(2015) 08 MAD CK 0173

In the Madras High Court

Case No : Writ Petition Nos. 14726, 19082 of 2015 and M.P. No. 1 of 2015

C. Anandhakumar APPELLANT

Vs

State Bank of India, Stressed Assets Management Branch RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(3-A), 13(4), 17
Transfer of Property Act, 1882 — Section 69, 69-A

Citation : (2015) 08 MAD CK 0173

Hon'ble Judges : Satish K. Agnihotri, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : Anita Sumanth, for the Appellant; M.L. Ganesh, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Satish K. Agnihotri, J—Regard being had to the commonality of the facts and the question of law involved in the writ petitions, both petitions are being considered and disposed of by a common order.

2. The first petition is filed by the borrower, assailing the legality of the notice issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") dated 14th March, 2015, calling upon the petitioner to make payment of outstanding dues in the subject matter. The second writ petition is filed by him, assailing the notice issued under Section 13(4) of the SARFAESI Act dated 16th May, 2015.

3. The prime contention of Dr.Anita Sumanth, learned counsel appearing for the petitioner is that the impugned demand notice under Section 13(2) of the SARFAESI Act has been issued without examining all relevant facts as the debt of Renaissance does not satisfy the definition of non performing asset as defined

under Section 2(o) of the SARFAESI Act and not in conformity with the regulations as prescribed in the Circular DBOD No. BP.BC/20/21.04.048/2001-2002 dated 1st September, 2001. During the pendency of the writ petition, a Division Bench of this court, by order dated 14th May, 2015, passed an interim order directing the respondent Bank not to take any coercive step till the disposal of the representation by the petitioner under Section 13(3-A) of the SARFAESI Act. The Bank, by communication dated 14th May, 2015 rejected the representation dated 6th May, 2015 made under the provisions of Section 13(3-A) of the SARFAESI Act.

4. The second petition is filed questioning the legality of the notice, as aforestated, under Section 13(4) of the SARFAESI Act on the ground that the representation made under Section 13(3-A) of the SARFAESI Act has been rejected by unreasoned order, which is tantamount to non application of mind and as such, the petitioner is entitled to maintain the writ petitions, invoking extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

5. In the course of the hearing, we are informed that the petitioner has preferred an appeal under Section 17 of the SARFAESI Act against the measure taken under Section 13(4) of the SARFAESI Act in S.A. No. 127 of 2015 with two applications for interim relief before the Debts Recovery Tribunal, Coimbatore.

6. The question as to whether the writ petition is maintainable against the issuance of demand notice under Section 13(2) of the SARFAESI Act or against the measure taken under Section 13(4) of the SARFAESI Act is no longer res integra.

7. The Supreme Court in the matter of United Bank of India Vs. Satyawati Tondon and Others, AIR 2010 SC 3413 : (2010) 3 BC 495 : (2010) 3 CompLJ 585 : (2010) 7 SCALE 696 : (2010) 8 SCC 110 : (2010) 9 SCR 1 : (2010) 9 UJ 4395 : (2010) AIRSCW 7049 : (2010) AIRSCW 5267 , referring to various judicial pronouncements made by the Supreme Court in Modern Industries Vs. Steel Authority of India Ltd. and Others, AIR 2010 SC 1625 : (2010) 4 JT 10 : (2010) 5 SCC 44 : (2010) 4 SCR 560 , Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another, (2010) 253 ELT 3 : (2010) 4 JT 54 : (2010) 4 SCC 772 : (2010) SCR 608 , Industrial Investment Bank of India Ltd. Vs. Biswanath Jhunjhunwala, (2010) 1 CompLJ 96 : (2009) 10 JT 533 : (2009) 11 SCALE 520 : (2009) 9 SCC 478 : (2009) 13 SCR 391 : (2009) 8 UJ 3941 : (2009) AIRSCW 5359 : (2009) 6 Supreme 171 , City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwala and Others, AIR 2009 SC 571 : (2009) 1 CTC 174 : (2008) 12 JT 127 : (2009) 1 SCC 168 , C.C.T. Orissa and Others Vs. Indian Explosives Ltd., AIR 2008 SC 1631 : (2008) 2 CLT 355 : (2008) 3 SCALE 307 : (2008) 3 SCC 688 : (2008) 14 VST 1 : (2008) AIRSCW 1815 , Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., AIR 2004 SC 2371 : (2004) 2 BC 397 : (2004) 120 CompCas 373 : (2004) 2 CompLJ 209 : (2004) 2 CTC 759 : (2004) 4 JT 308 : (2004) 138 PLR 271 :

(2004) 4 SCALE 338 : (2004) 4 SCC 311 : (2004) 51 SCL 513 : (2004) 3 SCR 982 : (2004) 2 UJ 980 : (2004) AIRSCW 2541 : (2004) 3 Supreme 243 , Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, AIR 2003 SC 2120 : (2002) 10 JT 561 : (2003) 2 SCC 107 : (2003) AIRSCW 126 : (2003) 1 Supreme 446 , Punjab National Bank Vs. O.C. Krishnan and Others, (2001) 6 AD 207 : AIR 2001 SC 3208 : (2001) 2 BC 642 : (2001) 107 CompCas 20 : (2001) 4 CompLJ 179 : (2001) 6 JT 408 : (2001) 5 SCALE 196 : (2001) 6 SCC 569 : (2001) 2 UJ 1491 : (2001) AIRSCW 2993 : (2001) 6 Supreme 81 , Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, AIR 1999 SC 22 : (1998) 7 JT 243 : (1998) 5 SCALE 655 : (1998) 8 SCC 1 : (1998) 2 SCR 359 Supp : (1998) AIRSCW 3345 : (1998) 8 Supreme 176 , State Bank of India Vs. Messrs. Indexport Registered and others, AIR 1992 SC 1740 : (1992) 75 CompCas 1 : (1992) 4 JT 273 : (1992) 1 SCALE 1109 : (1992) 3 SCC 159 : (1992) 2 SCR 1031 : (1992) 2 UJ 223 , Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, AIR 1985 SC 330 : (1985) 4 ECC 103 : (1985) ECR 4 : (1985) 19 ELT 22 : (1985) 154 ITR 172 : (1984) 2 SCALE 819 : (1985) 1 SCC 260 : (1985) 2 SCR 190 : (1985) 17 UJ 368 , Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, AIR 1983 SC 603 : (1983) 34 CTR 393 : (1983) 142 ITR 663 : (1983) 1 SCALE 437 : (1983) 2 SCC 433 : (1983) 2 SCR 743 : (1983) 53 STC 315 , Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, AIR 1969 SC 556 : (1971) 2 SCC 489(1) : (1969) 1 SCR 518 , Bank of Bihar Ltd. Vs. Dr. Damodar Prasad and Another, AIR 1969 SC 297 : (1969) 39 CompCas 133 : (1969) 1 SCR 620 , Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes, AIR 1964 SC 1419 : (1964) 6 SCR 654 : (1964) 15 STC 468 , Secy. Of State Vs. Mask & Co. (1939-40) 67 IA 222 , Attorney- General of Trinidad and Tobago Vs. Gordon Grant & Co. Ltd. 1935 AC 532 (PC) and Neville Vs. London Express Newspapers Ltd. 1919 AC 368; (1918-19) All ER Rep 61 (HL), observed as under :

"12. Section 13 of the SARFAESI Act contains detailed mechanism for enforcement of security interest. Sub-section (1) thereof lays down that notwithstanding anything contained in Sections 69 or 69-A of the Transfer of Property Act, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act. Sub-section (2) of Section 13 enumerates first of many steps needed to be taken by the secured creditor for enforcement of security interest. This sub-section provides that if a borrower, who is under a liability to a secured creditor, makes any default in repayment of secured debt and his account in respect of such debt is classified as non-performing asset, then the secured creditor may require the borrower by notice in writing to discharge his liabilities within sixty days from the date of the notice with an indication that if he fails to do so, the secured creditor shall be entitled to exercise all or any of its rights in terms of Section 13(4).

13. Sub-section (3) of Section 13 lays down that notice issued under Section

13(2) shall contain details of the amount payable by the borrower as also the details of the secured assets intended to be enforced by the bank or financial institution. Sub-section (3-A) of Section 13 lays down that the borrower may make a representation in response to the notice issued under Section 13(2) and challenge the classification of his account as non-performing asset as also the quantum of amount specified in the notice. If the bank or financial institution comes to the conclusion that the representation/objection of the borrower is not acceptable, then reasons for non-acceptance are required to be communicated within one week."

8. Consequently, taking a strong view of the adjudication by the High Court, the Supreme Court observed as under :

"55. 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 the 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."

9. In line with the aforestated observation, in Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, (2010) 1 BC 698 : (2011) 101 CLA 146 : (2011) 162 CompCas 337 : (2011) 2 CompLJ 1 : (2011) 3 JT 159 : (2011) 2 RCR(Civil) 676 : (2011) 2 SCALE 233 : (2011) 2 SCC 782 : (2011) 106 SCL 1 : (2011) 2 SCR 602 : (2011) AIRSCW 1194 : (2011) AIRSCW 5913 : (2011) 1 Supreme 655 , the Supreme Court held as under :

"25. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz. non-receipt of notice under Section 13(2) of the Act, non-communication of the order of the Chief Judicial Magistrate, etc. are involved, an efficacious statutory remedy of appeal under Section 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore, having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution."

10. In view of the foregoings, we are not inclined to entertain these petitions. However, we reserve liberty to the petitioner to raise all grounds, including determination of non performing asset or rejection of representation made by the petitioner under Section 13(3-A) of the SARFAESI Act and all other legally permissible grounds before the Debts Recovery Tribunal in the pending appeal. Having considered all aspects of the matter, we direct that status quo in respect of the property in question shall be maintained for a period of two weeks from the date of receipt of copy of the order to enable the Tribunal to decide the interim applications made by the petitioner herein for an interim relief. The Tribunal shall decide the interim applications within the specified time, as aforestated, on its own merit and in accordance with law, without being

influenced by any of the observations made herein-above.

11. Resultantly, both writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

