

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28TH DAY OF FEBRUARY, 2014

BEFORE

THE HON'BLE MR. JUSTICE A.S. BOPANNA

WRIT PETITION NO.1103/2014 C/W.
WRIT PETITION NO. 34179/2013 (GM-RES)

IN W.P.NO.1103/2014

BETWEEN:

M/S. DHEEMANTH CERAMICS
PRIVATE LIMITED,
NO.10, 5TH FLOOR, PALLAVI COMPLEX,
MISSION ROAD,
BANGALORE-560 027,

REPRESENTED BY ITS
MANAGING DIRECTOR,
T.RAMACHANDRA,
S/O.THATAPPA,
AGED 66 YEARS,
BETHAMANGALA ROAD,
TAMAKA,
KOLAR-563 101.

... PETITIONER

(BY SRI N. SURESHA, ADV.)

AND:

1. RESERVE BANK OF INDIA,
NRUPATUNGA ROAD,
BANGALORE-560 001,
REPRESENTED BY ITS
DEPUTY GOVERNOR.

2. DEPUTY COMMISSIONER,
KOLAR SUB DIVISION,
KOLAR-563 101.
3. THE AUTHORIZED OFFICER,
KARNATAKA BANK LTD.,
NO.105, III FLOOR,
MOHAN MANSION,
KASTURABA ROAD,
BANGALORE-560 001.
4. MR.M.B.MALLIKARJUNA,
S/O.BASAPPA.M (MOODBAGIL),
AGED ABOUT 50 YEARS,
2ND STAGE VINOBHA NAGAR,
SHIMOGA-577 204.
5. M/S. R.DEVIKA,
W/O. MR.G.PRAKASH,
AGED 45 YEARS,
NO.165, 18TH CROSS,
9TH MAIN, M.C.LAYOUT,
VIJAYANAGAR,
BANGALORE-560 040.
6. M/S. SEEMA H.S.,
W/O.MALLIKARJUNA M.B.,
AGED 40 YEARS,
(MOODBAGIL),
2ND STAGE, VINOBHA NAGAR,
SHIMOGA-577 204.
7. MR.NAGESH H.V.,
S/O.MR. VENKATAGIRIAPA,
AGED ABOUT 46 YEARS,
NO.117, 5/2, 8TH MAIN,
19TH CROSS, C.H.B.S. LAYOUT,
VIJAYANAGAR,
BANGALORE-560 040.

8. MR.ANAND P.S.,
 S/O. MR. PUTTALINGAPPA,
 AGED 44 YEARS,
 NO.827, 20TH MAIN ROAD,
 37TH CROSS, 4TH BLOCK,
 JAYANAGAR,
 BANGALORE-560 011. **... RESPONDENTS**

(BY SRI K.V.SHYAMAPRASADA, ADV. FOR C/R3
 SRI H.V.MANJUNATHA, AGA FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE SALE NOTICE DT.5.12.13 IN ANN-E ISSUED UNDER SECURITIZATION ACT.

IN W.P.NO. 34179/2013

BETWEEN:

HEALTH CARE GLOBAL
 ENTERPRISES LTD.,
 OFFICE AT HCG TOWERS,
 #8, P.KALINGA RAO ROAD,
 SAMPANGI RAMA NAGARA,
 BANGALORE-27,
 REP. BY ITS AUTHORIZED SIGNATORY,
 DR.MUDIT SAXENA,
 S/O.P.N.SAXENA,
 AGED 43 YEARS.

... PETITIONER

(BY SRI N. SURESHA, ADV.)

AND:

1. REGIONAL OFFICER,
 RESERVE BANK OF INDIA,
 NRUPATUNGA ROAD,
 BANGALORE-560 002.

2. KARNATAKA BANK LTD.,
ASSET RECOVERY MANAGEMENT BRANCH,
#105, III FLOOR,
MOHAN MANSION, KASTURBA ROAD,
BANGALORE-560 001.
REP. BY ITS AUTHORIZED OFFICER.
3. MR.T.RAMACHANDRA,
S/O.LATE. THATHAPPA,
AGED ABOUT 66 YEARS,
R/O. NO.165, 18TH CROSS,
9TH MAIN, MC LAYOUT,
VIJAYANAGAR,
BANGALORE-560 040.
4. MRS.R.DEVIKA,
W/O.MR.G.PRAKASH,
R/O. NO.165, 18TH CROSS,
9TH MAIN, MC LAYOUT,
VIJAYANAGAR,
BANGALORE-560 040.
5. MR.M.B.MALLIKARJUNA,
S/O.BASAPPA.M
R/O. "MOOD BAGIL",
2ND STAGE, VINOBHA NAGAR,
SHIMOGA..
6. MRS. SEEMA H.S.,
W/O.MALLIKARJUNA M.B.,
R/O."MOOD BAGIL",
2ND STAGE, VINOBHA NAGAR,
SHIMOGA.
7. NAGESH H.V.,
S/O.MR. VENKATAGIRIYAPPA,
R/O.# 117, 5/2, 8TH MAIN,
19TH CROSS, C.H.B.S. LAYOUT,
VIJAYANAGAR,
BANGALORE.

8. MR.ANAND P,
S/O. MR. PUTTALINGAPPA,
R/O.#827, 20TH MAIN ROAD,
37TH CROSS, 4TH BLOCK,
JAYANAGAR,
BANGALORE-560 011.

... RESPONDENTS

(BY SRI K.V.SHYAMAPRASADA, ADV. FOR C/R2
R1, R3-R6 ARE SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT NOT TO TAKE PHYSICAL POSSESSION OF THE WRIT PETITION SCHEDULED PROPERTIES.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

The petitioner in W.P.No.1103/2014 is the borrower. In respect of the action initiated by the respondent-Bank for recovery of the amount by issue of sale notice at Annexure-E, the petitioner is before this Court.

2. The petitioner in W.P.No.34179/2013 claims to be the tenant in respect of the said premises which is sought to be sold by the respondent-Bank.

3. Insofar as the borrower, that is the petitioner in W.P.No.1103/2014, the writ papers would disclose that apart from the proceedings initiated under Sections 13 and 14 of the SARFAESI Act, the respondent-Bank had also invoked the provisions contained in Section 19 of the Recovery of Debts Due to Banks And Financial Institutions Act, 1993 (for short the 'RDDB Act') and recovery petition had been filed. The said proceedings in O.A.No.636/2011 has already been disposed of accepting the claim of the respondent-Bank. Presently, since the petitioner was before this Court assailing the sale notice and it was indicated to this Court that efforts to settle the claims would be made, this Court by the order dated 16.01.2014 had permitted the borrower/petitioner in W.P.No.1103/2014 to secure an appropriate buyer. The petitioner was also directed to deposit a sum of Rs.1,00,00,000/- (Rupees One Crore only) within four weeks to establish their bonafides. In that view, the further process relating to the sale notice was directed to be kept in abeyance. The petitioner has neither secured

an appropriate buyer nor has deposited the amount as indicated by this Court.

4. Be that as it may, since the earlier proceedings, both under the RDDB Act and SARFAESI Act has concluded against the petitioner who is the borrower, certainly the petitioner cannot make a grievance with regard to the action taken by the respondent-Bank for sale of the property under the impugned sale notice at Annexure-E. Hence, the petition is liable to be dismissed, which is accordingly ordered.

5. Insofar as the petitioner in W.P.No.34179/2013, it is their claim that they are tenants in respect of the said premises. In a circumstance where the borrower is due and liable to pay the amount and action is initiated and notwithstanding the fact that the proceedings are initiated under the SARFAESI Act, the possession of tenant in any event would have to be taken in accordance with law. The issue as to whether the petitioner therein is entitled to

continue in the premises until such process is adopted and as to whether the petitioner is a bonafide tenant are all issues which can only be considered in an appeal under Section 17 of the SARFAESI Act.

6. In that view, liberty is reserved to the petitioner in W.P.No.34179/2013 to approach the Debts Recovery Tribunal under Section 17 of the Act. The interim order protecting their physical possession shall enure to the benefit of the petitioner for a period of three weeks subject to the petitioner therein filing the appeal before the Debts Recovery Tribunal within a period of two months from the date of receipt of a copy of this order. All questions with regard to the locus-standi, limitation and the maintainability of such appeal is left open to be considered by the Debts Recovery Tribunal.

7. It is also made clear that notwithstanding the leave granted to the petitioner in W.P.No.34179/2013 to approach the Debts Recovery Tribunal, there would be no impediment for the petitioner to proceed against the

borrower from the stage from where this Court had restrained the respondent-Bank by assuming symbolic possession of the premises.

In terms of the above, both these petitions stand disposed of.

**Sd/-
JUDGE**

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