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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) NO. 745 OF 2020

1. M/s P.S. Traders, through the Proprietor: Paramjeet Singh Gandhi, S/o Late Guru Dayal Singh Gandhi, aged about 51 years, R/o Sai Nagar, behind Kali Mandir, Phafadih, Raipur (CG) PS: Moudahapara, Raipur (CG)
2. M/s Kaur Enterprises, through: the Proprietor Mrs Jasbir Kaur, W/o Shri Paramjeet Singh Gandhi, aged about 46 years, R/o C-13, Sector 3, Devendra Nagar, PS Devendra Nagar (CG) **… Petitioners**

versus

1. State Bank of India, through the Authorized Officer, Stress Asset Recovery Management, Block B-1, Pujari Chambers, near Pachpedi Naka, Raipur (CG)
2. The District Magistrate, Raipur, District Raipur (CG) **… Respondents**

For Petitioners	:	Mr. N. Naha Roy, Advocate.
For Respondent 1	:	Mr. P.R. Patankar, Advocate.
For Respondent 2	:	Mr. V.R. Tiwari, Addl. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/02/2020

1. The relief sought for by the Petitioners through the present writ petition is, seeking for a direction to the Respondents to stay the proceedings pursuant to Section 14 of the Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (in short, "SARFAESI Act") initiated by Respondent No.1-Bank.

2. During the course of hearing, it has been revealed that the Respondent-Bank on an earlier occasion initiated auction proceedings of the property of the Petitioners and the Petitioners had then approached the Debt Recovery Tribunal, Jabalpur by way of S.A. No. 31/2019 wherein, on 19.2.2019, the Tribunal passed the following orders:

> **"**The present SA has been filed on 02/02/19 assailing the auction notice Ann. A-1. Counsel for Applicant submits that the date mentioned in the Notice Published in Hindi Newspaper is 25/01/18 which is incorrect and should have been 25/01/19.
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> During the course of arguments, the Applicant submits that he is willing to clear the entire dues of the Bank with interest provided he is given some time. On being queried, Counsel for Bank submits that the total outstanding of both the accounts as on date is appx. 76 Lac. In these circumstances, it is hereby directed that in case the Applicant deposits Rs. 8 Lac on or before 25/02/19, the Bank shall not proceed further with the auction notice. The Applicants are further directed to deposit a minimum of Rs. 5 Lac before the end of every month and clear the entire outstanding with interest within a period of 6 months, i.e., on or before 31/08/19. However, in case of failure to

> make the payments as directed above, the Bank shall be at liberty to proceed further with the recovery of its dues as per law.
> With these directions the SA stands disposed of. The record be consigned to the record room.**”**

3. It has been contended by the learned Counsel for the Petitioners that pursuant to the order dated 19.2.2019 of the Tribunal, the Petitioners had paid Rs.8 Lakh on 25.2.2019 and on 26.2.2019 by depositing an amount of Rs.4 Lakh each. Thereafter, the Petitioners have not been able to pay any amount whatsoever to the Respondent-Bank. From the order dated 19.2.2019 of the Tribunal, it clearly reflects that the outstanding amount as it stood against the Petitioners on 19.2.2019 was approximately Rs.76 Lakh. Though the Petitioners were required to pay Rs.5 Lakh per month starting from the month of March, 2019, but till date they have not deposited a single penny out of the said amount. Thus, there is a clear default on the part of the Petitioners in honouring the order passed by the Tribunal on 19.2.2019. Moreover, the Petitioners did not even attend the proceedings in the case pending before the Tribunal which ultimately dismissed the case on 16.12.2019.

4. The Petitioners now appear before this Court by way of the present writ petition seeking for a sympathetic consideration. According to the Petitioners, because of the slow down of the market their business also has failed miserably and they could not honour the promise that they had made to the Respondent-Bank. At this juncture, the Petitioners pray for a short breathing time for discharging the entire obligations towards the Bank. They pray for three-four months' time for clearing the entire amount due on him and payable to the Bank.

5. Learned Counsel for the Respondent-Bank however has a strong objection to the said request made by the Petitioners, on the ground that a similar sympathetic consideration was already considered by the Tribunal vide its order dated 19.2.2019 but the Petitioners have shown total disregard to their promise that they had made before the Tribunal and therefore the Petitioners should not be granted any further sympathy for depositing the amount and the Respondent-Bank may be permitted to proceed further in accordance with law.

6. Considering the entire facts and circumstances of the case and also considering the prayer that the Petitioners have made for only three-four months' time for clearing the entire dues payable, this Court taking a sympathetic consideration towards the claim of the Petitioners is inclined to allow the writ petition *provided* the Petitioners deposit 50% of the amount due to the Respondent-Bank within a period of 15 days from the day this order is uploaded on the website of the High Court of Chhattisgarh and the balance amount shall be cleared within a period of four months thereafter.

7. Subject to the Petitioners depositing the 50% of the amount within a period of 15 days, the Respondent-Bank is directed not to insist upon taking possession of the property of the Petitioners for a period of four months thereafter.

8. It is however made clear that in the event of any further default on the part of the Petitioners, the Respondent-Bank shall be at liberty to take all appropriate remedies open to them under the SARFAESI Act.

9. The writ petition stands partly allowed and is disposed of accordingly.

Sd/-
(P. Sam Koshy)
JUDGE

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