11.07.2022
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WPA 13427 of 2022

Archana Fabrics & Co.
-Vs-
Canara Bank & Ors.

Mr. Anindya Bose,
Mr. Samik Sarkar,
Mr. Diptendu Mandal,
Mr. Nikhil Gupta,
Ms. Sudipa Sen Gupta,
... for the petitioners

Ms. Sreemoyee Mitra,
... for the Canara Bank

The affidavit of service is taken on record.

First, the point of maintainability, learned counsel appearing for the petitioners submits that the DRT-3 is the proper forum for entertaining this matter but that the cease-work before the DRT-3 is presently continuing. The urgency is that E-auction, in terms of E-auction sale notice, is to be held at 11.30 a.m. today.

Counsel also submits that the impugned notice for E-auction/sale of the petitioners' property was published on 8th June, 2022 but was affixed on the premises of the petitioners on 27th June, 2022. Counsel submits that hence the impugned notice does not comply with the mandatory time period under Rule 8 (6) of The Security (Enforcement) Rules, 2002.

Learned counsel appearing for the Canara Bank seeks time to take instructions in the matter.

After hearing learned counsel, this Court is of the view that since the DRT-3 is not functioning and the impugned sale notice gives a fresh cause of action, the Writ Court should interfere in the present proceeding.

Although the E-auction was published on 8th June, 2022 but the said notice was affixed on the premises of the petitioners on 27th June, 2022. Hence the date of deemed knowledge can only be on and from 27th June, 2022.

The fact of the notice being pasted on the wall of the residential property of the petitioners has been specifically stated in the writ petition.

Under Rule 8(6) of The Security (Enforcement) Rules, 2002, the authorized officer is under an obligation to serve the notice to the borrower within a window of 30 days before the sale of immovable secured assets takes place. If the Bank does not comply with the said statutory requirement, this may also result in the petitioners being deprived of the right of redemption, as provided under Section 13(8) of The SARFAESI Act, 2002. In *Mathew Varghese Vs. M. Amritha Kumar; (2014) 5 SCC 610*, the Supreme Court held that 30 days notice must be given to the borrower before any sale or transfer can be resorted to by a secured creditor.

In view of the fact that the impugned notice admittedly does not give 30 days notice period to the petitioners, there shall be an order of stay of the E-auction/sale to the extent of the E-auction covering the assets of the petitioners until one week after the cease-work before the DRT-3 is resolved. The petitioners and the respondent Bank shall have the liberty of approaching the DRT-3 for appropriate relief.

WPA 13427 of 2022 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)