IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.NO.2112 OF 2021

1. M.Rahul

2. M.Varuna Priya .. Petitioners

-vs-

1. The Authorised Officer
   CANBANK FACTORS LIMITED
   (A Subsidiary of Canara Bank)
   1028, United India Building
   Second Floor, Avinashi Road
   Coimbatore - 641 018.

2. M/s.Ramalinga Fabrics Pvt. Ltd.
   Rep. by its Managing Director
   No.20, 1st Floor
   Near Indian Overseas Bank
   Thillai Nagar, Erode - 638 001.

3. Anand Ramalingam
4. C.Manoharan
5. A.Senthilkumar
6. Priya Anand
7. Pandiyarajan Muthukrishnan
8. Prakash Kumar Shanmugam
9. G.Ravi .. Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records of the first respondent pertaining to the E-Auction sale notice dated 10.2.2020 and quash the same.

For Petitioners : Mr.K.S.Karthik Raja

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The writ petitioners have indulged in multifarious proceedings and now have the gall to question the bank for opening up parallel fronts.

2. What appears to be fairly obvious is that the writ petitioners have obtained credit facilities from the respondent bank and have defaulted in repayment thereof. It is also evident that securities created in favour of the bank are attempted to be resisted from being enforced. The writ petitioners refer to a secured asset being an ancestral property and the subject-matter of a suit instituted in 2015. The writ petitioners accuse the secured creditor of disrespecting the suit court in proceeding against such security which is an integral part of the partition suit.

3. A sale notice has been challenged as the secured creditor proposes to auction the secured assets. The writ petitioners have carried the matter to the appropriate Debts Recovery Tribunal and complain that the stay petition has not been taken up and despite the pendency of the stay petition, the bank has proceeded with impunity to sell the secured assets.

4. The scheme of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is such that a secured creditor answering to that description in the Act has the authority thereunder to proceed against the securities and even realise or sell the same before any process of adjudication can be undertaken by the debtor. The only remedy upon measures being taken under Section 13(4) of the Act of 2002 for any person aggrieved, including the borrower, is to approach the appropriate Debts Recovery Tribunal under Section 17 of the Act of 2002 and obtain a stay. Defaulting debtors resort to the modern gimmick of filing stay petitions without taking proper steps to prosecute the same. One of the principal reasons why such a tactic is resorted to is because the Debts Recovery Tribunal usually requires a substantial deposit to be made for a stay to be granted.

5. As far as the suit instituted in 2015 is concerned, it may come as news to the writ petitioners that Section 34 of the Act of 2002 contains a two-fold buffer that prohibits matters which are capable of being adjudicated by the Debts Recovery Tribunal in terms of the Act of 2002 to be taken up for consideration by a civil court and an embargo on any injunction being issued by any civil court in respect of such matters.

6. The remedy of the petitioners is before the tribunal and upon complying with the conditions that may be set by the tribunal to make a substantial deposit. It is high time that the defaulting debtors stop using the hackneyed excuses and approach the Writ Court with a pretense of innocence.

7. W.P.No.2112 of 2021 is dismissed with costs assessed at Rs.10,000/- to be paid to the respondent bank, which the bank will be entitled to realise in course of its proceedings under the Act of 2002.

8. The petitioners protest in the description of the petitioners as borrowers, since the petitioners clarify that the petitioners are the children of the fourth respondent mortgagor. This is another game that the Writ Court should see through for whatever it is worth. It is only appropriate that the costs stand enhanced to Rs.20,000/-. Consequently, W.M.P.Nos.2394, 2395, 2397 and 2399 of 2021 are also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To:

The Authorised Officer
CANBANK FACTORS LIMITED (A Subsidiary of CANARA BANK)
1028, United India Building
Second Floor, Avinashi Road
Coimbatore - 641 018.

+1cc to Mr.K.S.Karthik Raja, Advocate, S.R.No.15387

W.P.No.2112 of 2021

JP(CO)
CS/22/03/2021