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(2011) 03 AHC CK 0017

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15341 of 2011

Bhupendra Joshi and others — APPELLANT

Vs

Allahabad Bank Centralised Retail Banking and another — RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:
Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17

Citation : (2011) 2 UPLBEC 923

Hon'ble Judges : Satya Poot Mehrotra, J;Rajesh Chandra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra and Rajesh Chandra, JJ.—As per the averments made in the Writ Petition, the petitioner Nos. 1 and 2 took loan for the housing purposes in March, 2005. The petitioner Nos. 3 to 5 also took loan in March? 2005.

2. The property in question was given as security for the said house loan.

3. The petitioners committed default in payment of the said loan. Consequently, proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short " the Securitization Act") have been initiated for sale of the secured asset.

4. Auction Notice dated 12.2.2011 has been published in the Newspaper Dainik Jagran dated 13.2.2011.

5. The petitioners have filed the present Writ Petition, inter-alia, praying for quashing the said Auction Notice dated 12.2.2011.

6. The petitioners in the present Writ Petition are impugning the proceedings being taken against them under the Securitization Act on various grounds.

7. We have heard Shri Hari Bans Singh, learned Counsel for the petitioner.

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8. In United Bank of India Vs. Satyawati Tondon and Others, 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.

9. In view of the decision of the Supreme Court in United Bank of India v. Satyawati Tandon and others (supra) and keeping in view the nature of controversy involved in the present Writ Petition, we are of the opinion that it will be appropriate that the petitioners be relegated to the alternative remedy? available to them of filing an Appeal/Application u/s 17 of the? Securitization Act before the Debts Recovery Tribunal.

10. We accordingly dismiss the Writ Petition on the ground of availability of alternative remedy to the petitioners by filing an Appeal/Application before the Debts Recovery Tribunal u/s 17 of the Securitization Act.

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