(2017) 04 UK CK 0005

In the Uttarakhand High Court

Case No : 719 of 2017

Harjinder Singh APPELLANT

Vs

Chairman, Uttarakhand Gramin Bank & others RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 13(7) - Enforcement of security interest

Citation : (2017) 04 UK CK 0005

Hon'ble Judges : Sudhanshu Dhulia

Bench : Single Bench

Advocate : G.D. Joshi, D.S. Patni

Judgement

1. The petitioner had admittedly taken a loan for a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) from the respondentbank, which he could not repay. Consequently, the respondents have initiated recovery proceedings against the petitioner under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (from hereinafter referred to as "the Act"). Aggrieved, he had filed a writ petition being WPMS No. 459 of 2017 before this Court, which was disposed of by this Court vide order dated 24.03.2017 by passing the following order:- "The petitioner had taken a loan for a sum of Rs.10.00 lakh (Rupees Ten Lakh Only) from the respondent/Bank - Uttarakhand Gramin Bank, Branch Gadarpur, District Udham Singh Nagar, which the petitioner admittedly could not repay in time. Consequently, the respondents have initiated recovery proceedings against the petitioner. Moreover, the property of the petitioner is also going to be auctioned on 27.03.2017.

This Court vide order dated 22.03.2017 directed the petitioner to deposit an amount of Rs.10.00 lakh (Rupees Ten Lakh Only) out of the total amount of loan in order to show his bona fide. Learned counsel for the petitioner, submits that as per the direction of this Court the petitioner has deposited the amount of

Rs.10.00 lakh (Rupees Ten Lakh Only), which is admitted by the learned counsel for the Bank.

Learned counsel for the petitioner further submits that the petitioner is ready to pay the entire amount of loan, including interest, within a period of three months.

Learned counsel for the respondent/Bank has no objection if the writ petition is disposed of with the direction to the petitioner to deposit the remaining amount of loan within a period of three months along with the interest.

Considering the above fact that the petitioner has already deposited some amount with the Bank as well as the fact that the petitioner is ready to deposit the entire amount, including interest, the writ petition stands disposed with the following direction.

The petitioner shall pay entire outstanding amount in three equal monthly installments to the Bank, details of which shall be given to the petitioner by the Bank well in advance. First installment shall be paid on or before 1st April, 2017. The last installment shall also carry the cumulative interest.

It is further directed that the respondent Bank shall handover the keys to the petitioner of his mortgaged property by Monday March 27, 2017. The auction proceedings initiated against the petitioner are hereby set aside.

It is made clear that the above order has been passed on the bona fide shown by the petitioner and the consent given by the counsel for the Bank. All the same, in case of default in payment of even a single installment, this order will not restrain the Bank from initiating any proceedings for recovery against the petitioner, in accordance with law."

2. Now a second writ petition has been filed by the petitioner before this Court with the following prayers:- "(i) Issue a writ, order or direction in the nature of certiorari for setting aside the impugned letter dated 27.03.2017 so far it relates to SARFAESI expenses i.e. Rs.2,11,000/- and other/legal expenses i.e. Rs.20,000/- issued by the respondent no. 2.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents not to recover the SARFAESI expenses i.e. Rs.2,11,000/- and other/ legal expenses i.e. Rs.20,000/-."

3. This Court has been informed that pursuant to the order of this Court, the petitioner has already deposited an amount of Rs.10,00,000/- (Rupees Ten Lakhs Only) as well as the first instalment with the respondent-bank. Now the petitioner is aggrieved by the charges which are being made by the respondent-bank against him for recovery.

4. Learned counsel for the respondent-bank on the other hand would object that the charges are being taken under the Act, which is for the expenses incurred by the bank for initiating the recovery proceedings and these charges are liable to be paid to the bank or financial institution under sub-section (7) of Section 13 of

the Act. Section 13 (7) of the Act reads as under:- "Section 13. Enforcement of security interest. -

(1)...

(2)...

(3)...

(4)...

(5)...

(6)...

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests."

5. The writ petition was decided on 24.03.2017 with certain terms and conditions which have to be followed, in case the petitioner has any grievance, he could have filed a review application before this Court, which he has not done. This aspect cannot be taken into a separate writ petition.

6. In view of the aforesaid, the writ petition stands dismissed.

