(2015) 03 AHC CK 0123

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4024 of 2015

A.N.K. Restobars Pvt. Ltd. and Others — APPELLANT

Vs

State of Uttar Pradesh and Others — RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(1-A), 13(2), 13(3-A), 13(4)

Citation : (2015) 4 ADJ 403 : (2015) 4 ALJ 466 : (2015) 3 BC 372 : (2015) 127 RD 582

Hon'ble Judges : Tarun Agarwala, J;Satish Chandra, J

Bench : Division Bench

Advocate : Pankaj Agarwal, for the Appellant; Satish Chaturvedi, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. We have heard Sri Pankaj Agarwal, learned counsel for the petitioners and Sri Satish Chaturvedi, learned counsel appearing for the State Bank of India, Meerut-respondent No. 4. The petitioner is a borrower and had taken certain cash credit facility from the respondent-bank. Since the petitioner could not repay the loan, proceedings under. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as the ''Act'') was initiated by the respondent-bank. A notice dated 11.5.2013 under Section-13(2) of the Act was issued to the petitioner in pursuance of which the petitioner filed his objection dated 5.7.2013. Without deciding the objection, it transpires that the respondent-bank filed an application under Section-14 of the Act before the District Magistrate which was allowed by an order dated 28.11.2014 permitting the respondent-bank to take physical possession of the property in question. The petitioner, being aggrieved by the action of the respondent and the order of the Additional District Magistrate (Finance and Revenue) has filed the present writ petition contending that no measures for taking possession of the property could be taken unless objection of the

petitioner was decided by the respondent-bank under Section-13(3-A) of the Act which, in the instant case, has not been done.

2. This Court while entertaining the writ petition had directed the learned counsel for the respondent-bank to seek necessary instructions as to whether any objection was filed and whether any order on such objection was passed by the respondent-bank.

3. Sri Satish Chaturvedi, learned counsel for the respondent-bank had obtained necessary instructions and submitted that objection was received by the respondent-bank and that it transpires from the order of the District Magistrate that objection was decided but the same is not on the record and there is nothing further to indicate that such reply of the bank was communicated to the petitioner. Learned counsel has further place reliance upon paragraph-26 of the judgment of the Supreme Court in Standard Chartered Bank Vs. V. Noble Kumar and Others, (2013) 117 CLA 18 : (2013) 180 CompCas 137 : (2013) 4 CompLJ 417 : (2013) 6 CTC 683 : (2013) 10 SCALE 540 : (2013) 9 SCC 620 , to support his contention that possession can be taken without even deciding the objection of the petitioner under Section-13(3-A) of the Act.

4. Having heard the learned counsel for the parties, we are of the opinion that the writ petition could be decided at the admission stage itself on the basis of the instructions received by the learned counsel for the respondent-bank. We find that the Supreme Court''s judgment in Standard Chartered Bank (supra) is not at all applicable in the instant case. The scheme of the Act and the procedure provided under Section-13 of the Act for the enforcement of the security interest requires that where the borrower is under a liability to a secured creditor and makes a default in repayment of the secured debt, in which case, the secured creditor is required to issue a notice in writing to the borrower to discharge in full his liabilities to the secured creditor within a stipulated period. On receipt of the said notice, the borrower is entitled to raise objections which, in our opinion, is required to be decided by the bank under Section-13(1-A) of the Act. This provision, in our opinion is mandatory and it is obligatory to the bank to decide the objections. Once such objection is decided and the liability is not discharged then it becomes open to the respondent-bank to proceed under Section-13(4) by taking possession or taking over the management of the business of the borrower. Section-14 is an additional procedure for taking possession which the Supreme Court has held in Standard Chartered Bank''s case. In the instant case, we find that the objection of the petitioner has not been decided by the respondent-bank, since no order has been brought before the Court, nor any such order has been communicated to the borrower, namely, the petitioner. In the absence of deciding any objection, we are of the opinion that the respondent could not file an application under Section-14 and take an order for possession from the Collector without deciding the objection under Section-13(3-A). Consequently, the order of the Additional District Magistrate dated 28.11.2014 is wholly illegal and is quashed. The writ petition is allowed. It is open to the

respondent-bank to proceed from the stage of deciding the objection of the petitioner under Section-13(3-A) of the Act and proceed accordingly.