
(2016) 09 MP CK 0046
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3803 of 2013

Balkishan Sharma

APPELLANT

Vs

Balaji Cold Storage and Ice Factory

RESPONDENT

Date of Decision : 12-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), Section 17, Section 34
Security Interest (Enforceme

Citation : (2017) 1 BC 55 : (2017) 1 DCR 190 : (2017) 1 DRTC 828 : (2017) 1 NIJ 420

Hon'ble Judges : Rohit Arya, J.

Bench : Single Bench

Advocate : Shri D.K. Agarwal, Advocate, for the Petitioner; None, for the Respondent No. 1; Shri M.P. Agrawal, Advocate, for the Respondents Nos. 2 and 3/State Bank of India; Shri M.P.S. Raghuvanshi, Advocate, for the Respondent No. 4; Shri Sunil Kumar Sharma, Advoc

Final Decision : Dismissed

Judgement

Rohit Arya, J. - Petitioners are guarantors of loan advanced to M/s Balaji Cold Storage and Ice Factory, Morena by the respondent-State Bank of India to the tune of Rs. 1,96,00,000/-. The loan became a non-performing amount (NPA) by the efflux of time due to irregularity in the matter of repayment of loan, as a result the amount due as on the date of issuance of the notice under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act, 2002) on 14/06/2012 was to the tune of Rs.1,50,94,833/-.

2. Petitioners have approached this Court taking exception to the notice issued under section 13(2) of the Act, 2002 on the premise that the same has not been issued by the Authorised Officer as defined under rule 2(a) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as "the 2002 Rules).

It is submitted that as the notice has been issued by an officer not authorised by the Board of Directors of the Bank, therefore, no proceedings can be further initiated pursuant to the impugned notice. Learned counsel contends that pursuant to the notice issued under section 13(2) of the Act, 2002, the property in question put to auction has not been properly valued through an approved valuer, as the same was required to be valued under rule 8(5) of the 2002 Rules.

3. Per contra, Shri Agarwal, learned counsel for the respondent/Bank contends that for the purpose of realization of the amount of the loan due and recoverable from the petitioners as guarantors, notice has been issued under section 13(2) of the Act, 2002. It is submitted that the argument canvassed by learned counsel for the petitioners is the result of misreading of the definition of "authorised officer" as provided for under rule 2(a) of the 2002 Rules. It is submitted that the impugned notice under section 13(2) of the Act has been issued by the Chief Manager; Authorised Officer of the State Bank of India. It is submitted that a plain reading of the definition of rule 2(a) "authorised officer" means an officer not less than a chief manager of a public sector bank. It is denied that the valuation of the property has not been properly done. It is further denied that the valuation has not been valued by the approved valuer of the Bank. In any case, the objection so agitated can be canvassed by the petitioners before the authority competent to adjudicate the dispute in that behalf and not before this Court in exercise of the powers under Articles 226/227 of the Constitution of India as the same is in the realm of facts. It is submitted that section 17 of the Act of 2002 provides for expeditious efficacious alternate statutory remedy of filing an appeal before the Debt Recovery Tribunal against the impugned notice under section 13(2) of the Act of 2002. Hence, the petitioners may be directed to avail the same. Moreso, in the light of specific bar as provided for under section 34 of the Act, 2002, the DRT or the Appellate Tribunal has exclusive jurisdiction to entertain the dispute of the nature filed before this Court invoking extraordinary jurisdiction of this Court. He relied upon the judgment of the Hon'ble Supreme Court in the case of United Bank of India v. Satyawati Tondon and others, (2010) 8 SCC 110, wherein while interpreting the provision of section 34 of the Act, 2002 the Hon'ble Supreme Court has held that no Court should interfere in the recovery proceedings in respect of a matter for which the Tribunal or Appellate Tribunal is empowered to determine and any person aggrieved thereby can always take recourse to appellate jurisdiction before the Debt Recovery Tribunal.

4. Heard learned counsel for the parties.

5. The primary question that arises for consideration is as regards the meaning of the word "authorised officer" as contained under rule 2(a) of the 2000 Rules and for ready reference, the same is reproduced below :

2. Definitions.-

(a) "authorised officer" means an officer not less than a chief manager of a public

sector bank or equivalent, as specified by the Board of Directors or Board of Trustees of the secured creditor or any other person or authority exercising powers of superintendence, direction and control of the business or affairs of the secured creditor, as the case may be, to exercise the rights of a secured creditor under the Act."

(Emphasis supplied)

The word "authorised officer" is defined in three parts; viz., (i) an officer not less than a chief manager of a public sector bank; (ii) an officer of the same rank as specified by the Board of Directors or Board of Trustees of the secured creditor; and (iii) or any other person or authority exercising the powers of superintendence, direction and control of the business or affairs of the secured creditor as the case may be, to exercise the rights of a secured creditor under the Act.

6. The case in hand relates to recovery of loan from the petitioners by the State Bank of India. Therefore, in the opinion of this Court, the first part of the definition; i.e., an officer not less than a chief manager of the Bank shall be the authorised officer, is attracted. Accordingly, this Court is of the view that the contention advanced by learned counsel for the petitioners that the chief manager who has signed the impugned notice under section 13(2) of the Act, 2002 was not the authorised officer by the Board of Directors of the State Bank of India is misconceived and misdirected and, therefore, the same cannot be countenanced. Accordingly, the impugned notice is found to have been issued by the authorised officer/Competent Authority.

7. In view of the provision as contained under section 34 of the Act, 2002 regarding bar of the proceedings in relation to the proceedings initiated under section 13(2) of the Act, 2002 and a specific provision for filing an appeal under section 17 thereof before the Debt Recovery Tribunal, in the opinion of this Court, no interference is warranted under Articles 226/227 of the Constitution of India.

8. The objection related to the valuation of the property in question, in the opinion of this Court, need not to be addressed by this Court as it is squarely in realm of facts to be determined before the adjudicatory authority and the petitioners shall be at liberty to address the said issue before the DRT in the appeal.

9. Accordingly, this writ petition is dismissed. However, as interim order was passed by a coordinate Bench of this Court on 10/06/2013 and the same is operating as on date, the interim order shall continue for a period of six weeks from today setting the petitioners at liberty to avail the remedy of filing statutory appeal before DRT to assail the proceedings initiated under section 13(2) of the Act, 2002 on the grounds available to them on facts and in law. If such an appeal is filed along with certified copy of order passed today, the DRT shall decide the same on merits and shall not insist upon the point of limitation within 03 (three) months.

10. It is made clear that this Court has not expressed any opinion on merits of the case.