

(2013) 07 AHC CK 0118

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 36314 of 2013

Gopal Ji Gupta

APPELLANT

Vs

Debts Recovery Appellate Tribunal and Others

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17, 18

Citation : (2013) 7 ADJ 167 : AIR 2013 All 175 : (2013) 5 ALJ 605 : (2014) 1 BC 259 : (2013) 120 RD 541

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Deepak Kumar Jaiswal and Sanjay Kumar Gupta, for the Appellant; V.K. Srivastava and Yashwant Singh, for the Respondent

Judgement

Tarun Agarwala, J.—Heard Sri Deepak Kumar Jaiswal, the learned counsel for the petitioner and Sri V.K. Srivastava, the learned counsel for the respondent-bank. With the consent of the learned counsel for the parties, the writ petition is being decided at the admission stage itself without calling for any counter affidavit, since no factual controversy is involved in the present writ petition.

The petitioner is a guarantor to a loan taken by M/s. Ganpati Traders, who defaulted in the payment of the loan. Accordingly, the bank issued a notice u/s 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Act of 2002) and thereafter, issued a notice u/s 13(4) of the Act of 2002 for taking possession of the property of the guarantor, pursuant to which possession was taken and the property of the guarantor was put to auction. It has come on record, that pursuant to the auction, a sum of Rs. 50,11,847/- has been realised towards the loan amount.

2. The petitioner, being aggrieved by the issuance of the notice bank u/s 13(4) of the Act of 2002, filed an application u/s 17 of the Act of 2002 before the Debts

Recovery Tribunal praying that the possession be restored in his favour. This application was rejected by the Tribunal, against which the petitioner preferred an appeal u/s 18 of the Act of 2002.

3. Section 18 of the Act of 2002 requires that any person aggrieved by an order of the Debts Recovery Tribunal could prefer an appeal provided he deposits 50% of the amount of debt due from him as claimed by the secured creditor or determined by the Debts Recovery Tribunal, whichever is less. The petitioner by his own calculation filed an application for waiver of the 50% to 25% as per the second proviso of Section 18 of the Act of 2002 alongwith a bank draft of Rs. 2.65 lacs and prayed that suitable orders may be passed for waiving the balance amount and entertaining the appeal. The said application was rejected by the Debts Recovery Appellate Tribunal by the impugned order. The petitioner, being aggrieved by the said order, has filed the present writ petition.

4. The Appellate Tribunal held that 50% of the amount demanded by the bank has to be deposited irrespective of the recovery so made by the bank by way of auction.

5. Having heard the learned counsel for the parties and having perused the impugned order, the Court finds it strange that the bank is demanding Rs. 94,08,777/- alongwith future interest but the possession notice issued u/s 13(4) of the Act of 2002 indicates that the bank had demanded a sum of Rs. 60,65,380.90 alongwith future interest. The Court is of the opinion that the amount indicated in the notice u/s 13(4) of the Act of 2002 can only be made the basis for the purpose of filing the appropriate deposit in an appeal u/s 18 of the Act of 2002, inasmuch as the petitioner had questioned the said notice before the Debts Recovery Tribunal. The contention of the respondent bank's counsel that 50% of Rs. 94,08,777/- has to be deposited is erroneous.

6. The second proviso to Section 18 of the Act of 2002 is relevant for the purpose of deciding the appeal. For facility, the said provision is extracted hereunder:

18. Appeal to Appellate Tribunal.--(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under Section 17, may prefer an appeal alongwith such fee, as may be prescribed] to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

[Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:]

[Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less]

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.]

A perusal of the said provision indicates that 50% of the amount of the debt due from him as claimed by the secured creditors or determined by the Debts Recovery Tribunal has to be deposited by the person who challenges the order of the Debts Recovery Appellate Tribunal.

7. In the instant case, no amount as yet has been determined by the Debts Recovery Tribunal and the petitioner has only questioned the possession notice issued by the bank u/s 13(4) of the Act of 2002, which indicates that an amount of Rs. 60,65,380.90 was required to be deposited by the petitioner at the time of filing the appeal.

8. In the instant case, the Court finds that the respondent bank had auctioned the property of the petitioner and has recovered a sum of Rs. 50,11,847/-, which is more than the 50% of the total amount sought to be recovered. The proviso to Section 18 of the Act of 2002 restricts the entertainment of the appeal unless the borrower deposits 50% of the amount of debt due from him as claimed by the secured creditors. Since more than Rs. 50 lacs has already been realised by the secured creditor, namely, the bank, which is more than 50% of the debt due from the petitioner, the purpose of the proviso stands satisfied.

9. The Court is of the opinion that there was no requirement for the petitioner to deposit any further amount for entertainment of his appeal under the second proviso to Section 18 of the Act of 2002. In the light of the aforesaid, the decision cited by the respondent-bank in the case of Indian Bank Vs. Blue Jagers Estates Ltd. and Others, , has no application to the present set and circumstances of the case.

For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed. The writ petition is allowed. The Debts Recovery Appellate Tribunal is directed to entertain the appeal without any pre-condition of deposit and decide the appeal on merits in accordance with law.