**(2015) 07 CAL CK 0009**

**In the Calcutta High Court**

**Case No :** Writ Petition 382 of 2015

Kaaiser Oils Pvt. Ltd. and Others APPELLANT

Vs

Allahabad Bank RESPONDENT

**Date of Decision :** 08-07-2015

**Acts Referred:**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 17, 18, 34

**Citation :** (2015) 07 CAL CK 0009

**Hon'ble Judges :** Dipankar Datta, J

**Bench :** Single Bench

**Advocate :** H.K. Mitra, Senior Advocate, Debdutta Sen and Z. Rahaman, for the Appellant; K.K. Ganguly, Advocates for the Respondent

**Final Decision :** Dismissed

## Judgement

Dipankar Datta, J.

1. By presenting this writ petition dated March 23, 2015, the petitioners have prayed for, inter alia, the following relief:

"In the above background, Your Petitioners most humbly pray before this Hon''ble Court for the following reliefs:

a) A Writ of Certiorari quashing and/or setting aside the Restructuring made by the Respondent Bank in May, 2012 dehors the banking norms stipulated by the Reserve Bank of India vide its Master Circular being Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated July 02, 2012 and General Guidelines on Sick Micro and Small Enterprises dated November 1, 2012.

b) A writ of or in the nature of Mandamus do issue commanding the respondent bank, their men, agents and assigns:-

i. To act in accordance with law;

 

ii. To forthwith rescind and/or withdraw and/or cancel the Restructuring dated May 11, 2013;

c) A writ of or in the nature of Mandamus do issue declaring that the respondent''s conduct of reporting the Petitioner Company''s account as ''Sub-Standard'' to CIBIL database while maintaining in their own books as ''Standard'' and restructuring the same dehors the RBI Master Circular dated July 2, 2012 and General Guidelines for Rehabilitation of Micro and Small Enterprises dated November 01, 2012 is malafide, illegal, null and void.

d) A Writ of Mandamus directing the Respondent Bank to act in all fairness and consider the accounts of the Petitioner Company as on 30.09.2011 (sic 2012) i.e. as on the cutoff date considered in the application for restructuring."

2. It is not in dispute that close on the heels of presentation of this writ petition, the respondent bank issued demand notice under section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter the Act) dated March 30, 2015 claiming Rs. 50,81,38,779.00 from the petitioners. Similar demand notice was issued to the guarantors.

3. Based on such demand notice, Mr. Ganguly, learned advocate for the respondent bank has objected to the maintainability of the writ petition. According to him, if the petitioners are aggrieved by the action of the respondent bank in taking recourse to section 13(2) of the Act, they ought to respond to such notice and allow the respondent bank to deal with the objection/ representation before further action is taken in terms of the other provisions of the Act.

4. Mr. Mitra, learned senior advocate representing the petitioners, while countering the preliminary objection, contended that the reliefs that the petitioners are claiming in this writ petition are such that the same cannot be granted either by the debts recovery tribunal having jurisdiction under section 17 of the Act or by the debts recovery appellate tribunal under section 18 thereof.

5. In his endeavour to persuade this Bench to entertain this writ petition, Mr. Mitra referred to the averments in the writ petition as well as the annexures thereto. It was sought to be demonstrated that because of inadequate working capital, for which the respondent bank is solely responsible, the petitioners could not operate the oil refinery set up by them.

6. It would appear from paragraphs 4 to 9 of the writ petition that the petitioners have alleged arbitrary sanction of a lower limit by the respondent bank leading to the petitioners being short on working capital. There is a statement to the effect that the petitioners had to accept whatever was sanctioned by the respondent bank under duress.

7. Whether or not the petitioners were under duress, is a question of fact which would require the parties to lead evidence and this Bench is of the view that such factual issue ought to be left for decision by the appropriate civil court.

 

8. Section 34 of the Act was referred to by Mr. Mitra while contending that no civil suit could be instituted by the petitioners against the respondent bank. If indeed Mr. Mitra''s contention that the tribunals under sections 17 and 18 of the Act would be disabled to grant relief as claimed in the writ petition is to be accepted, there is no question of section 34 of the Act being a bar for institution of a suit against the respondent bank. For a decision on the issue as to whether the respondent bank ought to be held responsible for inadequate working capital being made available to the petitioners to operate the oil refinery, this Bench is of the clear view that the remedy of the petitioners before a civil court on facts and in the circumstances may not be barred.

9. Mr. Mitra further sought to contend that the petitioners were entitled to restructuring of the account keeping in mind certain circulars of the Reserve Bank of India (hereafter the RBI). Attention of this Bench was drawn to a circular dated November 1, 2012 of the RBI.

10. The introduction to the general guidelines contained in the circular would reveal the concern expressed by the RBI because of the impact on the Indian economy due to "recent global slow down" resulting in micro and small enterprises (MSEs) being compelled to discontinue business and becoming sick.

11. This Bench is of the view that reliance placed on such circular is thoroughly misconceived, having regard to the fact that the oil refinery of the petitioners was never in regular operation and that the same becoming sick (due to recent global slow down) did not at all arise. That the refinery of the petitioners could not start regular operation despite its completion in May, 2011 is clear from the contents of paragraph 13 of the writ petition. The RBI circular does not apply and is, therefore, of no help to the petitioners.

12. Mr. Mitra further sought to contend, referring to a sanction letter dated June 29, 2013 and to paragraph 33 of the writ petition, that the scheme of restructuring and rehabilitation stood frustrated. It was submitted that representations made by the petitioners to persuade the respondent bank did not yield the desired result.

13. If at all the petitioners felt aggrieved by the sanction letter dated June 29, 2013, there is no suitable justification for their belated approach. It is well-settled by now that time spent on un-provided for memorials and representations cannot be considered as sufficient to explain delay.

14. Finally, Mr. Mitra argued that the equity of redemption that continued to exist in favour of the petitioner was lost because of certain arbitrary actions of the respondent bank. Attention of the Bench was also drawn to the representation made to the public (vide CIBIL data base) that the petitioners'' account was sub-standard, although in the records of the respondent bank the same account was described as standard.

15. The relationship between the respondent bank and the petitioners is in the

 

realm of a contract. Examination of the contention urged by Mr. Mitra would necessarily require ascertainment as to whether the respondent bank has violated any of the contractual stipulations between the parties. It is settled law that a writ petition is not an appropriate remedy for impeaching contractual obligations and, therefore, the remedy provided by the general laws of the country ought to be pursued by the petitioners.

16. The writ petition does not set up any case for interference and the same stands dismissed, without costs.

17. Needless to observe, the petitioners shall be at liberty to pursue their remedy in accordance with law and the observations made hereinabove shall not influence any subordinate court or tribunal if approached by the petitioners.

Urgent certified copy of this judgment and order, if applied for, may be furnished to the applicant at an early date.