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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 834 of 2020

1. Smt. Radha Tekam, W/o Mansingh Tekam, Aged About 40 Years, R/o Manpur House Rewadih, Dongargarh Road, Rajnandgaon, District : Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. Bank of Baroda Through The Chief Manager, Regional Stressed Asset Recovery Branch, Durg, Regional Office, First Floor, Zonal Market, Sector-10, Bhilai, District : Durg, Chhattisgarh
2. Branch Manager, Bank of Baroda, Padumtara Branch, Beside Ashok Fuel Centre, Khairagarh Road, Village Padumtara, Tahsil And 491441, District : Rajnandgaon, Chhattisgarh
3. District Magistrate Rajnandgaon, District : Rajnandgaon, Chhattisgarh

----- Respondents

For Petitioner	:	Mr. Shrawan Agrawal, Advocate
For Resp. No. 1 & 2	:	Mr. Vinod Deshmukh, Advocate
For Respondent No. 3	:	Mr. V.R. Tiwari, Addl. A.G. with Mr. Somkant Verma, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy
Order on Board

04.03.2020

1. The present Writ Petition has been filed for the following directions:

> "(i) That, this Hon'ble may kindly be pleased to issue an appropriate writ/orders/directions to the respondents in respect of proposal submitted by the petitioner.
>
> (ii) That, this Hon'ble may kindly be pleased to issue an appropriate writ/orders/directions in respect of physical possession of the mortgaged property.
>
> (iii) That, this Hon'ble Court may kindly be pleased to grant any other relief which seems just and fair in the eyes of law, looking to the facts and circumstances of the case."

2. The whole dispute of the petitioner is in-respect-of the non-clearance of the loan that the petitioner had obtained from the respondent no. 1 and

2 banks. A perusal of the pleadings in the writ petition would show that the petitioner was a co-borrower, whose loan account was declared as Non-Performing Asset (NPA) on 29.07.2017. Subsequently, the respondent no. 1 and 2 initiated proceedings under the SARFAESI Act, 2002 and the first notice under section 13 (2) was issued on 25.10.2017. Subsequently, the further proceedings under the said SARFAESI Act, 2002 were also initiated and concluded. Finally, the property mortgaged by the borrowers were put to auction.

3. Before the auction was put to hold on 29.02.2020, the petitioner approached the respondent-bank seeking time to deposit the entire amount. The bank-authorities granted them time till 28.02.2020; so that the borrowers could clear dues, failing which the auction proceeding would be put into force on 29.02.2020. The petitioner failed to discharge her liability and as a consequence, the property was put to auction on the 29.02.2020.

4. The counsel for the respondent no. 1 and 2 banks on instruction submits that the auction has been finalised in favour of Mrs. Swapna Singh, she has also paid 25 per cent of the auction amount to the bank and thereafter the bank has the power to issue sale letter in favour of the auction purchaser. Today, when the matter was taken up by this Court in the pre-lunch session instruction from the petitioner was sought, as to whether he would be able to discharge the liability within 48 hours; so that the bank authorities can drop the further proceedings on the auction held on 29.02.2020. When the matter was taken up in the post lunch session, the counsel for the petitioner expressed his reluctance to discharge the entire liability within a period 48 hours and prayed for a couple of months time for discharging the said liability.

5. Given the fact that the petitioner was not in a position to discharge the entire liability within 48 hours, this Court finds it difficult to grant any relief to the petitioner particularly, when the entire exercise as is provided under the SARFAESI Act, 2002 has already been concluded. Moreover, the property has also been put to auction and the property has also been purchased on auction by one namely, Mrs. Swapna Singh, W/o Raj Singh.

6. Given the said fact that the auction has been finalised and the auction purchaser Mrs. Swapna Singh has also deposited 25 per cent of the amount with the bank and has also got the sale letter in her favour, a right has definitely accrued in her favour and who is not a party to the proceedings in the present writ petition. Therefore, this Court finds its difficult to issue any relief to the petitioner at this juncture. However, in case, in the event if the said auction purchaser fails to discharge the liability; so far as payment of the balance of amount agreed over the said property within the stipulated period, the petitioner may approach the respondent no. 1 and 2 banks on that situation by making the entire amount due on her to the banks, which the banks shall consider in accordance with the provisions of law.

7. With the aforesaid observations, the present writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Rahul