(2012) 11 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

BANK OF BARODA APPELLANT

Vs

Geeta Foods Through Its Sole RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Citation : 2012 4 CPJ 705

Hon'ble Judges : J.M.MALIK , VINAY KUMAR J.

Final Decision : Petition disposed

Judgement

1. THIS order shall decide the revision petition filed in respect of an interim order passed by learned State Commission. The said cryptic order runs as follows: - "Complaint presented against Bank of Baroda Narhi Branch Lucknow. The Learned Counsel for the complainant argued that the complainant had taken loan from the opposite party for self employment and he had from time to time been repaying the same. Present complaint the opposite party bank has already issued a notice dated 02.06.2012 for auction of the property. Till further orders the notice dated 02.06.2012 is stayed with the directions that the opposite party bank would not take coercive steps against the complaint. The complaint be listed for hearing on 20.07.2012."

2. THE complainant, M/s Geeta Foods is a proprietorship concern. It took loan from the Bank of Baroda, opposite party. The complainant waddled out of the commitments and did not pay off the loan. His account was classified ''NPA'' under the provisions of SARFAESI Act, 2002. The opposite party bank issued notice under Section 13(2) on 15.1.2010. A sum of Rs. 2,09,01,253/ - is due and recoverable in respect of the cash credit facility and Rs.41,96,331/ - in respect of WCDL (Recession package) alongwith interest w.e.f. 1.1.2010. A copy of the notice under Section 13(2) of the SARFAESI Act, 2002 has been placed on record. The Bank further issued notice dated 26.4.2010 which was published in two newspapers. The respondent filed an application under Section 17(1) of SARFAESI Act, 2002 before the Debts Recovery Tribunal on 6.5.2010. The said application was replied by the petitioner which is still pending before the learned

Debts Recovery Tribunal. It is contended that under the circumstances, the order passed by the State Commission is not tenable.

3. WE have heard learned counsel for the parties. Learned counsel for the respondent vehemently argued that in accordance with the RBI directions, they had filed a proposal before the opposite party -Bank on 20.1.2009. The said proposal has not yet been answered. In support of her case, it is notworthy that she neither produced the notification issued by the Reserve Bank of India nor did she show to the court that the said notification was ever violated. She did not produce the copy of the proposal filed by the complainant before the opposite party -Bank. She has placed reliance on the judgments of this Commission reported in Smt. Geeta Devi vs. Mahanagar Telephone Nigam Ltd. 1986 -2006 CONSUMER 10453 (NS), Deva Ram and another vs. Ishwar Chand and another, 1996 AIR(SC) 378 Ashok Kumar Yadav v. Noble Designs Pvt. Ltd., 2006 AIR(Cal) 237 Bijedra Kumar and Ors. Vs. Basant Kumar, 1994 AIR(All) 81 and Shri Ram Tiwary and another vs. Bholi Devi and another, 1994 AIR(Pat) 76 We are of the considered view that these authorities have no application to the facts of this case. It is difficult to fathom as to why the bank was restrained from proceeding further in accordance with law. The Bank is acting under the SARFAESI Act, 2002. If the complainant has got any grouse, he can proceed and lodge a complaint with the Debts Recovery Tribunal. The State Commission cannot arrogate to itself the power already vested with the Debts Recovery Tribunal.

4. THE State Commission cannot stay the SURFAESI Act as such. It is surprising to note how the banks would recover the money from their debtors if such like orders are permitted to prevail. In order to bring the case under the Consumer Protection Act, it is incumbent upon the complainant to show that there is deficiency on the part of the bank. No such deficiency in service has been alleged. The Bank is proceeding in accordance with law. Under the circumstances, the order passed that the bank would not take coercive steps against the complainant appears to be illegal. No deficiency on the part of the bank was ever alleged. The State Commission has got hardly any jurisdiction to try this case. It cannot restrain the Debts Recovery Tribunal from proceeding against the complainant as per law. Consequently, we set aside the order passed by the State Commission, vacate the stay and give the permission to the petitioner -Bank to take coercive methods against the complainant as permitted by law only. The parties are directed to appear before the State Commission on 3.12.2012 for further proceedings. The revision petition stands disposed of.

