(2011) 03 KL CK 0015

In the High Court Of Kerala

Case No : Writ Petition (C) No. 5490 of 2011

E.P. Sreedharan — APPELLANT

Vs

The Manager Indian Bank and Another — RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Limitation Act, 1963 — Section 14
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 2(g)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17(1), 2(h)(a), 36

Citation : (2011) 3 BC 407 : (2011) 2 KLJ 635 : (2011) 2 KLJ 633 : (2011) 2 KLT 627 : (2011) 6 RCR(Civil) 3168

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : K.A. Salil Narayanan, for the Appellant; S. Easwaran, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Abdul Rehim, J.—Proceedings initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) is under challenge in this writ petition. Consequent to default committed in repayment of a loan availed by the petitioner from the. 1st respondent Bank, a suit was filed in the year 1997, which was decreed in favour of the 1st respondent as per Ext.P2, on 30.10.1998. It is contended that no execution petition was filed within the limitation period of 12 years. According to the petitioner the proceedings under the SARFAESI Act was initiated only in December 2009, and steps as contemplated u/s 13(4) was intimated through Ext.P1 notice, issued only on 17.1.2011. Under such circumstances the proceedings is challenged on the ground that it is barred by limitation, as prescribed u/s 36 of the SARFAESI Act. In the counter affidavit filed on behalf of respondents it is mentioned that an execution petition was filed before the Sub Court within the period of limitation, and the petitioner had already entered appearance and raised contentions regarding maintainability of the execution petition in that Court, on the ground that the amount sought to be recovered is more than Rs. 10 lakhs.

2. Regarding the question of limitation, contention of the respondents is that, the proceedings was initiated by virtue of Ext.R2(a) notice issued u/s 13(2) on 1.12.2009 and it was received by the petitioner as early as on 3.12.2009. The debt in question which is sought to be recovered through the impugned proceedings is the ''decree debt'', which had fallen due as on 30.10.1998 (date of the decree). As per the definition of ''debt'' u/s 2(h)(a) of the SARFAESI Act r/w Section 2(g) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDB Act) it includes amounts covered under a decree. Therefore, the ''debt'' which is sought to be recovered through the SARFAESI proceedings is the ''decree debt'' and the period of limitation starts only from the date of the decree. Computed on that basis the notice u/s 13(2) was issued well within the period of limitation stipulated under Article 136 of the Limitation Act. Hence it is not barred u/s 36, is the contention.

3. Learned counsel for the petitioner, per contra, raised contentions based on the provisions of Section 13(2), to the effect that, for initiating a proceeding under the SARFAESI Act the debt should be a debt which is classified as a non-performing asset. Since there is no classification of the ''decree debt" as a non-performing asset, such a classification was only with respect to the loan account. Hence the limitation period need be reckoned from the date on which the loan account was classified as ''NPA'', is the crux of the contention.

4. On a reading of Section 13(2) it is evident that two ingredients required for raising a demand are, (i) there should be a default in repayment of a secured debt or any instalments thereof and (ii) the account of the borrower in respect of such debt should have been classified by the secured creditor as a non performing asset. In the case at hand since the decree, debt will fall within the definition of ''debt'', the first limb is satisfied. On a careful reading of the second limb (2nd ingredient), it is clear that the wording is, ''his account in respect of such debt''. The ''debt'' being the decree, the account with respect to such ''debt'' can only be the loan account. Since the loan account stands classified as non-performing asset that ingredient also stands satisfied.

5. Then the further question arises as to what is the starting point of time for computation of the period of limitation. From Section 36 of SARFAESI Act it is evident that, the claim in respect of the ''financial asset'' should be made within the period of limitation prescribed. Going fry the definition of ''financial asset'' it means any debt or receivables. Since the decree is also a ''debt'', there is no doubt that it is a ''financial asset''. The claim with respect to the ''financial asset'' is made on the basis of notice u/s 13(2). So the limitation can only be reckoned from the date on which that ''financial asset'' became due, which in turn can only be the date of the debt. In the case at hand the ''debt'' is only the decree debt. Hence, it should be reckoned from the date of the decree. Therefore from a

combined reading of Section 36 of the SARFAESI Act and the definition clauses of the terms ''debt'' and ''financial asset'' along with the relevant Article of the Limitation Act prescribing the period of limitation for realization of a decree, it can safely be concluded that the limitation prescribed u/s 36 of the SARFAESI Act, in the case of recovery of a decree debt, can only be computed from the date of the decree and not from the date of declaring the loan as ''NPA''. Under the above mentioned circumstances, I am of the considered opinion that the challenge raised in this writ petition based on the question of limitation is not legally sustainable.

6. Yet another contention raised by the petitioner is that, since the period of limitation prescribed u/s 17(1) stands expired, he is not in a position to challenge the proceedings initiated by resorting to the statutory remedy. The question whether the petitioner can invoke provisions of Section 14 of the Limitation Act, in view of filing of this writ petition, is left open for agitation before the Tribunal, if the petitioner files any statutory appeal. However, it is for the Tribunal to consider all such aspects, if any such application is made, and to take appropriate decision. Under the above circumstances, the writ petition is dismissed without prejudice to rights if any available to the petitioner under law to pursue statutory remedy against the impugned proceedings.