

HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION No.44412 OF 2018

ORDER: (per V. Ramasubramanian, J)

Contending that the account of the borrower had become a Non Performing Asset (N.P.A.) way back in the year 1983 and that therefore the very invocation of the Provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), after more than thirty years, was clearly barred by law, a person who claims to have purchased the mortgaged property has come up with the above Writ Petition.

Heard Mr.R.Sushanth Reddy, learned counsel for the petitioner and Ms.Y.N.Lalitha, learned Standing Counsel for the respondents-Corporation.

As stated in the preamble, the case of the petitioner is that the account even according to the respondents-Corporation became an N.P.A. more than thirty years ago and that therefore proceedings under the Act were completely barred by limitation.

But the petitioner appears to be a subsequent purchaser of the property. Whether the claim as against the borrowers is barred by limitation or not, is not only a mixed question of fact and law, but also a question that should be raised in the first instance by the borrowers or the guarantors.

According to the counsel for the petitioner, it is an admitted fact that the account became N.P.A. thirty years ago and that there was no dispute on facts.

But we do not agree. From what is stated in the demand notice under Section 13(2) of the Act and from what is stated in the possession notice under Section 13(4) of the Act, and admission of fact cannot be presumed. Predominantly the question of limitation is a mixed question of fact and law. Therefore, the appropriate course of action open to the petitioner is only to go before the Tribunal. If the petitioner goes to the Tribunal, the question of limitation can be adjudicated both on facts and in law by the Tribunal.

Therefore, leaving it open to the petitioner to go before the Tribunal, this Writ Petition is dismissed. No order as to costs.

Consequently, miscellaneous petitions if any pending in the Writ Petition shall stand dismissed.



V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

03.01.2019
mgr/vhb