(2011) 02 OHC CK 0006

In the Orissa High Court

Case No : Writ Petition (C) No. 688 of 2011

Central Bank of India and Another APPELLANT

Vs

Ram Chandra Sahoo and Others RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Consumer Protection Act, 1986 — Section 12, 13(3B)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20, 34(1)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 34, 35

Citation : (2011) 1 OLR 1046

Hon'ble Judges : B.P. Das, J;B.K. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.P. Das, J.—The Central Bank of India represented by the Branch Manager of its Puri Branch and the Assistant General Manager-cum-Authorised Officer of its Regional Office at Bhubaneswar have filed this writ petition against the interim order dated 12.10.2010 passed by the District Consumer Disputes Redressal Forum, Puri, in C.D. Case No. 157/2010 directing them not to sell out the pledged property till final disposal of the said C.D. Case, which was mortgaged against the loan.

2. Opposite party No. 1 -Ram Chandra Sahoo availed a Cash Credit loan amounting to Rs. 8,70,000/- from the Puri Branch of the Bank and his wife (O.P.2) stood as the guarantor to such loan. When O.P.1 defaulted to repay the loan amount, the Bank issued notice to both O. Ps. 1 & 2 u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "Securitisation Act"). Thereafter, the Authorised Officer of the Bank issued the possession notice u/s 13(4) of the Securitisation Act (Annexure-4). Challenging the possession notice, O.P.1 filed a complaint case

being C.D. Case No. 157/2010 before the District Consumer Disputes Redressal Forum, Puri, which passed the impugned interim order dated 12.10.2010 in Annexure-1.

Aggrieved by the said impugned order dated 12.10.2010 (Annexure-1), the Petitioners have filed this writ petition with a prayer to set aside the said order in Annexure-1 and quash the proceeding in Annexure-2.

3. This Court by its order dated 18.1.2011 while issuing notice to the opposite parties by special messenger stayed the operation of the impugned order dated 12.10.2010, which has been challenged in this case on the ground that opposite party No. 1 being the borrower and since the Bank has invoked the power under the provision of the Securitisation Act, the District Forum has no jurisdiction to entertain the application of the complainant leave apart passing an order of injunction in contravention of the provisions made in the Securitisation Act.

4. Now the question arises whether the District Consumer Forum has any jurisdiction to interfere with the proceeding initiated under the,. Securitisation Act and pass the interim order as has been passed in C.D. Case No. 157/2010 filed by opposite party No. 2. It appears, the complaint petition filed u/s 12 of the Consumer Protection Act, 1986, vide Annexure-2, that the complainant has filed an interim application before the District Forum u/s 13(3-B) of Consumer Protection Act, 1986. Let us have a look at the provision made in Section 13(3-B) of Consumer Protection Act, 1986, which provides as follows:

Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

Before delving into the merit of the case, if we peruse the statement of objects and reasons of the Consumer Protection Act, 1986, it can be said that it was enacted to promote and protect the rights of consumers such as-

a) the right to be protected against marketing of goods which are hazardous to life and property;

b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;

d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;

e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

f) right to consumer education.

5. Law is also well settled that where a right or liability is created by a statute

which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This observation was made by the apex Court while dealing with the question of interference by the High Court in Securitisation Act and D.R.T. Act in exercising the power under Articles 226 of the Constitution of India. This decision has been rendered in the case of Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, .

6. The moot question that arises for decision in this case is whether in view of Section 34 of the Securitisation Act, the Consumer Forums have any jurisdiction to entertain the application, pass the interim order and decide the same finally.

Let us notice the provision of Section 34 of the Securitisation Act, which reads thus:

34. Civil Court not have jurisdiction-No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

The said Act was put to test of judicial scrutiny in many decisions; one of such is the case of United Bank of India Vs. Satyawati Tondon and Others, , wherein the apex Court observed thus:

Many hundred thousand took advantage of easy financing by the banks and other financial institutions but a large number of them did not repay the amount of loan, etc. Not only his, they instituted frivolous cases and succeeded in persuading the civil Courts to pass orders of injunction against the steps taken by banks and financial institutions to recover their dues. Due to lack of adequate infrastructure and non-availability of manpower, the regular Courts could not accomplish the task of expeditiously adjudicating the cases instituted by banks and other financial institutions for recovery of their dues. As a result, several hundred crores of public money got blocked in un-producting ventures. In order to redeem the situation, the Government of India constituted a Committee under the chairmanship of Shri T. Tiwari to examine the legal and other difficulties faced by banks and financial institutions in the recovery of their dues and suggest remedial measures.

xxx xxx xxx

The Parliament enacted the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short ''the DRT Act''). The new legislation facilitated creation of specialized forums, i.e., the Debts Recovery Tribunals and the Debts Recovery Appellate Tribunals for expeditious adjudication of disputes relating to recovery of the debts due to banks and financial institutions. Simultaneously, the jurisdiction of the Civil Courts was barred and all pending matters were transferred to the Tribunals from the date of their establishment.

In paragraph-5, the Court further held as follows:

5. Section 34 lays down that no civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Tribunal or Appellate Tribunal is empowered to determine. It further lays down that no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken under the SARFAESI Act or the DRT Act. Section 35 of the SARFAESI is substantially similar to Section 34(1) of the DRT Act. It declares that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

In view of the aforesaid observations of the apex Court, Section 34 of the Securitisation Act also creates a bar that no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. So there is a total bar for passing any interim order of injunction against the action taken by the secured creditor u/s 13(4) of the Act.

7. Furthermore, Section 20 of the D.R.T. Act has been enacted with a view to provide a special procedure for recovery of Debts Due to the Banks and the Financial Institutions. There is a hierarchy of authorities provided in the Act, particularly for filing of an appeal u/s 20 of the Act and this procedure cannot be allowed to be ignored either by taking recourse to proceedings under Article 226 of the Constitution of India or by filing a civil suit, which have been expressly barred. Even though a provision under particular Act cannot expressly oust the jurisdiction of this Court under Article 226 of the Constitution, judicial prudence demands that the Court should refrain from exercising its jurisdiction under the said constitutional provisions, particularly, when alternative remedy is available.

8. In the case at hand, there is express bar for passing of any order of injunction and the Civil Court or other authority has no jurisdiction to entertain any suit in respect of any matter. The words, "other authority" have been interpreted by the Hon''ble apex Court in the case of Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , paragraph-5 of which is quoted herein below:

(5) The meaning of the word "authority" given in Webster''s Third New International Dictionary, which can be applicable, is a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise. This dictionary meaning of the word "authority" is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India, and we do not see any reason

to narrow down this meaning in the context in which the words "other authorities" are used in Article 12 of the Constitution.

The meaning of "other authority" though in the aforesaid case has been interpreted for the purpose of Article 12, of the Constitution of India, the same interpretation is applicable to the District Consumer Disputes Redressal Forum and it comes within the meaning of "authority.

In the case at hand, we have no hesitation to say that the District Consumer Disputes Redressal Forum, Puri has transgressed its jurisdiction in entertaining the application of opposite party No. 1 and also by passing the impugned interim order as at Annexure-1, which the Forum is not empowered.

9. It is stated at the Bar that passing of such type of order by the-District Forum now-a-days is rampant and the District Forum, Puri has crossed all its limits in passing the interim order without insisting opposite party No. 1 to approach the appropriate forum under the Statute It is also stated that now the borrowers of various other Banks are approaching the Consumer Forums and getting the orders of stay of realization of the loan amount availed by them.

10. The Consumer Forums and its Members should know their limitation and they should be aware of their jurisdiction. In our considered opinion, the order dated 12.10.2010 passed by the District Consumer Disputes Redressal Forum, Puri is illegal, arbitrary and without jurisdiction and has been passed without application of mind. We, therefore, set aside the order dated 12.10.2010 passed by the District Consumer Disputes Redressal Forum, Puri, in C.D. Case No. 157/2010 and direct the Bank authorities to proceed against the opposite parties in accordance with law. The further proceeding in C.D. Case No. 157/2010 is also quashed.

As it is stated at the Bar that the District Consumer Disputes Redressal Forums of the State are passing certain orders, which are neither within their jurisdiction nor in conformity with legal provisions, either deliberately or due to lack of adequate legal knowledge, we direct the Commissioner-cum-Secretary to Government in Food and Civil Supplies and Consumer Affairs Department as well as the Principal Secretary to Government in Law Department to probe into the matter and if necessary, make adequate arrangement for improvement of the libraries and orientation programme for the Presidents and Members the District Consumer Disputes Redressal Forums of the State enabling them to be acquainted with provisions of different Statute vis-a-vis Consumer Protection Act.

It is further alleged that sometimes the President and the Members of the Consumer Forum being appointed in the same district are influenced by the local litigants.

If any such event comes to the notice of the Government, it would be open to them to make inter-district transfer of the President and Members of the Forum. That apart, we direct to circulate this judgment to all the District Consumer

Disputes Redressal Forums of the State. Despite this judgment, if any order of restraint or injunction in the matter covered under the D.R.T. Act and SARFAESI Act is passed by the District Forum, that shall be construed to be an act of contempt.

The writ petition is allowed accordingly.

Let a free copy of this judgment be supplied to the learned Counsel for the State.