

(2007) 12 MAD CK 0072

In the Madras High Court

Case No : WP. No. 2431 of 2007 and M.P. No. 1 of 2007

Abdul Azeez Sons and Company

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 05-12-2007

Acts Referred:

General Clauses Act, 1897 — Section 13, 13(2)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(4), 17

Citation : (2007) 12 MAD CK 0072

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : D. Bharatha Chakravarthy, for Sai Bharath and Ilan, for the
Appellant; Kalyanaraman, for Aiyar and Dolia, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—Contending that the first respondent has issued a fresh notice u/s 13[2] of the SARFAESI Act, when

proceedings are pending before the Debts Recovery Tribunal in respect of the earlier notice u/s 13[2], the petitioner has come up with the present

writ petition.

2. Heard Mr.Bharatha Chakravarthy, learned Counsel for the petitioner and Mr.Kalyanaraman, learned Counsel for the respondents.

3. Admittedly, a notice u/s 13[2] was issued on 21.10.2002 and a possession notice was also issued u/s 13[4] on 01.07.2004. As against the said

possession notice, the petitioner has already approached the Debts Recovery Tribunal by way of an appeal u/s 17 of the SARFAESI Act. A

conditional order of stay is stated to have been passed in the said appeal and the petitioner claims to have complied with the conditional order. The

appeal is pending consideration still before the Debts Recovery Tribunal.

4. At this stage, the first respondent has issued a second notice u/s 13[2]. Therefore, the petitioner has come up with the present writ petition

challenging the notice u/s 13[2] on the short ground that the first respondent is not entitled to keep on issuing notices u/s 13[2] repeatedly,

especially when the previous notice u/s 13[2] and the possession notice u/s 13[4] are under challenge in a regularly filed appeal before the Debts

Recovery Tribunal.

5. I have carefully considered the submissions of the learned Counsel for the petitioner.

6. The first notice u/s 13[2] issued on 21.10.2002, contained two schedules, with Schedule-1 containing the description of 8 items of immovable

properties and Schedule-2 containing the list of hypothecated movable properties. When possession notice u/s 13[4] was issued on 01.07.2004,

the said possession notice contained only the description of four immovable properties leaving out the remaining four out the total of 8 items of

immovable properties covered by the notice u/s 13[2]. As against possession notice dated 01.07.2004, covering only four properties, the

petitioner has already gone before the Debts Recovery Tribunal and obtained a conditional order not to proceed with the auction sale of those

properties, in S.A. No. 20/2004 dated 13.12.2004 [later re-numbered as S.A. No. 15/2007 on the file of the Debts Recovery Tribunal-III,

Chennai].

7. When the appeal is still pending consideration before the Debts Recovery Tribunal, the first respondent has issued the notice impugned in the

writ petition u/s 13[2], dated 16.12.2006 in respect of the remaining four properties which were left out under the possession notice dated

01.07.2004.

8. Mr.D.Bharatha Chakravarthy, learned Counsel for the petitioner contended that Section 13[2] of the SARFAESI Act speaks only about

"notice" and not about "notices" and that therefore, it is not open to the first respondent to keep on issuing notices u/s 13[2] in a piecemeal

manner. Section 13[4] reads as follows:

13[2]: Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured

debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the

secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the

date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under Sub-section [4].

9. According to the learned Counsel for the petitioner, when the plain language used in the Section refers only to ""notice in writing"", there is no

scope for enlarging the same to mean ""notices in writing"".

10. However, I am unable to countenance the said contention of the learned Counsel for the petitioner for the simple reason that u/s 13[2] of the

General Clauses Act, 1897, the words in the Singular would include the plural and vice-versa in all Central Acts and Regulations. Section 13 of the

General Clauses Act reads as follows:

13. Gender and Number: In all [Central Acts] and Regulations, unless there is anything repugnant in the subject or context,-

[1] words importing the masculine gender shall be taken to include females; and

[2] words in the singular shall include the plural and vice versa.

11. Therefore, unless there is anything repugnant in the subject or context, words in singular would always include plural. I do not find anything

repugnant either in Section 13 or in any other Section of SARFAESI Act to exclude the plural, when Section 13[2] refers to ""notice"". Therefore,

there is no embargo for the first respondent to issue a fresh notice u/s 13[2], in respect of properties, which were not covered by the earlier

possession notice u/s 13[4] dated 01.07.2004.

12. Learned Counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in The Newspapers Ltd. Vs. The State Industrial

Tribunal, U.P., , for the proposition that the provisions of the General Clauses Act, cannot always be imported into provisions of all the Acts. But,

the said decision is of no assistance to the petitioner for the simple reason that, that decision arose out of the U.P. Industrial Disputes Act, 1947.

Under the said Act, unless a group of workmen joined together and raised a dispute, it would not come within the definition of the term ""industrial

dispute"". At the time when the aforesaid decision was rendered, the U.P. Industrial Disputes Act had no provision to enable individual workman to

raise an industrial dispute. Hence, the word ""workmen"", indicating the plural, was held not to include the singular, since such an interpretation on the basis of Section 13[2] of the General Clauses Act was beyond the object and scope of U.P.I.D. Act, 1947 at that point of time. In other words there was something repugnant to the context in the U.P. Industrial Disputes Act, 1947, for invoking the provisions of Section 13[2] of the General Clauses Act.

13. But, insofar as the SARFAESI Act is concerned, the scope of the Act, does not prohibit the issue of any number of notices u/s 13[2].

Therefore, the application of the provisions of Section 13[2] of the General Clauses Act to the word ""notice"" found in Section 13[2] of the SARFAESI Act, is justified.

14. Moreover, the original notice issued u/s 13[2] dated 21.10.2002, covered eight items of immovable properties. The possession notice issued

u/s 13[4] on 01.07.2004 covered only four out of eight items of properties. There is no embargo under any of the Sub-sections of Section 13 of

the SARFAESI Act for the first respondent even now to merely issue a possession notice u/s 13[4], in respect of the four items of properties not

covered by the earlier notice u/s 13[2] dated 01.07.2004. If there can be no embargo for the issue of a fresh possession notice, u/s 13[4] in

respect of the left out properties, there cannot be any embargo for the issue of a fresh notice u/s 13[2]. Therefore, even on this ground the

contention of the learned Counsel for the petitioner cannot be accepted.

15. In any event, a writ petition as against a notice u/s 13[2] is not maintainable. It is always open to the petitioner to give a reply and it is only

when the first respondent issues a possession notice u/s 13[4] that the petitioner is entitled to approach the Debts Recovery Tribunal u/s 17. In this

case, the petitioner has already filed an appeal in S.A. No. 15 of 2007 on the file of the Debts Recovery Tribunal-III, Chennai. Therefore, if and

when a possession notice is issued u/s 13[4], in pursuance of the notice impugned in this writ petition, it is always open to the petitioner either to

seek relief in the appeal already pending before the Debts Recovery Tribunal or to file a separate appeal as against the said order. In other words,

the remedies, open to the petitioner under the provisions of the SARFAESI Act, are not lost to him since that stage has not even come.

16. Therefore, leaving it open to the petitioner to challenge any possession notice, as and when issued by the first respondent u/s 13[4] in pursuance of the impugned notice, either in the same appeal pending on the file of the Debts Recovery Tribunal or by way of a separate appeal, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.