(2017) 11 CHH CK 0004

In the Chhattisgarh High Court

Case No : 196 of 2016

Dr. (Smt.) Neeta Soni & anr. APPELLANT

Vs

Central Bureau Of Investigation & ors. RESPONDENT

Date of Decision : 01-11-2017

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 14, Section 13(2), Section 13(4) - Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset. - Enforcement of security interest - Enforcement of security interest

Citation : (2017) 11 CHH CK 0004

Hon'ble Judges : Prashant Kumar Mishra

Bench : Single Bench

Advocate : N.K. Shukla, Shrawan Agrawal, Pawan Kesharwani, U.N.S. Deo, Anand Shukla

Judgement

1. The petitioners, who are borrowers having obtained financial assistance to the tune of Rs.2.10 Crores and Rs.1.00 Crore as term loan from the respondent Bank, have preferred this writ petition seeking a direction to register First Information Report (FIR) against the Officers of the respondent No.7 Bank, as also for staying the proceedings initiated by the Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ''the Act, 2002) till completion of investigation. Prayer has also been made for a direction to the Bank to supply documents to the petitioners and to unlock the property seized from the petitioners on 30.07.2016.

2. Petitioner No.1 is running 41 bedded hospital in the name of M/s Hari Devanta Advance Super Speciality Care, Radhika Nagar, Bhilai. They have obtained term loan of Rs.2.10 Crore on 17.10.2011 and additional term loan of Rs.1.00 Crores on 14.05.2013. For their failure to repay the loan amount, the Bank initiated proceedings under the Act, 2002. After the said initiation, the petitioners

examined the matter to find that the supplier has not supplied machinery, plants and equipments, however, fraudulent payment has been made by the Bank to the suppliers by transferring the amount from the term loan account to current account. It is further averred that the Bank authorities have embezzled an amount of Rs.1.02 Crores approx., however, ignoring the petitioners'' request for investigation, the Bank has proceeded under the Act, 2002.

3. To assess the prima facie reliability of the petitioners'' submission, this Court directed the counsel for the respondent Bank, who appeared on advance notice, to produce the original record of the loan transaction.

4. Perusal of the record would demonstrate that whenever the amount has been transferred from the petitioners'' term loan account to the supplier, it has been made on petitioners'' request. Petitioners'' signature is available on the application for transfer or the voucher through which the transfer of amount has been made. Thus, there is no, prima facie, material to hold that the Bank Officers have fraudulently paid the amount to the suppliers. Even otherwise, it is impossible for the respondent Bank to know the name of such supplier to whom amount is to be paid unless the petitioners have requested or informed the Bank about the details of person or firm to whom payment is to be made for supply of plants, machinery and equipment.

5. Be that as it may, it is important to notice the observations made by the Supreme Court in Priyanka Srivastava and Another v. State of Uttar Pradesh and others, (2015) 6 SCC 287 where dealing with the similar prayer made by the borrower, the following was observed in para 28 : 28. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants, like respondent 3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, respondent 3 had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of appellant 1, who is presently occupying the position of Vice-President, neither was the loan taken, nor was the default made, nor was any action under the SARFAESI Act taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present appellant 1. We are only stating about the devilish design of respondent 3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156 (3) Cr.P.C. is a simple application to the court for issue of a direction to the investigating

agency. We have been apprised that a carbon copy of a document is filed to show the compliance with Section 154 (3), indicating it has been sent to the Superintendent of police concerned."

6. The Supreme Court further observed in Priyanka Srivastava (supra) that when the proceedings initiated and the action has been taken by the authorities under the Act, 2002, the same are assailable before the higher forum and if, a borrower is allowed to take recourse to criminal law in the manner it has been taken, it needs no special emphasis to state, has the inherent potentiality to affect the marrows of economic health of the nation. It is clearly noticeable that the statutory remedies have clearly been bypassed and prosecution route has been undertaken for instilling fear amongst the individual authorities compelling them to concede to the request for one-time settlement, which the financial institution possibly might not have acceded.

7. In the present case also, on the application of the respondent Bank under Section 14 of the Act, 2002, the District Magistrate, Durg has passed an order on 30.03.2016 (Annexure - P/8) directing delivery of possession of mortgaged property. Before the said order, the Bank proceeded to issue notice under Section 13 (2) and 13 (4) of the Act, 2002. However, from the pleadings made in the writ petition, it does not appear that the petitioners have approached the jurisdictional Debts Recovery Tribunal to assail the proceedings under the Act, 2002 as has been observed by the Supreme Court in Priyanka Srivastava (supra) and United Bank of India v. Satyawati Tondon and others, (2010) 8 SCC 110 .

8. For all the reasons as stated supra, the petition, being bereft of merit, is liable to be and is hereby dismissed. No order as to costs.

