(2012) 09 AHC CK 0181

In the Allahabad High Court

Case No : Writ-C No. 40883 of 2012

Anoop Kumar Gupta and Another	APPELLANT
Vs	
State of U.P.Through Its Chief Secy, and Others	RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2)
Security Interest (Enforcement) Rules, 2002 — Rule 8(1)

Citation : (2012) 09 AHC CK 0181

Hon'ble Judges : Ashok Bhushan, J and Abhinava Upadhya, J

Final Decision : Disposed Of

Judgement

AbhiNava Upadhya, JJ.—Heard learned Counsel for the petitioners, learned Standing Counsel appearing for the Staterespondent No. 1 and Sri Mahesh Mehrotra, learned Counsel appearing for the Bankrespondents No. 2 and 3.

With the consent of learned Counsel for the parties, the writ petition is being finally disposed of.

2. By means of this writ petition the petitioners have prayed for quashing the possession notice dated 30.7.2012 issued by respondent No. 3 under section 13(2) of the SARFAESI Act (in short the Act) and Rule 8(1) framed under the Security Interest (Enforcement) Rules, 2002 (in short the Rules).

3. The petitioners had taken cash credit limit of Rs. 12,00,000/ for which the security of his house, i.e., immovable property was given. The petitioners have also given a bank guarantee of Rs. 10,00,000/..

The Bank, invoking power under section 13(2) of the Act had issued notice to the petitioners for the recovery of an amount of Rs. 23,03,887.50 along with interest. The notice under section 13(2) of the Act contains the recovery against both, i.e., cash credit limit as well as bank guarantee. The Bank invoking its power under section 13(4) of the Act has now issued possession notice with regard to the house in question on 13.7.2012 in which the amount demanded from the petitioners has been mentioned as sum of Rs. 13,74,471.10 as on 31st November, 2011.

4. Learned Counsel for the petitioners have come up in the writ petition against the possession notice and submitted that the peiitioners accept the entire liability as mentioned in the possession notice and are ready to deposit the entire amount provided some reasonable time is given to them to deposit the amount.

5. Learned Counsel for the respondentBank submits that although both the cash credit limit as well as bank guarantee were secured. The Bank has reserved right to take action under the said Act. Learned Counsel for the Bank, however, submits that in case the petitioners deposit the entire outstanding amount as mentioned in the possession notice within the time allowed by this Court, no coercive action shall be taken against the petitioner and on default being committed by the petitioners in depositing the amount, the Bank may be given liberty to proceed further in the matter.

6. Considering the facts and circumstances of the present case, ends of justice would be served in disposing of the writ petition with the following directions:

1. The petitioners shall deposit the entire outstanding amount as contained in possession notice dated 30.7.2012 in six equal quarterly instalments with the respond en tBank and the first instalment shall be paid on or before 15th October, 2012 and thereafter within every three months.

2. Only citation having been issued, no recovery charges shall be realized from the petitioner.

3. After the deposit of the first instalment, the Bank shall provide a statement of account to the petitioners after adjusting the amount deposited by the petitioners and subsequent amount shall be paid accordingly.

4. In the event of petitioners committing any default in depositing the amount as directed above, the respondents will be at liberty to proceed against the petitioners in accordance with law under the said act and the recovery proceeding shall be revived.

5. Subject to payment as directed above, no coercive action shall be taken against the petitioners by the respondents.

7. With the aforesaid observations/directions, the writ petition is finally disposed of.