(2014) 12 JH CK 0034

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 4809 of 2014

J.G. Garments APPELLANT

Vs

Central Bank of India RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

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

Citation : (2015) 2 BC 553

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Ashok Kr. Yadav and Ram Lal Ram, Advocate for the Appellant

Judgement

S. Chandrashekhar, J.—Seeking quashing of letter dated 11.08.2014 whereby, the representation/objection of the petitioner under Section 13(3-A) of the SARFAESI Act, 2002 has been dismissed, the petitioner has approached this Court by filing the present petition.

2. The brief facts of the case are that, in the year, 2002 a cash credit loan of Rs. 2,00,000/- was sanctioned to the petitioner, for which the petitioner provided liquid security in the form of fixed deposit of Rs. 25,000/- and it deposited original title deed of loan for equitable mortgage in favour of the respondent-bank. Subsequently, the cash credit limit was enhanced and finally on 24.11.2005, it was enhanced to Rs. 8,00,000/- The security given by the petitioner is to the tune of Rs. 1,90,000/- and in addition to the said security it submitted NSC for Rs. 50,000/- and LIC policy for Rs. 19,500/-. In view of the growth in business, the petitioner required additional capital, for which it requested the respondent-bank to grant additional facilities however, it was not granted and thus, the loan account became irregular in December, 2010. Vide letter dated 19.07.2011, the petitioner''s account became NPA. The petitioner was directed to deposit an amount of Rs. 8,82,446/- by 31.07.2011. The petitioner could not repay the entire outstanding dues and thus, vide letter dated

03.11.2011, a notice under Section 13(2) of the SARFAESI Act, 2002 was issued directing the petitioner to deposit an amount of Rs. 9,43,118/-. The petitioner submitted its objection under Section 13(3-A) of the SARFAESI Act vide representation dated 26.12.2011 however, the said representation was rejected by the respondent-bank on 03.01.2012. The petitioner again submitted representation dated 09.01.2012 and it offered to settle the loan amount vide letter dated 07.09.2012. In the settlement camp, it was agreed by the respondent-bank that the loan account of the petitioner would be settled for a sum of Rs. 7,00,000/- by adjusting the liquid security already lying with the bank. However, vide letter dated 10.09.2012, the respondent-bank informed that its compromise proposal is subject to approval by the higher authorities. Since, inspite of adjustment of Rs. 4,06,829/-, the respondent-bank again directed the petitioner to make payment of Rs. 7,00,000/-, the petitioner was constrained to approach this Court in W.P.(C) No. 5490 of 2013. In the meantime, the respondent-bank filed Certificate Case No. 17(CBI)/13-14 for recovery of a sum of Rs. 4,86,342/-. The respondent-bank again issued notice under Section 13(2) of the SARFAESI Act, 2002 requiring the petitioner to pay Rs. 8,24,801/- as on 16.06.2014 and therefore, the notice dated 16.06.2014 under Section 13(2) of the SARFAESI Act, 2002 was challenged by the petitioner in I.A. No. 3330 of 2014 in the pending writ petition. Vide order dated 21.07.2014, the writ petition was disposed of with liberty to the petitioner to file a representation before the authorised officer within 15 days. The petitioner filed a representation on 31.07.2014 pointing out serious discrepancies in the loan account and the consequent demand issued by the respondent-bank however, vide letter dated 11.08.2014, the representation of the petitioner has been dismissed arbitrarily and therefore, the petitioner has once again approached this Court.

3. Heard the learned counsel appearing for the petitioner.

4. The learned counsel for the petitioner submits that though, after the loan account became N.P.A on 20.05.2011, a notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 03.11.2011 however, in the settlement camp it was agreed by the respondent-Bank that the loan amount would be settled and in this regard, a communication dated 11.09.2012 was issued to the petitioner by the respondent-Bank. Seeking quashing of communication dated 11.09.2012 whereby compromise proposal dated 07.09.2012 was accepted by the Bank and aggrieved by notice under Section 13(2) dated 16.06.2014, the petitioner approached this Court in W.P.(C) No. 5490 of 2013 which was disposed of vide order dated 21.07.2014.

5. It is submitted that apparently, there is serious error in calculation of amount due to the petitioner in as much as, three different amounts have been shown by the respondent-Bank due from the petitioner. The recovery proceeding has been initiated for recovery of an amount of Rs. 4,86,342/- whereas, the notice under Section 13(2) indicated a different amount. The learned counsel for the petitioner further submits that since the Bank at one time agreed to settle the loan

amount, the matter may be sent to the National Lok Adalat which is to be held on 06.12.2014. It is further submitted that since the objection of the petitioner under Section 13(3-A) of the SARFAESI Act, has been rejected by the respondent-Bank arbitrarily the petitioner has no other remedy in law except, to approach this Court and therefore, this writ petition is maintainable.

6. I have carefully considered the submission of the learned counsel for the petitioner and perused the documents on record.

7. The SARFAESI Act, 2002 is a complete Code in so far as, the recovery of loan amount under the Act is concerned. A secured creditor has been given power which may appear harsh for the borrower however, the validity of the provision of SARFAESI Act, 2002 has been upheld by the Hon''ble Supreme Court in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., . The legislature in its wisdom, considering the hardship to the borrowers, incorporated Section 13(3-A) by an amendment dated 11.11.2004. The contention of the learned counsel for the petitioner that against the rejection of its objection under Section 13(3-A) of the SARFAESI Act, 2002, the present writ petition is maintainable, merits no acceptance. Once action under Section 13(4) of the SARFAESI Act, 2002 is taken by the secured creditor, the borrower would have remedy under Section 17 of the SARFAESI Act. The question whether there is any calculation error or not, would necessarily be a question of fact and therefore, this aspect cannot be gone into by this Court in the writ proceeding. I am of the opinion that in the writ petition challenging action taken under the SARFAESI Act, 2002, this Court is precluded from granting any interim order unless, it is shown to the Court that the initiation of the proceeding itself is without jurisdiction. Since, the grievance of the petitioner is against alleged arbitrarily rejection of its representation/objection under Section 13(3-A) of the SARFAESI Act, 2002, I am of the opinion that present writ petition is not maintainable and it is liable to be dismissed.

8. The learned counsel for the petitioner submits that under the provision of SARFAESI Act, 2002, there is no mechanism for adjudication of the quantum of liability of the borrower. This submission is liable to be rejected. It is always open to the borrower to raise all such objections even with respect to quantum of liability under Section 17 of the Act.

9. The learned counsel for the petitioner further submits that this Court in order dated 21.07.2014 has noticed that, there appears to be a discrepancy relating to the amount which the respondent-bank intends to realise from the petitioner however, inspite of this Court''s observation, the representation of the petitioner has been disposed of without considering the objections raised by the petitioner in its representation dated 31.07.2014. I find that order dated 11.08.2014 whereby, the representation dated 31.07.2014 has been disposed of, clearly mentions that the date on which the account was declared NPA, that is, on 20.05.2011 the outstanding dues was Rs. 8,82,446/-. It is further indicated that as on 11.08.2014, after the adjustment of liquid securities, the closure amount was 8,43,241/-. A copy of account closure enquiry is also provided to the

petitioner. It is further indicated that the Certificate Case has been filed on the basis of Running Ledger Balance of the account which does not include Unrealised Interest after the date of NPA and thus, the petitioner is required to pay the said amount also. It is also made clear that the amount mentioned in notice under Section 13(2) is inclusive of the Unrealised Interest as on 16.06.2014. I find that it is not in dispute that the interest is charged on daily basis and thus, due to delay at different point in time, the amount found due and payable by the petitioner, has changed. Prima facie, there does not appear any discrepancy in the notices issued by the respondent-bank as claimed by the petitioner. Moreover, the discrepancy in account, if any, would be a subject matter in the SARFAESI Appeal, once an action under Section 13(4) is initiated and the petitioner prefers to challenge the action taken under Section 13(4) of the SARFAESI Act. It is always open to the petitioner to make payment to avoid recurring interest being accumulated in its account. Referring to the submission that the matter may be referred to Lok Adalat for settlement, I am of the opinion that the matters in which Certificate Case has been initiated and notice under Section 13(2) of the SARFAESI Act has been issued, those matter cannot be referred for settlement in Lok Adalat. The learned counsel for the petitioner lastly submitted that if this Court would not interfere in the matter, the borrower is rendered remedy-less. The submission of the counsel for the petitioner deserves no acceptance. The petitioner is a defaulter and its account has become NPA, are the admitted facts. The petitioner has failed to demonstrate conclusively, from the record of the respondent-bank that, the respondent-bank has demanded an amount which is arbitrary and unauthorised. Moreover, the hardship of borrower cannot be a ground for entertaining the writ petition. Merely on an apprehensive of a borrower the writ petition cannot be entertained. In Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., , while upholding the constitutional validity of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Hon''ble Supreme Court observed as under;

81. "........... The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of the economy of the country and welfare of the people in general which would subserve the public interest."

10. In view of the aforesaid discussion, this writ petition is dismissed.