

**Court No. - 9**

**Case :-** WRIT - C No. - 24957 of 2020

**Petitioner :-** Radhey Shyam Gupta And 2 Ors.

**Respondent :-** State Of U.P. And 2 Ors.

**Counsel for Petitioner :-** Ram Sajivan, Shailesh Kumar

**Counsel for Respondent :-** C.S.C., Sanjai Singh

**Hon'ble Anjani Kumar Mishra, J.**

**Hon'ble Prakash Padia, J.**

Heard learned counsel for the petitioners.

Although the matter has been taken up in the revised list, counsel for respondent-Bank has not appeared.

The petitioner is aggrieved by the auction notice dated 27.10.2020 published in the newspaper Hindustan consequent to a possession notice dated 06.10.2020 by which possession has been taken by the Bank over the security offered for securing a loan of Rs.25,00,000/- (Rupees Twenty Five Lacs) and there was a default in repayment of loan.

The notice under Section 13(2) of the Securitization and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 calling upon the petitioner to repay the loan after declaring the loan as NPA is on 28.11.2019. On a pointed query by the Court, counsel for the petitioner states that no representation or objection was filed by the petitioner against the said notice. It appears that there is a provision for filing such objection under Section 13(3)A of the Securitization and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act"). It is only after the objection has been disposed of and in case, the loan has not been repaid, the financial institution is empowered to proceed and to take possession of the security in accordance with Sub Section (4) of Section 13 of the Act.

Once the possession has been taken under Sub Section (4) of the Section 13 of the Act, the debtor has two options, he may either deposit the entire amount due as provided under Sub Section 8 where upon the financial institution is debarred from proceeding with the sales of the security or debtor may file an application under Section 17 of the Act before the Debt Recovery Tribunal. Under the circumstances, the petitioner has two statutory remedies available to him which he may avail as may be advised.

The only contention at this stage raised by the counsel for the petitioner that he may be permitted to deposit the out standing loan amount in installments.

In our considered opinion, we do not have the jurisdiction to pass such order unless and until the financial institution which initiated recovery proceedings consents to such order.

As noted above, none appears on behalf of the respondent bank, therefore, in the absence of any categorical consent by the financial institution, the order for the relief as he prayed for cannot be granted.

In the circumstances, the petitioner may avail any of the remedy available to him for redressal of his grievance.

Subject to the above, the writ petition fails and is dismissed.

**Order Date :- 21.12.2020**

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