(2012) 09 RAJ CK 0068

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2865 of 2012

Kailash Chandra Sharma APPELLANT

Vs

ICICI Bank Ltd. and Others RESPONDENT

Date of Decision : 21-09-2012

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 : (2012) 09 RAJ CK 0068

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Advocate : Manoj Bhardwaj, for the Appellant; Ajeet Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi

1. Instant petition has been filed by the petitioner assailing the notice served upon him u/s 13(2) of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ("Act") through lawyer who has been instructed by the secured creditor. At the outset, it will be relevant to observe that at one stage, the Court without going into merits of the case any further was of the view that the matter may be amicably settled and taking note thereof it was observed in the order dt. 21.03.2012 that the out of the dues towards the bank of Rs. 13 Lacs, the petitioner would pay Rs. 5 Lacs and thereafter the matter may be considered but as informed the petitioner for the reasons best known to him still has not complied order of the Court dt. 21.03.2012 and failed to deposit sum of Rs. 5 Lacs and in view thereof the interim arrangement made by the Court after hearing the parties vide order dt. 21.03.2012 has not been carried out by the petitioner for good reasons.

2. The main thrust of submission of counsel for petitioner is that notice impugned herein u/s 13(2) of the Act has been served through advocate of the secured

creditor who was neither authorised officer nor can claim to be secured creditor and that being so the notice itself is in contravention of the provisions of the Act. In support of submission, counsel placed reliance upon the judgment in Transcore Vs. Union of India (UOI) and Another,

3. Counsel for respondent Sh. Ajeet Bhandari submits that the question raised in the instant petition came up for consideration before the Division Bench of Calcutta High Court in Asset Reconstruction Company India Ltd. Vs. M/s. Amit Ventures Private Ltd. & Ors. , AIR 2007 Calcutta 49 and taking note of the provisions of Sec. 13(2) of the Act finally observed that if the advocate on instructions of secured creditor served notice u/s 13(2) of the Act upon the borrower/guarantor, it is sufficient compliance of the mandate of law and will not be defeated only on the premise of notice being served through advocate of the secured creditor.

4. This Court also finds substance that the question which the petitioner has raised in the instant petition has been examined by the Division Bench of Calcutta High Court and observed as under :-

From the aforesaid provisions of the Act and the Rules framed thereunder it appears to us that service of notice in terms of Section 13(2) of the Act is condition precedent for invoking the right of the secured creditors in terms of Section 13(4) of the Act. The phrase "issued by the secured-creditor or the authorised officer" appearing in Rule 2(b) should not be stretched to such extent so as to mean that the same must be actually written by the secured-creditor or the authorised officer. We appreciate the contention of Mr. Roy, the learned advocate appearing on behalf of the respondent, that the decision to give notice in terms of Section 13(2) of the Act must be taken by either the secured-creditor or the authorised officer as the case may be but that does not mean that the notice cannot be conveyed through a learned advocate on their behalf.

We cannot lose sight of the fact that a learned advocate gives notice in terms of Section 13(2) of the Act after getting specific instruction from his client, namely, the secured-creditor or the authorised officer. All that is necessary under the Act is that the secured-creditor or the authorised officer, as the case may be, must himself take the decision to give such notice and thereafter, those persons entitled to take decision, can instruct their learned advocate to convey such decision to the debtor. The notice by a learned advocate always mentions that such notice is given on instruction given by the client. Therefore, by giving such notice on behalf of a client, a lawyer merely conveys the decision of his client but the decision to give notice had already been taken by the client himself.

5. This Court is also of the view expressed by the Division Bench of the High Court of Calcutta, in the judgment, referred to supra, that notice u/s 13(2) served through advocate as well being instructed by the secured creditor cannot be said to be in contravention of the provisions of the Act and there is no prohibition under law which restricts the advocate from serving notice on

instructions extended by the secured creditor or any other person covered u/s 13(2) of the Act.

6. As regards the judgment on which counsel for petitioner placed reliance upon, the question arose before the Hon''ble Supreme Court was as to whether withdrawal of original application pending before DRT under the DRT Act is not a condition precedent for taking recourse to the Act and the paragraphs-24 & 25 which the counsel for petitioner read before the Court, only gives scheme of the Act as to how the notice and other proceedings are to be processed under the Act. However, this Court finds that the question which has been raised in the instant petition has been categorically answered by the Division Bench of the High Court of Calcutta and in view thereof, the present petition deserves rejection.

7. It has been informed that during pendency objection was submitted by the petitioner u/s 13(3A) of the Act and that was rejected by the respondent and that being so remedy is available to the petitioner of invoking Sec. 17 of the Act. This Court does not find merit in the instant petition and the same accordingly stands dismissed. However, the petitioner will be liberty to avail remedy which the law permits to him.

