(2018) 06 MP CK 0015

In the Madhya Pradesh High Court

Case No : Writ Petition No...12563 Of 2018

Artemis Greenland Infraway Pvt. Ltd., Indore APPELLANT

Vs

Andhra Bank, Indore And Another RESPONDENT

Date of Decision : 11-06-2018

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(4), 14, 17(1)
Code of Civil Procedure, 1908 — Section 9

Citation : (2018) 06 MP CK 0015

Hon'ble Judges : VIVEK RUSIA, J;VIRENDER SINGH, J

Bench : Division Bench

Advocate : Ajay Assudani, Amit Bhatia

Final Decision : Dismissed

Judgement

THE petitioner has filed the present petition being aggrieved by the notice dated 11.05.2018 published by the Respondent No.1 for auctioning the

mortgaged properties belonging to the petitioner for recovery of the amount of Rs.5,39,91,882-00 and interest thereon borrowed by the Respondent

No.2.

[2] The petitioner is a Private Limited Company duly incorporated under the provisions of Companies Act. The Respondent No.1 granted the financial

assistance to the tune of Rs.10 crore to the Respondent No.2 on 13.06.2016 when the Respondent No.2 was a Partnership Firm. The said financial

assistance was bifurcated into SOD limit of Rs.5 crore and BG limit of Rs.5 crore. The petitioner has agreed to mortgage their five immovable

properties as a guarantor in order to grant financial assistance to the Respondent No.2. According to the petitioner, the Respondent No.2 informed that the Bank is not providing the financial assistance as the value of the collateral security is not proper and now they will be taking financial

assistance/loan from some other Bank. Later on the petitioner was got surprised when the Respondent No.1 served a notice dated 01.02.2018 under

Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in brief â??the

SARFAESI Actâ?]. By the aforesaid notice, the account of the Respondent No.2 has also been classified as NPA. Thereafter the Respondent No.1

published a notice on 28.04.2018 in the Times of India Indore Edition regarding the possession of immovable properties of the petitioner which were

mortgaged with the Respondent No.1. The petitioner submitted an objection on 19.05.2018 to the effect that they have never guaranteed nor

mortgaged any property with the Bank for securing the financial sanction to the Respondent No.2. Vide letter dated 31.05.2018 the Respondent No.1

has turned down the objection/representation of the petitioner submitted on 19.05.2018. Though the petitioner has mentioned about it in para 5.12 of

the writ petition, but has not filed the copy of the said letter. The Bank has published the notice in the newspaper for auctioning the mortgaged

properties of the petitioner. Hence, the petitioner approached this Court.

[3] Shri Vijay Assudani, learned counsel for the petitioner submits that the Respondent No.1 before auctioning the properties did not issue notice as

contemplated under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002. The properties of the petitioner have not been property valued and

put into the auction on a lessor price. The petitioner had never mortgaged their properties as guarantor for grant of financial assistance to the

Respondent No.2, later on incorporated as Private Limited Company. The petitioner signed the documents as guarantor for grant of loan to the Firm

and without their knowledge the loan has been sanctioned to the Respondent No.2 who is a Company registered under the Companies Act.

[4] The Respondent No.1/Bank filed the return by submitting that Mr. Vijay Dwivedi, who is a Director of the petitioner Company is also a main

Director of the Respondent No.2 and earlier he was Partner of the Firm also, hence all the facts were in his knowledge. The authorized representative

of the petitioner Company approached the Bank after receipt of the notice dated 01.02.2018 and assured for repayment of the loan. The Respondent

No.2 has also filed Writ Petition No.11987 of 2018 seeking regularization of the account. The notice dated 01.02.2018 was published in the Indore

edition of Times of India (English) and Raj Express (Hindi), as per the requirement of the law. The petitioner submitted a detailed objection and the

same has been turned down vide letter dated 31.05.2018 and thereafter the notice for auctioning was published. The petitioner is having alternate and

efficacious remedy to approach the Debt Recovery Tribunal against the proceedings initiated under the provisions of the SARFAESI Act, hence the

petition is liable to be dismissed.

[5] We have heard learned counsel for the parties.

[6] In the case of Kanhaiyalal Lalchand Sachdev & others v/s State of Maharashtra & others, reported in 2011 (2) SCC 782 the Apex Court held that

against an action taken under Section 14 of the SARFAESI Act, the remedy lies to move an application to the Tribunal. The court observed thus :-

Â â??22. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act

constitutes an action taken after the stage of Section 13(4).and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the

Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for

an appeal before the DRT.

23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants

under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious

alternative remedy is available to any aggrieved person.â??

[7] In the case of United Bank of India v/sSatyawati Tondon, reported as (2010) 8 SCC 110 the Supreme Court held that the expression ""any person

in Section 17 include borrowers, guarantors or any other person. Para 27,28 which reads as under:-

â??27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of

statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse

impact on the right of banks and other financial institutions to recover their dues.

We hope and trust that in future the High Courts will exercise their

discretion in such matters with greater caution, care and circumspection.

28. Insofar as this case is concerned, we are convinced that the High Court was not at all justified in injuncting the appellant from taking action in

furtherance of notice issued under Section 13(4) of the Act.â??

[8] In another case Jagdish Singh v/s Heeralal & Others, reported as 2014 (1) SCC 479 the Apex Court held that the jurisdiction of Civil Court is

barred in respect of an action under Section 13(4) of the SARFAESI Act, the remedy being only under Section 17 of the SARAFESI Act. It observed

in para 24 and 25 as under :-

â??24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed

against the secured assets, sub- section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by

the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured

assets. Any person aggrieved by any of the

measures"" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section

17. Â The opening Â portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding ""in respect of any

matter"" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any

matter' referred to in Section 34 would take in the ""measures"" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if

any aggrieved person has got any grievance against any ""measures"" taken by the borrower under sub-section (4) of Section 13, the remedy open to

him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit

or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the

jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with

the provisions of that Act, which takes in Section 9 CPC as well.

25. We are of the view that the civil court jurisdiction is completely barred, so far as the ""measure"" taken by a secured creditor under sub- section (4)

of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal. to

determine as to whether there has been any illegality in the ""measures"" taken. The bank, in the instant case, has proceeded only against secured assets

of the borrowers on which no rights of Respondent Nos.6 to 8 have been crystalised, before creating security interest in respect of the secured assets.

In such circumstances, we are of the view that the High Court was in error in holding that only civil court has jurisdiction to examine as to whether the

measures"" taken by the secured creditor under sub-section (4) of Section 13 of the Securitisation Act were legal or not. In such circumstances, the

appeal is allowed and the judgment of the High Court is set aside. There shall be no order as to costs.â??

[9] The petitioner has filed the present petition being aggrieved by the auction notice published in the newspaper which is nothing but consequential

action after issuing the letter dated 31.05.2018. The petitioner is in possession and knowledge of letter dated 31.05.2018 but did not challenge the same

in the writ petition. The petitioner has not filed even the copy of the said letter in this petition. The petitioner is having alternate and efficacious remedy

to challenge the said letter by which objections were rejected by the Bank. Therefore, without commenting on merits of the case, the petition is

dismissed for want of alternate and efficacious remedy.