(2004) 04 DEL CK 0019

In the Delhi High Court

Case No : C.W.P. No. 3704 of 2004

Gabs (Groups Apparel Business Services) APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Citation : (2004) 111 DLT 522 : (2004) 77 DRJ 365

Hon'ble Judges : B.C. Patel, C.J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : R.K. Chadha, Kamal Mohan Gupta, Vikas Pahwa, Pawan Sankhla, A.K. Singh, Promila Kaul, B.B. Bhatia, Iti Sharma, Anuradha Sharma, S. Sukumaran, Divya Nair, A.S. Gambhir, Sandeep Khurana, B.K. Satapathy, Vandana Miglani, Sandeep Sethi, Nandini Sahni, Sanjay Poddar, Rakesh Saini, Kuljit Rawal, Renu Sehgal, Leena Tuteja, Raman Duggal, Sarvagya Sharma, Arif Jamal, A.H. Pasha, Anand Aggarwal, Rajat Bhalla, Ranjana Roy, Maneesha Dhir, Anupma Singh, Ravi Prakash Sharma, Jugal Wadhwa and Jyoti Singh, for the Appellant; Rajinder, for the Respondent

Judgement

1. This group of petitions have been filed challenging the provisions contained in the Securitisation and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002. The controversy has been settled by the Apex Court in Transfer Case (Civil) Nos. 92-95/2002; Vinod Kumar Vs. Presiding Officer, Labour Court No. 1, Karkardooma Courts, Secretary Labour-cum-Labour Commissioner and Management of Fixopan Engineering Pvt. Ltd., on 8.4.2004. We re-produce paragraphs 80, 81, 82, 83 and 84 of the judgment.

"Under the Act in consideration, we find that before taking action a notice of 60 days is required to be given and after the measures u/s 13(4) of the Act have been taken, a mechanism has been provided u/s 17 of the Act to approach the Debt Recovery Tribunal. The above noted provision are for the purposes of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows:

1. Under Sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceeding to take any of the measures as provided under Sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal u/s 17 of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under Sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) u/s 17 of the Act before the Debt Recovery Tribunal.

3. That the tribunal in exercise of its ancillary power shall have jurisdiction to pass any stay/interim order subject to the conditions as it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) u/s 17 of the Act is an oppressive, onerous and arbitrary condition against all the can one of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in Civil Court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the Court.

In view of the discussion held in the judgment and the findings and directions contained in the preceding paragraphs, we hold that the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debt Recovery Tribunal. The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of economy of the country and welfare of the people in general which would subserve the public interest.

We, Therefore, subject to what is provided in paragraph 80 above, uphold the validity of the Act and its provisions except that of Sub-section (2) of Section 17 of the Act, which is declared ultra virus of Article 14 of the Constitution of India.

Before we part with the case, we would like to observe that where a secured creditor has taken action u/s 13(4) of the Act, in such cases would be open to borrowers to file appeals u/s 17 of the Act within the limitation as prescribed Therefore, to be counted with effect from today.

The transfer cases, appeals and the petitions thus stand partly allowed limited to the extent indicated above. For the rest of the reliefs, they stand dismissed.

Costs easy."

2. In view of the law laid down by the Apex Court, the parties obviously are bound by the decision of the Apex Court, and Therefore, we dispose of all the petitions in terms of the Apex Court judgment.

3. However, for some residential properties, we had earlier granted interim relief in these petitions. The interim relief granted earlier, shall continue for a period of two weeks only provided that undertakings as directed have already been filed by the respective petitioner in the petitions. All these petitions are disposed of with no order as to costs.

