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ORDER SHEET

WPO/633/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SALONA MERCHANTS PRIVATE LIMITED AND ANR
VS
RESERVE BANK OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 10th July, 2024.

Appearance:
Mr. Saptangshu Basu, Sr.Adv.
Mr. Biswaroop Bhattacharya, Adv.
Mr. Rajarshi Dutta, Adv.
Mr. Arik Banerjee, Adv.
Mr. Surendra Dube, Adv.
Mr. Meghajit Mukherjee, Adv.
Mr. Ramendu Agarwal, Adv.
Ms. Sonia Das, Adv.
...For the Petitioner

Ms. Soni Ojha, Adv.
Ms. Sambrita B. Chatterjee, Adv.
..For respondent nos. 2 and 3

Mr. Debjit Mukherjee, Adv.
Ms. Susmita Chatterjee, Adv.
...For respondent no. 4

The Court: The only issue involved in this writ petition is whether the bank should be directed to stay its hand from taking possession as per the order passed by the Chief Metropolitan Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, in short). The petitioners/mortgagors are willing to pay up the entire dues of the bank. As on date, according to the petitioners, the dues are around 1.80 crores as per the amount stated by the bank in the notice under Section 13(2) of the SARFAESI Act.

The petitioners contend that the order of the learned Chief Metropolitan Magistrate was passed beyond 60 days and thus on the basis of such order, possession cannot be taken by the bank.

The petitioners have an adequate remedy under Section 17 of the said Act. However, the petitioners contend that if the bank provides the break-up as per the dues as on date, they are willing to pay up the amount.

Learned advocate for the bank submits that the notices under Section 13(2) and 13 (4) of the Act have been upheld by a co-ordinate Bench and the subsequent proceeding initiated by the bank against the borrowers were found to be in accordance with law. An appeal therefrom is pending before the Hon'ble Division Bench, but the borrower did not show any inclination to move such appeal. It is further contended that the writ petition should not be entertained. No relief should be granted mandating the bank to accept the amount offered by the petitioners. The bank should be allowed to take possession. According to the bank, the dues are around 2.40 cores.

This Court accepts the submissions of the learned advocate for the respondent bank. The issue is, whether in the event the petitioners are willing to pay up the dues, the bank should consider such offer and afford an opportunity to the petitioners to retain the property. This Court does not, in any way, indicate that it is the incumbent duty of the bank to accept any offer, but if the amount as calculated to be due from the borrowers are paid, there does not seem to be any reason why coercive measures should be taken after all.

Under such circumstances, the writ petition is disposed of with a direction upon the bank to immediately issue a calculation of the dues to the petitioners. If the petitioners are willing to pay up the said amount, the bank shall afford an opportunity to the petitioners to do so and the matter can be resolved before any sale notice is published. The right of redemption exists till the publication of the sale notice.

In view of the bona fide shown by the petitioners and their willingness to pay up the dues, the bank should not either take possession or any further coercive steps for a period of 48 hours.

WPO 633 of 2024 is disposed of.

All parties are to act on the basis of the server copy of the order.

(SHAMPA SARKAR, J.)

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