(2009) 01 DEL CK 0207

In the Delhi High Court

Case No : Writ Petition (C) 1884 of 2007

Inderjeet Singh and Another APPELLANT

Vs

Fedral Bank Ltd. and Another RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

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

Citation : (2009) 01 DEL CK 0207

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : D.K. Rustagi, for the Appellant; P.I. Jose, for the Respondent

Judgement

S. Ravindra Bhat, J.

Issue rule. Mr. P.I. Jose, learned Counsel for the respondent waives notice of rule. The writ petition was heard finally.

1. Heard learned Counsel for the parties.

2. The petitioners who are exporters, availed of credit facilities from the respondent bank. To secure this facility, they mortgaged the property being N-81, Panchsheel Park, New Delhi. It is claimed that the value of the property is in the vicinity of Rs. 10 crores.

3. During the course of export trade, the petitioner received an amount of Aus $75,000 on account of dues payable by one M/s Hemmi Import-Export. A cheque was issued on 28.07.2005. The petitioner deposited the cheque with the respondent bank on 03.08.2005. The bank credited the Indian currency equivalent (of the Australian Dollars) in the petitioner''s account on 23.08.2005.

4. The petitioner next adverts to two credit memos issued by the respondent bank on 28.09.2005 and 30.09.2005 reflecting the charge of interest @ 14.75%

per annum on the outstanding amounts payable in its loan account. One of the facilities availed by the petitioner was an over-draft account. The petitioner further adverts to other letters/communication stating that the balance outstanding in the foreign reserve bill account of the firm was in excess of Rs. 17.79 lakhs. It is claimed further that the petitioner sought financing from alternative sources and therefore sought to clear its outstanding. Alleging that no co-operation was forthcoming from the respondent, it approached the District Consumer Redressal Forum on 12.05.2006. When the complaint was pending, the bank appears to have communicated that the cheque for Australian Dollars 75,000 had been returned and sought to reverse the credit already given to the petitioner. This was communicated to the petitioner by the respondent bank by letter dated 01.06.2006. The letter also indicated the other outstanding demands payable by the petitioners.

5. In these circumstances on 04.12.2006 the respondent bank issued a notice u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as "the SRFAESI"), threatening action towards seizing the mortgaged property for recovery of the outstanding amounts. The notice demanded payment of Rs. 53,11,808/ -.

6. Claiming to be aggrieved by this notice, the petitioner approached this Court under Article 226 of the Constitution of India. It is urged that the respondent has sought to exercise the powers mala fide, compounding their errors in not intimating about the return of the cheque within time, so as to enable the petitioner to take necessary legal steps for the recovery of the amount. Learned Counsel submitted that although an application was made under the Consumer Protection Act, the Forum was of the opinion that the disputes were not covered under the said Act. However, after the intervention of the Consumer Commission the cheque was finally handed over to the petitioner which thereafter filed a suit for recovery of Rs. 58,00,000/ -, impleading the bank. It is submitted that the bank, in addition to seeking recourse of the SRFAESI, also sought to recover the same amount by filing an original application before DRT.

7. The bank''s position is that the present writ proceedings are not maintainable since an appeal is provided for, u/s 17 upon the taking of measures u/s 13(2). It is contended that the bank initially gave credit to the cheque for Aus $75,000 but the same had to be reversed since it was dishonored. In the circumstances, there is nothing wrong in invoking provisions of the SRFAESI. Learned Counsel submitted that in any event the petitioner''s grievance would be gone into by the DRT, in case it chooses to file an appeal in that regard. During the pendency of this proceeding at the stage of issuance of notice, the Court had by orders dated 31.07.2007 and 30.08.2007 sought to crystallize the issues by recording that the amounts admittedly payable by the petitioner should be deposited. The said two orders read as follows:

Order dated 31.07.2007 - W.P(C) No. 1884/2007 and CM. No 3464/2007

Present: Mr. B.T. Singh with Mr. A.S. Anand and Mr. MX. Jha for the Petitioner.

Mr. P.I. Jose for the Respondent.

Renotify this matter on 30.08.2007.

The Learned Counsel for the petitioner submitted that insofar as the amount due to the bank is concerned, the same can be divided into two parts. One representing then value of the cheque and the other the balance amount. Insofar as the balance amount is concerned, the learned Counsel for the petitioner submits that he is willing to make the payment for the same on the contractual rate of interest as indicated in the letter dated 09.11.2005 issued by the Bank to the Petitioner. Insofar as this payment is concerned, the learned Counsel for the petitioner requests that the bank may allow three installments. This matter needs to be sorted out between the petitioner and the bank for which purpose they shall have a meeting. As regards the amount represented by the cheque in question, the same shall be taken up for decision on the next date of hearing. The petitioner shall have a meeting with the Chief Manager of the concerned Branch on 10.08.2007. On the date, the petitioner shall carry with him the payment to the extent of 1/3rd of the amount mentioned in the said letter dated 09.11.2005. Interim order to continue.

Order dated 30.08.2007 - W.P(C) No. 1884/2007

Present: Mr. B.T. Singh for the Petitioner.

Mr. P.I. Jose for the Respondent.

It is submitted that the sum of Rs. 5,93,300/ - was deposited with the respondent Bank, being one third of the amount admitted by the petitioner, on 10.08.2007. It is submitted that the balance two thirds along with contractual rate of 14.75% p.a. would be deposited by the petitioner after reasonable time is granted. Learned Counsel for the respondent submitted that the contractual rate if not 14.75% to 16.75% subject to variation of the bank rate.

In view of the statements made, the petitioner shall deposit the balance two thirds of the admitted principal amount, along with interest worked out at the rate of 14.75% p.a. with quarterly rests within three months from today. It is open to the petitioner to pay these in convenient installments. The above directions are without prejudice to the rights and contentions of both parties.

List on 07.01.2008. Interim order shall continue.

9. It is further, an undisputed fact that the sum of Rs. 23,79,036/ - has been deposited by the petitioner with the respondent bank.

10. From the above, it is apparent that the impugned controversy upon which, the notice was founded included the petitioner''s liability to pay Indian currency equivalent to Aus $ Dollars 75000. The cheque drawn for the purpose was deposited with the bank on 03.08.2005. Learned Counsel for the bank had

submitted that message intimating the return of the cheque was received by it on 18.08.2005, credit was accordingly given shortly thereafter. The bank, however, intimated about reversal of credit on account of dishonor of the cheque about eight months subsequently, in May 2006. The petitioner is not disputing the liability to pay the balance amount as per its arrangement with the bank. It is not in dispute that the sum of Rs. 23,79,036/ - was deposited by the petitioner as on 03.12.2007. The bank has also chosen to proceed against the petitioner for recovery of amount before the DRT. The petitioner too has filed a suit against various parties including the bank that involves determination of the same issues. In these peculiar circumstances, the Court is of the opinion that since factual disputes have to be adjudicated after considering the evidence, in regard to the parties'' role as well as the petitioner towards liability of payment of the Indian rupee equivalent to Aus $ 75000, the notice in question should not be proceeded with, at least until the outcome of the proceedings before the DRT.

11. Since the petitioner has not apparently filed a counter claim before the DRT, learned Counsel submitted that the same would be done within a period of four weeks. It is further submitted by the respondent bank that there was a small controversy that a further Rs. 4.61 lakhs was payable by the petitioner. To put an end to the controversy, it is hereby directed that petitioner should deposit a further sum of Rs. 2 lakhs with the respondent bank within four weeks as an ad hoc deposit without prejudice to his rights and contentions.

12. In the above circumstances, the interim order granted on 29th March, 2007 is made absolute. The respondent shall not take any coercive steps pursuant to the impugned notice till the conclusion of the proceedings before the DRT. In case any steps are required to be taken, it shall be guided and bounded by such decision. The petitioner is granted liberty to file counter claim before the DRT within a period of four weeks from today. The DRT shall consider the application and counter claims of the petitioner and render its decision as early as possible, preferably within six months from today. All rights and contentions of the parties hereby reserved.

The writ petition is disposed of in the above terms.

