(2007) 09 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Harminder Singh and Another APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 24-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 17

Citation : (2007) 4 PLR 746

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for quashing notice dated 12.1.2007 (P-2), issued u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, ''the Act''). Further prayer for quashing notice dated 17.3.2007 (P-4), issued u/s 13(4) of the Act has also been made. It is still further prayed that the respondent-bank may be restrained from taking possession of the residential house of the petitioners.

2. It is undisputed that after issuance of notice u/s 13(2) of the Act, the. petitioners have filed reply and objections to the aforesaid notice. The respondent-bank, who is a secured creditor, was required by virtue of Section 13(3A) of the Act to pass a well reasoned order, if the objections were not acceptable. There is further obligation imposed on a secured creditor to communicate within a week on the receipt of objections/representation, the reasons for non-acceptance of objections/representation filed by the borrower like the petitioners. According to the proviso, the reasons communicated to the petitioners were not to entitle the petitioners to invoke the jurisdiction of the Debts Recovery Tribunal u/s 17 of the Act. It remains undisputed that no such order has been passed by the secured creditor and it has taken further steps in

the direction of taking possession of the secured assets.

3. After hearing learned Counsel for the parties, we are of the considered view that provisions of Section 13(3A) of the Act is mandatory in character. For ready reference, we may read Section 13(3A) of the Act, which is as under:

13. Enforcement of security interest-

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(3A) If, on receipt of the notice under Sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower.

4. A perusal of the aforementioned provision makes it clear that after issuance of notice u/s 13(2) of the Act, objections filed by a debtor or representation made by such a person must be considered by a secured creditor. If a secured creditor comes to the conclusion that such objections or representation was not acceptable or tenable then he was required to communicate the reason for non-acceptance of the objections or representation to the borrower within a period of one week of the receipt of objections or representation. It is appropriate to mention that this provision has been added after Hon''ble the Supreme Court has pointed out some lacuna in its judgment rendered in the case of Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., . The aforementioned course has admittedly not been adopted by the respondent secured creditor. Therefore, the notice dated 17.3.2007 (P-4) issued u/s 13(4) of the Act is set aside. However, the secured creditor-respondent shall be at liberty to proceed against the petitioners in accordance with law by passing a detailed reasoned order for not accepting the objections or representation raised by the petitioners.

The petition stands allowed in the above terms.

