(2006) 10 MAD CK 0042

In the Madras High Court

Case No : Writ Petition No. 39384 of 2006 and M.P. No. 1 of 2006

C. Regraj APPELLANT

Vs

Bank of Rajasthan RESPONDENT

Date of Decision : 17-10-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17, 17(1)

Citation : (2007) 1 CompLJ 204

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : G. Ilamurugu, for the Appellant; S. Rajasekar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothlmani, J.—This writ petition is filed challenging the possession notice issued by the respondent bank against the petitioner dated

30.8.2006 by virtue of the powers conferred u/s 13(2) of the Securitisation and Reconstruction of Financial Assets Enforcements and Security

Enforcement Act, 2002.

2. The case of the petitioner is that on earlier occasion, this court in VVP MP No. 13904/2006 dated 10.5.2006 has directed the petitioner to

deposit Rs. 50 lakhs. However, it appears that the petitioner has deposited only Rs. 20 lakhs and he has filed an application for the purpose of

extension of time for payment of the balance amount of Rs. 30 lakhs. By subsequent order dated 31.5.2006, this court has directed the petitioner

to pay the said balance amount of Rs. 30 lakhs within four weeks time.

3. It is the case of the petitioner that before the expiry of four weeks time given by this court, an order u/s 13(4) of the said Act came to be

passed, taking possession. On a perusal of the order passed by this court, it shows that, inspite of the order passed on 10.5.2006, directing the

petitioner to deposit Rs. 50 lakhs, the petitioner has deposited only Rs. 20 lakhs and, subsequently, an order dated 31.5.2006 came to be passed

in which the petitioner was directed to pay the remaining amount within four weeks lime and the said four weeks time expired during the end of

June, 2006. It was only after the expiry of four weeks, again, on 17.7.2006, the respondent has given notice u/s 13(2) of the Securitisation Act,

directing the petitioner to pay the amount. Inspite of that the petitioner has not paid the amount. In view of the same, provision u/s 13(4) of the

Securitisation Act was invoked by the respondent bank for the purpose of taking possession. Therefore, there is absolutely no justification in the

contention of the learned counsel for the petitioner that even before four weeks time granted by this court, the respondent has invoked the

jurisdiction u/s 13(4) of the Securitisation Act. Hence, the possession notice taken u/s 13(4) of the Securitisation Act is perfectly in order.

4. As against the order passed u/s 13(4) of the Securitisation Act, Section 17 provides an appeal to be filed before the Debt Recovery Tribunal

within a period of 45 days from the date on which the measures have been taken. Therefore, on the face of it, when there is an effective alternative

remedy which is available under the statutory provision, a writ petition cannot be filed invoking Article 226 of the Constitution of India. In view of

the same, the writ petition fails and the same is dismissed giving liberty to the petitioner to approach the appropriate authority, namely, the Debt

Recovery Tribunal as per Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcements and Security Interest Act,

2002.

5. At this juncture, learned counsel for the petitioner would submit that the order u/s 13(4) was passed on 30.8.2006 and within a period of 45

days from that date, an appeal should be filed u/s 17(1) of the said Act and by this time, there is a delay of two days.

6. On reference to the papers in the writ petition, it is seen that the writ petition has been filed on 11.10.2006 which is within 45 days from the date

of the order passed u/s 13(4) of the Securitisation Act. In view of the same, the petitioner is permitted to file an appeal as per Section 17(1) of the

Securitisation Act within a period of ten days from today and on the petitioner filing such an appeal within the time stipulated, the Debt Recovery

Tribunal shall receive the same and pass orders in accordance with Section 17(1) of the Securitisation Act.

7. The writ petition is dismissed with the above directions. No costs. Consequently, connected miscellaneous petition is dismissed.