

Appellant Vs. Respondent

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SooperKanoon Citation : sooperkanoon.com/1060458

Court : Kolkata

Decided On : Aug-06-2012

Judge : Dipankar Datta

Appellant : Appellant

Respondent : Respondent

Judgement :

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ORDER

SHEET W.P.No.631 of 2012 IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction Original Side -DEEPAK KHEMKA & OTHERS .Petitioners Versus PHOENIX ARC PVT.LTD.& ORS.Respondents BEFORE: The Hon'ble JUSTICE DIPANKAR DATTA Date :

6. h August, 2012.

Mr.Joy Saha, Advocate, Mr.R.C.Prusti, Advocate, Mr.P.Deb, Advocate, Mr.J.N.Manna, Advocate and Mr.D.Banik, Advocate for the Petitioners.Mr.Hirak Kumar Mitra, Sr.Advocate, Ms.Sanjukta Ray, Advocate, Mr.Abhik Das, Advocate for Respondent Nos.1 and 2 Ms.Usha Doshi, Advocate for Respondent No.3 The Court : Notice dated 1st June, 2012 issued by the respondent no.2 in exercise of power conferred by Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is under

challenge in this writ petition dated 26th July, 2012, filed in the department on 30th July, 2012.

Mr.Saha, learned counsel appearing for the petitioners has raised various points in support of his contention that the notice under Section 13(2) of the Act is ex-facie bad and liable to be set aside by this Court.

However, I am not inclined to exercise discretionary powers on this writ petition having regard to the fact that between the dates of affirmation of the affidavit accompanying the writ petition and presentation of the writ petition, the petitioners have lodged an objection dated 28th July, 2012 in response to the notice issued under Section 13(2) of the Act.

In terms of Section 13(3A) of the Act, the respondent no.2 is obliged to consider the objection and to pass a reasoned order in the event such objection is not acceptable to it.

Section 13(3A) has been inserted in the Act to provide remedy to a defaulting borrower before the secured creditor takes measure under Section 13(4).I am of the view that the petitioners ought not to be allowed to pursue parallel remedies.

The writ petition stands dismissed, without costs.

Needless to observe, I have not entered into the merits of the contentions raised by Mr.Saha and all points are left open to be urged before the appropriate forum at the appropriate stage, if occasion therefor arises.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(DIPANKAR DATTA, J.) km AR(CR)

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