(2011) 05 AHC CK 0454

In the Allahabad High Court

Case No : C.M.W.P. No. 31285 of 2011

Heera Brick Field — APPELLANT

Vs

Bank of Baroda and another — RESPONDENT

Date of Decision : 26-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(4), 17

Citation : (2011) 5 AWC 4827

Hon'ble Judges : Satya Poot Mehrotra, J;Rajesh Chandra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra and Rajesh Chandra, JJ.—As per the averments made in the writ petition, the petitioner took Cash Credit Facility from the respondent No. 1-Bank of Baroda for business purposes. The property in question was given as security for the said facility. The petitioner committed default in respect of the said facility. Consequently, the proceedings u/s 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "the Securitization Act") have been initiated against the petitioner. A Notice dated 3.1.2011 (Annexure-1 to the writ petition) u/s 13 (2) of the Securitization Act has been issued to the petitioner.

2. Shri Sandeep Kumar Singh, learned counsel for the respondent Nos. 1 and 2, on the basis of instructions received by him. states that a Notice dated 7th May. 2007 u/s 13 (4) of the Securitization Act has also been issued to the petitioner. The petitioner has filed the present writ petition, inter alia, praying for quashing the proceedings initiated against the petitioner under the Securitization Act.

3. We have heard Shri Sushil Shukla, learned counsel for the petitioner and Shri Sandeep Kumar Singh, learned counsel for the respondent Nos. 1 and 2.

4. The petitioner in the present writ petition is impugning the proceeding being taken against the petitioner under the Securitization Act on various grounds.

5. In United Bank of India Vs. Satyawati Tondon and Others, . their Lordships of the Supreme Court have laid down that in view of the alternative remedy available under the Securitization Act, the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India should normally not interfere in respect of the proceedings being taken under the said Act.

6. In view of the decision of the Supreme Court in United Bank of India v. Satyavati Tandon and others (supra) and keeping in view the nature of controversy involved in the writ petition, we are of the opinion that the writ petition is liable to be dismissed on the ground of availability of alternative remedy of filing appeal/application u/s 17 of the Securitization Act before the Debts Recovery Tribunal.

7. We accordingly dismiss the writ petition on the ground of availability of alternative remedy of filing appeal/application before the Debts Recovery Tribunal u/s 17 of the Securitization Act.