Bhupendra Kumar Tripathi and Another Vs. State Bank of India and Another

Bhupendra Kumar Tripathi and Another Vs. State Bank of India and Another

SooperKanoon Citation : sooperkanoon.com/917479

Court : Allahabad

Decided On : Apr-05-2011

Judge : Satya Poot Mehrotra; Rajesh Chandra, JJ.

Acts : Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002; Constitution of India - Article 226

Appeal No. : WRIT - C No. - 19757 of 2011

Appellant : Bhupendra Kumar Tripathi and Another

Respondent : State Bank of India and Another

Advocate for Def. : Smt. Archana Singh, Adv

Advocate for Pet/Ap. : Gulab Chnadra, Adv

Judgement :

1. The petitioner took loan for construction of house from the respondent no.2- State Bank of India in the year 2002.

2. The petitioner committed default in respect of the said loan Consequently, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short " the Securitisation Act") have been initiated against the petitioners.

3. We have heard Shri Gulab Chandra , learned counsel for the petitioners and Smt Archana Singh, learned counsel for the respondent nos. 1 and 2, and have perused the averments made in the Writ Petition.

4. In United Bank of India v. Satyavati Tandon & others reported in 2010 (8) SCC 110, their Lordships of the Supreme Court have laid down that in view of the alternative remedy available under the Securitization Act, the High Court in exercise of Writ Jurisdiction under Article 226 of the Constitution of India should normally not interfere in respect of the proceedings being taken under the said Act.

5. Shri Gulab Chandra , learned counsel appearing for the petitioners, however, states that the petitioners do not want to question the merits of the proceedings being taken under the Securitization Act and want to pay the entire outstanding dues with interest and expenses on pro-rata basis in case reasonable time is given to them for making the deposit in instalments.

6. Smt. Archana Singh, learned counsel appearing for the contesting respondent-Bank has no objection to the above prayer made on behalf of the petitioners provided the petitioners deposit an amount of Rs. 1.5 lac by 7.4.2011, and further, deposit the remaining amount in four equal quarterly instalments.

7. In view of the above, we dispose of the Writ Petition with theconsent of the learned counsel for the parties, without going into the merits of the controversy involved in the Writ Petition, by giving the following directions:

1. The petitioners will clear off the entire outstanding dues along-with interest, penal interest and expenses on pro-rata basis.

2. The entire outstanding dues shall be paid in five instalments. The first instalment of Rs. 1.5 lacs shall be paid by 7.4.2011, and thereafter, the remaining amount will be paid in four equal quarterly instalments.

3. Initially the recovery proceedings are stayed till 7.4.2011. On depositing the first instalment, impugned proceeding shall remain stayed up to the date of next instalment and the process shall continue until the last instalment has been paid.

4. If the petitioners deposit the entire amount as undertaken by the petitioners in the manner indicated above, the proceedings shall stand withdrawn.

5. If the petitioners fail to deposit the amount of any one instalment within the stipulated period, the Bank shall be at liberty to proceed in accordance with law.

6. The cost and recovery charges, if any, shall be paid alongwith the last instalment. It is made clear that this order has been passed on the statements made by the learned counsel for the petitioners as well as the learned counsel for the Bank, and we have not adjudicated the claim on merits.

8. The Writ Petition is disposed of with the aforesaid directions and observations.

9. Copy of this order will be provided to the learned counsel for the parties, on payment of usual charges, within 24 hours.