

(2021) 06 DEL CK 0053

In the Delhi High Court

Case No : Letter Patent Appeal No. 183 Of 2021, Civil Miscellaneous Application
No. 18503, 18561-18563 Of 2021

Dr. Pallavi Yadav & Anr

APPELLANT

Vs

Vijaya Bank & Ors

RESPONDENT

Date of Decision : 04-06-2021

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security
Interest Act, 2002 — Section 13(2), 13(3), 13(3A), 13(4), 17

Citation : (2021) 06 DEL CK 0053

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : S.D. Singh, Shweta Sinha, Kush Sharma

Final Decision : Dismissed

Judgement

Navin Chawla, J

The petition has been heard by way of video conferencing.

1. This appeal has been filed by the appellants challenging the judgment and order dated 19.05.2021 passed by the learned Single Judge of this Court,

in C.M. No. 16621 of 2021 in Writ Petition No. 5073 of 2019, dismissing the application for interim relief filed by the appellants herein.

2. In the said application, the appellants had prayed for the following reliefs:-

â??a. stay the operation of notice dated 06.04.2021 issued by chief manager/ authorised officer of Bank of Baroda by issuing direction to

the bank to accept the offer made by the petitioners and C.M. NO. 3298 of 2020 be taken up for hearing with this application and consider

the reliefs as sought for in the writ petition including the closing of account qua the Petitioners/guarantors and further directions be issued

for releasing the property no. A-154, 3rd Floor, Block-A, Sector- 8, Dwarka, New Delhi, owned by Petitioner no.1.

b. to take the steps for selling of the mortgage property owned by principal borrowers Max Life Care Pvt. Ltd. namely:-i. Hospital

equipment, machineries, furniture and fixtures, ambulance etc.

ii. current assets consisting of stocks of medicines and other medical equipments and book debts and iii. recover the amount of L.I.C. Policy

No. 127472843 dated 21.2.2015 in the name of Mr.Nitender Singh with a single premium paid of Rs.10,9,800/- and sum assured of Rs.

17,00,000/-.

c. to disclose the amount lying in the current A/C. 600200301000704 of the Principal borrower Max Life Care Pvt. Ltd. and adjust the

amount lying therein towards the loan amount.â??

3. The learned counsel for the appellants submits that the learned Single Judge has failed to appreciate that the remedy under Section 17 of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (â??SARFAESI Actâ??) is not available

against a notice issued under Section 13(2) of the Act. He further submits that in the present case, an amount of Rs. 40 lakhs had been deposited by

the principal borrower with the respondent-Bank, which has not been taken into account by the respondents while issuing the notice dated 06.04.2021.

He submits that only an amount of approximately Rs. 11 lakhs would be payable if complete accounts are rendered by the respondents against the

loan account. He has taken us through the list of dates wherein the calculation of the amount due according to the appellants has been worked out.

4. The above submissions of the learned counsel for the appellants have been refuted by the learned counsel for the respondents, who submits that this

is yet another attempt of the appellants to somehow halt the recovery procedure adopted by the respondent-Bank. He further submits that on any

action being taken by the respondents under Section 13(4) of the Act, the appellants shall always be at liberty to invoke the statutory remedy provided

under the SARFAESI Act.

5. We have heard the learned counsels for the parties.

6. The learned Single Judge in the Impugned Order, placing reliance on the judgments of the Supreme Court has rightly observed that the High Court

should be circumspect in entertaining Writ Petitions on issues that are to be adjudicated before the Debts Recovery Tribunal (DRT) under the SARFAESI Act. The findings of the learned Single Judge in this regard, are as under:-

2. The communication dated 06.04.2021, which is sought to be challenged by the petitioners by way of this application, is a notice issued by the respondent-Bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [""the SARFAESI Act""]. As far as measures taken by banks and financial institutions under the SARFAESI Act are concerned, the petitioners have an alternative remedy of appeal under Section 17 of the said Act. The settled law is that writ proceedings will normally not be entertained against measures taken under the SARFAESI Act. The judgment of the Supreme Court in *United Bank of India vs. Satyawati Tondon and Ors.* (2010) 8 SCC 110 (paragraphs 43 to 46), is clear on this point. *Satyawati Tondon* has been followed inter alia in *Authorized Officer, State Bank of Travancore vs. Mathew K.C.*, (2018) 3 SCC 85 and *C. Bright vs. District Collector & Ors.*, 2020 SCC OnLine SC 909.

7. As far as the submission on the amount that is due and payable by the appellants as a guarantor is concerned, the same could not have been adjudicated in the Writ Petition filed by the appellants. It may be noted that the Writ Petition itself prays for a direction to the respondent-Bank to accept a sum of Rs. 18 lakhs as a One-Time Settlement. It further prays that the respondent-Bank be directed to release the property mortgaged with the bank and recover its amount by selling the other equipment mentioned in Annexure P-2 to the Writ Petition.

8. We may also note that the application challenged a notice under Section 13(2) of the Act. The remedy of the appellants against such notice would be in form of a representation to the respondent-Bank in terms of Section 13(3) of the SARFAESI Act. The appellants claim to have made such a representation vide letter dated 05.05.2021. In case, the decision of the respondents in terms of Section 13(3A) of the Act is adverse to the appellants and the respondent-Bank proceeds to take action under Section 13(4) of the Act, the appellants would be at liberty to challenge the same, in

accordance with law.

9. In view of the same, we find no infirmity in the order passed by the learned Single Judge. Accordingly, the appeal is dismissed. There shall be no

order as to costs.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.