

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.433/2022

M/s Siddhesh Construction Co., Nagpur and another
..Vs..
Canara Bank, Shankar Nagar, Nagpur

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Radhe Agrawal, Advocate for the petitioners.
Mr. Vivek Kolte, Advocate for the respondent.

CORAM :- SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.

DATED :- 28.1.2022.

Hearing is conducted through Video Conferencing and all the learned Advocates agreed that the audio and visual quality was proper.

2. Heard Mr. Agrawal, learned counsel for the petitioners.

3. The contention is that the petitioners never received demand notice under Section 13(2) of the Securitization Act.

4. On going through the Annexures to the petition, we find that there is a possession notice dated 21.9.2021 received by the petitioners. It refers to demand notice received by the petitioners dated 22.04.2021. By this notice, the petitioners have been informed that as they failed to pay the outstanding amount of Rs.1,50,15,396/-, the respondent bank had taken

possession of the property described in the notice in exercise of the powers conferred upon the authorized officer of the bank under Section 13(4) of the Securitization Act.

5. Now, the question arises as to what the petitioners were doing when the petitioners received the possession notice dated 21.9.2021?

6. It appears that the contents of the possession notice were sufficient to put the petitioners on notice about the issuance of the notice under Section 13(2) of the Securitization Act by the respondent bank and that the secured assets have also been taken in possession by the respondent bank and, therefore, if the petitioners had any grievance against such action on the part of the respondent bank, the petitioners ought to have approached the D.R.T., Nagpur as at that time, it is not in dispute, the office of D.R.T., Nagpur was very much functional. However, the petitioners did not approach D.R.T., Nagpur and now, in January 2022, the petitioners have filed an application under Section 17 of the Securitization Act and have approached this Court contending that as there is no Presiding Officer available at D.R.T., Nagpur, the stay to the auction notice, which auction is scheduled to be held tomorrow i.e. on 29th January, 2022, be granted.

7. The conduct of the petitioners as noted above, in our considered view, would not deserve them any interim relief in the matter.

8. It is also the contention of the learned counsel for the petitioners that the petitioners have after issuance of

notice dated 22.4.2021 regularized the loan account when they paid amount of Rs.17,37,000/- into the loan account. We must say that payment of Rs.17,37,000/- against the outstanding amount of Rs.1,50,15,396/- cannot be considered to be regularization of the loan account and, therefore, the contention cannot be accepted.

9. There is an explanation which is tried to be given by the learned counsel for the petitioners on account of failure on the part of the petitioners to immediately approach the D.R.T. under Section 17 of the Securitization Act after possession notice dated 21.9.2021 was received by the petitioners. He submits that some criminal cases were going on against the petitioners and, therefore, petitioners were out of Nagpur and as such the petitioners could not take prompt action to challenge the possession notice. There are no pleadings made to this effect in the petition. The explanation, therefore, cannot be accepted.

10. In view of the above, we do not think that this is a fit case for this Court to make any interference in the matter. The petition stands **dismissed**. No costs. However, we make it clear that if any auction is held, same shall be subject to the result of the securitization application which the petitioners say that they have filed before the D.R.T., Nagpur.