(2020) 09 DRT CK 0022

In the Debts Recovery Tribunal

Case No : Securitisation Application No. 306 Of 2017

Krishna Poddar And Anr. APPELLANT

Vs

State Bank Of India And Anr. RESPONDENT

Date of Decision : 08-09-2020

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(3), 13(3A), 13(4), 17, 17A, 17(1), 36, 73(2)
Security Interest (Enforcement) Rules, 2002 — Rule 8(1)

Citation : (2020) 09 DRT CK 0022

Hon'ble Judges : A. K. Chaturvedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This SA has been filed by the applicants under Section 17(1) of the SARFAESI Act, 2002 (hereinafter referred to as 'Act of 2002') seeking relief to set aside the demand notice dated 05.03.2016; possession notice dated 01.07.2017 and auction sale notice dated 20.07.2017 as well as injunction restraining respondent bank from taking action in furtherance thereof. Neither affidavit in opposition nor written notes of argument has filed by respondent bank. written notes of argument filed by the Applicants is taken into consideration.

2. In brief, applicant no.1 is carrying on business of retail garments in the name and style of M/s Mira Dresses and applicant no.2, wife of applicantno.1, stood guarantor of cash credit facility to the tune of Rs.5.00 thousand, subsequently enhanced to Rs.6.00 lakh sanctioned by the respondent bank in favour of applicant no.1. Said credit facility was secured by creating equitable mortgage of 2 cottah of land situated at Habra Pally Patra Road, South Habra, North 24 Parganas. Applicants had defaulted due to illness of applicant no,1 and said cash credit account became NPA on 10.01,2007 Demand notice u/s 73(2) was issued on 05.03.2016 claiming outstanding dues to the tune of Rs.16,72,682.00 repayable within 60 days. Applicants did not repay. Symbolic possession was

taken on 01.07.2017 by issuing Possession Notice u/r 8(1). Thereafter sale notice was issued on 20 07 2017 ' Hence, the S.A.

3. Applicants have admitted that due to illness of applicant no 1, they defaulted in repayment of loan. However, their contention is that provisions of Sec. 13(3) have not been complied with in the demand notice. Possession notice was not served upon them and 30 days' time was not given in conducting auction sale. They further contended that enforcement of mortgaged property is barred by limitation.

4. This case was instituted on 01.08.2017 and it appears from order of this Tribunal dated 02.03.2020 that on various occasions learned counsel for Respondent bank appeared with authorized officer and prayed time for filing objection, however, it is curious that after lapse of nearly three years they did not file affidavit in opposition. On 03.08.2017, ld. counsel appearing on behalf of the respondents submitted that they were withdrawing the impugned sale notice.

5. I have heard ld. counsel for the applicants and considered the facts and circumstances of the case including the law points raised by the parties'

6. Before going to merit of the case, applicants' contention regarding limitation is to be considered first. As per Section 36 of the SARFAESI Act, a secured creditor can initiate proceedings or take actions under the said statue, including measures under Section 13, subject to compliance with the Limitation Act 1963. Referring to Section 36 of SARFAESI Act, applicants contended that the proceedings initiated by the respondent bank under SARFAESI Act is barred by limitation and therefore should be quashed. The mortgage of the concerned immovable property was created in 2002. As statement of accounts was not produced, the exact date of last paid Installment is not available, however, it is on record that account was classified NPA on 10.01.2007. Therefore, it can safely presume that last installment was deposited at least 90 days before that date in 2006. Under the Limitation Act, 1963, a suit for mortgage could have been instituted within 12 years from 2006, when last installment was presumed to be deposited. In this case SARFASI proceeding was initiated in 2016, within the period of 12 years. Therefore, initiation of SARFAESI proceedings is not barred by limitation.

7. Coming to merit of the case, I find that facts relating to availing of cash credit facility against creation of equitable mortgage and subsequent default due to illness are not in dispute. There is no objection relating to classification of NPA. Applicants have made specific contention of violation of section 13(3) of the Act of 2002. For appropriate adjudication of the issue a reference of aforesaid sub-section is reproduced.

Sec. 13(3) - The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

13(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower: Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

Aforesaid sub-section makes it clear that secured credit bank shall give detail breakup of the outstanding dues narrating principal dues, interest accrued thereon and other charges, if any. In a catena of judgment Hon'ble Supreme Court has held that demand notice shall describe detail break up of outstanding dues so that there cannot be any doubt in the mind of borrower, who was directed to fulfill the demand failing which his property would be enforced. Therefore, detail breakup of outstanding dues is a condition precedent. In this case applicants' contention is that respondent bank claimed Rs.5,36,755/- as on 24.05.2015 which according to applicants cannot be Rs.76,72,682/- as on 16.02.2016 within a period of nine months, more so in the demand notice respondent bank did not describe the quantum of principal ; accrued interest and whether any other charges were included. Respondent bank did not come forward to resolve the issue during long span of three years. Prima facie a doubt may have been arisen in the mind of applicants, which was not clarified by the secured creditor bank. In view of the legislative intent behind aforesaid sub-section and subsequent interpretation of Hon'ble Supreme Court, I have no other alternative than to hold that provision of Section 13(3) has been violated in the demand notice by not describing detail break up of outstanding dues not even the rate of interest and as such, said notice is not sustainable in law. However, it is pertinent to mention here that applicants have also failed to represent against the demand notice as per Sec. 13(3A) by raising the question which they have raised now. Sec. 13(3A) has provided a chance to represent against the demand notice so that grievance of borrower may be redressed by the lender before taking recourse to Sec. 13(4). In this case, not making representation at appropriate time, applicants have delayed recovery of outstanding dues.

8. Since demand notice is liable to be set aside, respondent bank is not empowered to take recourse any of the measures available in Sec. 13(4). As such, possession notice and subsequent sale notice are also liable to be set aside.

ORDER

8. In view of the foregoing discussion, instant S.A. is allowed. Impugned demand notice, possession notice and auction sale notice are set aside. Respondent bank may proceed afresh/ if they so like. No costs.

Copy of the judgement/final order be uploaded in the Tribunal's website. File be consigned to the Record Room.

(Dictated to Stenographer transcribed by him, corrected, signed and pronounced by me in the open Court on this time the 8th day of September, 2020)

