
(2010) 10 DEL CK 0030

In the Delhi High Court

Case No : Writ Petition (C) No. 6716 of 2010

Ishan Systems Pvt. Ltd.

APPELLANT

Vs

Vijaya Bank and Others

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2004 — Rule 3

Citation : (2010) 10 DEL CK 0030

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Harshvir Pratap Sharma, for the Appellant; Virender Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner had availed of financial assistance of Rs. 44 crores from the respondent No. 1 Vijaya Bank and had in lieu thereof given security of its property at Noida (UP). It is the case of the petitioner in the petition filed on 22nd September, 2010 itself that the Bank on 17th May, 2010 i.e. about four months prior to the filing of this petition took over symbolic possession of the said property in exercise of power u/s 13(4) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. It is further the case of the petitioner in the petition itself that the Bank on 30th June, 2010 i.e. again about three months prior to the institution of this petition, transferred the aforesaid property of the petitioner to the respondent No. 5, an Asset Management/Reconstruction Company. The petitioner in this petition claims the relief of declaration of the notice dated 31st October, 2009 i.e. of about one year prior to the institution of the petition issued by the Bank u/s 13(2) of the SARFAESI Act as illegal and arbitrary and seeks declaration of all subsequent actions of the Bank with respect

to the said property as illegal including transfer/vesting on 30th June, 2010 of the property by the Bank in the aforesaid Asset Management Company.

2. The Counsel for the petitioner admits that action u/s 13(4) of the SARFAESI Act having already been taken against the petitioner, the remedy of appeal before the Debt Recovery Tribunal u/s 17 of the SARFAESI Act is available to the petitioner. The Counsel however contends that since it is the contention of the petitioner that the action u/s 13(2) of SARFAESI Act itself was illegal, the Writ Court can still be approached. Reliance in this regard is placed on U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, in para 10 whereof it was observed that writ remedy can be invoked where there is a statutory violation or where the financial company has acted unfairly and unreasonably. Reliance is also placed on Orissa State Financial Corporation v. Umesh Chandra Dani, (2001) 10 SCC 522

3. On enquiry as to what is the statutory violation in the present case, the Counsel has contended that the notice as required to be given under Rule 3(a) of the Security Interest (Enforcement) Rules, 2002 was not given. It is stated that though a notice dated 31st October, 2009 at page 165 of the paper book was issued by the respondent No. 1 Bank but subsequently a revised notice also dated 31st October, 2009 at page 170 of the paper book was given and in pursuance to the revised notice no opportunity as required to be given has been given to the petitioner till now.

4. Both the notices at page 165 and at page 170 are of 31st October, 2009. Though the Counsel initially contended that there is a difference between the two but has been unable to point out any difference. The only argument urged is that the notice at page 165 was given to a different person viz. Mr. Ramvir Singh Yadav. However, a perusal of the notice at page 165 shows that the same is addressed to the petitioner and with a copy to Mr. Ramvir Singh Yadav. The same is the position with respect to the notice dated 31st October, 2009 at page 170 which is also addressed to the petitioner with a copy to Mr. R.S. Yadav.

5. The Counsel for the petitioner contends that the notice dated 31st October, 2009 at page 170 was issued on 27th November, 2009 and received on 3rd December, 2009. However, except for a bare statement, there is nothing else in support thereof. Moreover, when the notice dated 31st October, 2009 at page 165 was admittedly issued, merely because another copy thereof was dispatched on 27th November, 2009, would not make any difference.

6. The only other contention raised by the Counsel for the petitioner is that the respondent No. 1 Bank had vide letter dated 31st March, 2009 to the petitioner, copy whereof is found at page 148 of the paper book, restructured the loan of the petitioner and allowed the petitioner to pay the installments with effect from October, 2009. It is urged that notwithstanding the same, in the notice dated 31st October, 2009 (supra) u/s 13(2) of the Act, it was stated that the account has been classified as NPA on 27th July, 2009. It is argued that a fresh proposal/

restructuring having been allowed on 31st March, 2009 and where-under the installments were to commence from October, 2009, the account could not have been classified as NPA on 27th July, 2009. It is argued that once the classification as NPA on 27th July, 2009 is held to be bad, all subsequent actions would be void.

7. The letter dated 31st March, 2009 re-structuring the loan of the petitioner required the petitioner to submit certain documents including an undertaking in acceptance thereof. I have enquired from the Counsel for the petitioner as to whether there is anything to indicate that the petitioner communicated to the respondent No. 1 Bank its acceptance of the restructuring proposal contained in the letter dated 31st March, 2009. The Counsel for the petitioner in reply shows an endorsement at the bottom of the letter dated 31st March, 2009 of the petitioner itself of having accepted the terms and conditions. The petitioner has before this Court filed only typed copies. The endorsement even if any made by the petitioner on its copy of the letter without communication thereof to the respondent is of no avail. The Counsel is unable to satisfy that the terms and conditions subject to which the letter dated 31st March, 2009 was issued were complied with by the petitioner, though it is argued all the documents were submitted but no acknowledgement thereof was given.

8. I have next enquired from the Counsel for the petitioner as to whether the petitioner has paid the installments from October, 2009 onwards. The answer is again in the negative. The explanation given is that since the notice dated 31st October, 2009 was given, the installments were not paid.

9. The aforesaid explanation is not found satisfactory. There is nothing to indicate that the petitioner had tendered any installments in accordance with the re-structured proposal dated 31st March, 2009.

10. The petitioner claims to have filed its objections to the notice dated 31st October, 2009 (supra). However, inexplicably the petitioner has chosen not to file copy thereof before this Court and has only quoted extracts therefrom in the petition. However, the reply dated 30th November, 2009 of the Bank to the said objections has been filed. In the said reply the respondent No. 1 Bank has stated that before issuance of the notice dated 31st October, 2009 u/s 13(2) of the SARFAESI Act, many discussions had taken place with the petitioner and the petitioner had been apprised of the Bank's contemplated action. The Bank in this regard has also referred to its letters dated 27th June, 2009 and 13th October, 2009 and the failure of the petitioner to remit payment inspite thereof. In fact the respondent No. 1 Bank vide the said communication yet again called upon the petitioner to pay Rs. 42,74,98,205.88 due as on 21st January, 2009 with future interest.

11. The Counsel for the petitioner has invited attention to para 6 of the reply dated 30th November, 2009 of the respondent No. 1 Bank in which the Bank has mentioned that "regarding issuance of notice to Sh. Ramvir Singh Yadav & Mrs. Usha Yadav we have to inform you that a correct notice have already been sent".

On the basis thereof, it is argued that the Bank had admitted a revised notice. I am unable to agree.

12. The Counsel for the petitioner also argues that the schedule of payments filed at pages 150 & 151 of the paper book was delivered by the respondent No. 1 Bank to the petitioner only after the petitioner had accepted the re-structuring proposal of 31st March, 2009.

13. He also draws attention to the letter dated 6th October, 2009 of the respondent No. 1 Bank at page 154 of the paper book. However, the same also does not persuade me to entertain this petition especially when the alternative remedy of appeal where all factual controversies can be adjudicated is available.

14. This Court would ordinarily not interfere in the process of securitization, the very object whereof is to curtail delays in the realization of dues of the Bank. The petitioner in the present case has been unable to make out a case. The petitioner is also barred by laches as aforesaid.

15. The Counsel for the petitioner at this stage seeks a clarification that any observations herein would not come in the way of the appeal which may be preferred by the petitioner before the DRT, if so advised. It is clarified that the observations aforesaid have been made in the context of the writ jurisdiction and on the basis of the material placed before this Court.

The petition is therefore dismissed in limine. No order as to costs.