
(2004) 05 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19657 of 2003

Gill Knit Wears

APPELLANT

Vs

UCO Bank

RESPONDENT

Date of Decision : 25-05-2004

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17, 17(2)

Citation : (2005) 3 BC 197

Hon'ble Judges : Swatanter Kumar, J;Amar Dutt, J

Bench : Division Bench

Advocate : Deepak Aggarwal, for the Appellant; Gurpreet Singh, Additional Central Govt. Standing Counsel, Rajesh Mahajan and R.S. Bhatia, for the Respondent

Judgement

Swatanter Kumar, J.—In Civil Writ Petition Nos. 17409 of 2002, 19657, 1928, 15375, 18611, 7223, 8769, 9370, 10136, 10150, 10388, 10626, 8508, 11779, 10932, 11408, 15018, 17193, 17857, 17484, 19951, 19800, 6489, 6813, 18141, 17359, 7455, 8133, 11829, 14956, 7369, 6812, 9769, 9882, 355, 323, 7855, 8344, 4052, 15811 to 15814, 15171, 20107, 8753, 4387, 7459, 15436, 14909, 716, 5679, 17590, 14632, 14929, 18487, 19042, 15668, 20389, 20234, 19098, 7384, 16246, 7402, 14864, 8517, 7809, 8564, 3921, 6996, 7904, 4893, 17436, 17242, 18847 of 2003 and 27, 139, 318, 464, 4008, 4010, 4513, 4607, 4520, 4084, 3502, 2431, 5225, 5227, 3533, 5761, 2467, 5660, 4874, 5455, 5447, 5442, 5049, 5068, 5072, 5078, 5213, 5271, 5274, 5421, 8447, 447, 4575, 4236, 3429, 3346, 5015, 5085, 5953, 4036, 4045, 4065, 4075, 4175, 4682, 4728, 4780, 4865, 3084, 3235, 1966, 3062, 4017, 3899, 1957, 1685, 3852, 3713, 3504, 3503, 3428, 3315, 3251, 3253, 5761, 1976, 5280, 2707, 8104, 2467, 2808, 5772, 5762, 5790, 5818, 5830, 5956, 3195, 3925, 3657, 4357, 5910, 6039, 5987, 5720, 5641, 5638, 5548, 5546 and 5486 of 2004, the petitioners have raised challenge to the constitutionality and/or validity of Sub-clauses (2) and (4) of Section 13 of the Securitisation and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 (in short "the Act").

2. All the petitioners, in these petitions, are either the principal borrowers and/or the guarantors, who had executed the documents in favour of the Bank/financial institution for repayment of the debt. The Bank/financial institution in exercise of powers vested in the Bank under the provisions of the Act issued notice u/s 13(2) and/or Section 13(4) of the Act for taking physical possession of the mortgaged assets and security, which were available to them in terms of the agreement executed between the parties. It is at that stage the writ petitions have been filed.

3. Ad interim orders of injunction were passed by this Court by a detailed order in the case titled as Goyal Steel and Ors. v. Union of India and Ors., on 14.08.2003 (Reported in Goyal Steels and Others Vs. Union of India (UOI) and Others, . This order was passed following the dictum of the Supreme Court in the case of Mardia Chemicals Limited, etc. v. Union of India and Ors. connected matters II (2004) BC 397 (SC) : II (2004) SLT 991 : JT 2004(4) SC 324. The Supreme Court had granted injunction even in SLP No. 15566 of 2003.

4. It is commonly conceded by the Counsel for the parties that SLP before the Apex Court as well as Civil Writ Petitions have already been finally decided. The Apex Court has upheld the vires of these provisions and none of the provisions of the Act has been declared to be ultra vires except the provisions of Section 17(2) of the Act [Reported in 2004(1) ISJ (Banking) 545].

5. In face of the above, it is obligatory upon the parties to take recourse to specific statutory alternative remedy i.e. filing of an appeal u/s 17 of the Act against an order passed u/s 13(4) of the Act or such other objections as the, petitioners could file in terms of the judgment of the Court. It is not open to this Court at this stage now to interfere, in view of the judgment of the Supreme Court. The interim order passed by this Court has already been rendered in consequential inasmuch as the appellate authority is an appropriate forum to pass even interim order with regard to matters in issue.

6. For the reasons recorded above, we dispose of these petitions with liberty to the petitioners to file appropriate appeals/take recourse to such remedy as is permissible under the provisions of the Act and in the light of the judgment of the Apex Court in the case reported as Mardia Chemical Ltd., etc. v. Union of India (UOI) and Ors. etc. etc. (supra). Appeals may be filed expeditiously, in any case not later than one month. We leave the parties to bear their own costs.

7. All these petitions stand disposed of accordingly.