(2019) 07 UK CK 0141

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1001 Of 2015

Bank Of Baroda, Branch Khatima, District Udham Singh Nagar	APPELLANT
Vs	
District Magistrate, Udham Singh Nagar & Others	RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 2(zd), 2(ba), 2(l), 5, 14
Indian Stamp Act, 1899 — Section 8F
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1)

Citation : (2019) 07 UK CK 0141

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Siddhartha Sah, Anjali Bhargava, Aditya Singh, Anil Kumar, Lalit Sharma

Final Decision : Disposed Of

Judgement

Sudhanshu Dhulia, J

1. This writ petition was filed by the Bank of Baroda, Branch Khatima, District Udham Singh Nagar who is a "secured creditor" as defined under Section 2 (zd) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (from hereinafter referred to as the "Act"). The petitioner was aggrieved by the order dated 27.04.2015 passed by the District Magistrate, Udham Singh Nagar, by which the District Magistrate had recalled his earlier order dated 08.04.2014 passed under Section 14 of the Act.

2. The plain submission of the learned counsel for the petitioner before this Court was limited to the extent that the order impugned before this Court is totally without jurisdiction as what has been done by the District Magistrate in its order dated 27.04.2015 is that he has practically reviewed his earlier order dated 08.04.2014, a power which is not vested with him under Section 14 of the Act.

3. Respondent nos.1 and 2 are being represented by Ms. Anjali Bhargava, Brief Holder, for the State, respondent no.3 who is borrower, is being represented by Mr. Aditya Singh, Advocate and respondent no.4 is being represented by Mr. Lalit Sharma, Advocate, who has now become a party subsequent to the formation of consortium between the Bank of Baroda and ICICI Bank.

4. All the same, during the pendency of the present writ petition, new developments have been taken place in view of Section 5 of the Act. It is an admitted case that in lieu of the loan taken by the borrower, he had mortgaged his property with the bank, which is a "financial asset" as defined under Section 2 (l) of the Act.

Section 2 (l) of the Act reads as under:-

"2. Definitions.- (1) In this Act, unless the context otherwise requires,-(a)...

(b)...

(c)...

(d)...

(e)...

(f)...

(g)...

(h)...

(i)...

(j)...

(k)...

(l) "financial Asset" means debt or receivables and includes-

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or

(iii) a mortgage, charge, hypothecation or pledge of movable property; or

(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or

(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or

(va) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or

(vb) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or

(vi) any financial assistance."

5. The "asset reconstruction company" is also been defined under Section 2 (ba) of the Act, which reads as under:-

"2. Definitions.- (1) In this Act, unless the context otherwise requires,-(a)...

(b)...

(ba) "asset reconstruction company" means a company registered with Reserve Bank under Section 3 for the purposes of carrying on the business of asset reconstruction or securitization, or both."

6. The "asset reconstruction company" has now acquired the financial asset of the bank under Section 5 of the Act as far as it relates to the loan taken by respondent no.3 by virtue of the assignment agreement dated 28.09.2018. Section 5 of the Act reads as under:-

"5. Acquisition of rights or interest in financial assets.- (1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any asset reconstruction company may acquire financial assets of any bank or financial institution-

(a) by issuing a debenture or bond or any other security in the nature of the debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or

(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

[1-A) Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitization shall be exempted from stamp duty in accordance with the provisions of Section 8-F of the Indian Stamp Act, 1899 (2 of 1899):

Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.]

(2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the asset reconstruction company, such asset reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

[2-A] If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets under sub-section (1).]

(3) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the asset reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, asset reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of the asset reconstruction company, as the case may be.

(4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the asset reconstruction company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the asset reconstruction company, as the case may be.

[5] On acquisition of financial assets under sub-section (1), the asset reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the asset reconstruction company in such

pending suit, appeal or other proceedings.]"

7. The petitioner has annexed the settlement agreement dated 29.10.2018 entered between the petitioner and respondent no.3.

8. In view of these new developments, nothing further needs to be done in this matter. Let the parties act in terms of the settlement. The writ petition stands disposed of in terms of the above order.