(2008) 03 JH CK 0035

In the Jharkhand High Court

Bharti Enterprises APPELLANT

Vs

United Commercial Bank and Others RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13

Citation : (2008) 3 JCR 73

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Petitioner has chal lenged the notice dated 20.7.2006 issued u/s 13(2) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. 2002 (the Act for short). Mr. Sunil Kumar Sinha, appearing for the petitioner submitted that the respondent-Bank has not disposed of petitioner''s objection filed on 24.9.2006 against the said notice. He relied on para graph 80 of the judgment reported in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.,

2. Mr. Rajan Raj, appearing for respondent-Bank, referring to materials brought on the record submitted as follows:

The proprietor of M/s Bharti Enterprises (petitioner) has availed loan from Bihar State Financial Corporation (B.S.F.C.) against the mortgage of its unit and was later declared defaulter. Ultimately the said unit was sold in auction by B.S.F.C. Mrs. Mithu Mohanti purchased it vide Sale Order No. N-45 dated 23.2.2000, but she did not pay the full purchase amount and still owes a heavy amount to B.S.F.C. Even then the petitioner Mr. Subhash Mohanti, proprietor of M/s Bharti Enterprises availed loan from the respondent-Bank, mortgaging-the Plant and Machinery and others assets of the said unit again with the Bank and suppressing the said liability on the unit, which made the unit non-existent. In the circumstan ces, the respondent-Bank could not secure a second charge over the assets in question and suffered loss of public money of over Rs. 20,00,000/-. In view of such conduct of petitioner, this Court may not exercise the discretionary writ jurisdiction in his favour. He relied on the judgment reported in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , and submitted that the fairness required cannot be carried to the extent of disabling the Bank from recovery what is due to it. He further submitted that the purported objection was a frivolous objection for objection sake and was filed only with a view to delay the recovery proceedings.

3. The said statements made in the counter affidavit filed way back on 31.7.2007, have not been controverted and therefore, the prayer for adjournment for filing rejoinder, was refused.

4. The only thing said in the lengthy objection filed by the petitioner is that the loan was taken under the Credit Guarantee Fund Scheme for Small Industries and therefore the Bank may move the Central Government for recovery of the amount.

But under the following terms of the scheme, the respondent-Bank is required to recover the amount from the borrower.

7. Responsibilities of lending institution under the scheme;

...(V) The payment of guarantee claim by the Trust to the lending institution does not in any way take away the responsibility of the lending institution to recover the entire outstanding amount of the credit from the borrower. The lending institution shall exercise all the necessary precautions and maintain its recourse to the borrower for entire amount of credit facility owed by it and initiate such necessary actions for recovery of the outstanding amount, including such action as may be advised by the Trust.

...(vii) The lending institution shall, in respect of any guaranteed ac count, exercise the same diligence in recovering the dues, and safeguarding the interest of the Trust in all the ways open to it as it might have exercised in the normal course if no guarantee had been furnished by the Trust....

5. Moreover, it could not be disputed by the petitioner that he mortgaged the assets with respondent-Bank, which were earlier mortgaged with B.S.F.C: were sold in auction sale and the full payment having not been made against the sale. B.S.F.C. had first charge on the same.

6. Thus it is clear that, petitioner''s objection was frivolous on the face of it and his conduct has been most unfair. In such cir cumstances, I am not inclined to give benefit of the judgment of Mardia Chemicals Ltd. (supra) to the petitioner, and accordingly the same is dismissed with a token costs of Rs. 1,000/-.

