
(2011) 09 AHC CK 0297
In the Allahabad High Court
Case No : Writ Petition No. 886 (M/S) of 2011

Manokamna Steel Pvt.Ltd.

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 31(e)

Citation : (2011) 09 AHC CK 0297

Hon'ble Judges : Tarun Agarwala, J

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.

In the year 2005, the petitioner had taken a loan from the respondent bank for the purpose of running a factory. Initially, a Cash Credit limit of Rs.100 lacs and a Term Loan of Rs.160 lacs was granted. This Cash Credit limit was enhanced from time to time and eventually, it was extended upto Rs.600 lacs. In the year 2009, the loan was restructured. It is alleged that the Cash Credit limit was reduced from Rs.600 lacs to Rs.400 lacs and the Term Loan limit was reduced from Rs.160 lacs to Rs.48 lacs.

On 8th July, 2010, a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act") was issued by the respondent bank indicating that the petitioner's account has been classified as a nonperforming asset (NPA) as on 30th June, 2010 as per the Reserve Bank of India guidelines and indicating therein that the outstanding amount was liable to be recovered. The notice also indicated the list of assets through which the amount was to be recovered. In response to the notice, the petitioner filed an objection indicating that the account of the petitioner could not be classified as a nonperforming asset as per the Reserve Bank of India guidelines and that the notice was illegal,

perverse and was issued in gross violation of the Act of 2002.

It transpires that the petitioner further sent a reply on 19th April, 2011 contending that the factory has been erected on a leased land and consequently could not be sold in view of the provision of Section 31(e) of the Act. Since the petitioner's representations remained pending, the petitioner approached the court in May, 2011 praying for the quashing of the notice dated 8th July, 2010 issued by the respondent bank under Section 13(2) of the Act.

The respondent bank has filed a counter affidavit denying the allegations made in the writ petition and contended that since the petitioner failed to repay the loan, the account of the petitioner has been classified as a nonperforming asset as per the Reserve Bank of India guidelines and that the petitioner has an efficacious remedy of filing an appeal under Section 17 of the Act before the Debts Recovery Tribunal. The respondent bank further submitted that the objection of the petitioner dated 24th August, 2010 was duly considered and was rejected by an order dated 9th September, 2010. Further, proceedings under Section 13(4) of the Act was initiated and a notice dated 23rd March, 2011 was issued to the petitioner which was duly acknowledged by one of the Directors and that possession was also taken on the same day, i.e., on 23rd March, 2011. The possession, which was taken, was also duly published in the newspaper on 28th March, 2011. It was further contended that the land on which the petitioner had erected his factory was given by the petitioner to the respondent bank by deposit of the original title deeds, upon which a security interest had been created and therefore, Section 31(e) of the Act would not be applicable. In the

light of the aforesaid, the respondent bank submitted that the writ petition was devoid of merit and was liable to be dismissed.

Heard Sri Atul Kumar Bansal, the learned counsel for the petitioner and Ms. Neelima Mishra, the learned counsel for the respondent bank.

The learned counsel for the petitioner, in the first instance, submitted that the notice under Section 13(2) of the Act was ex facie illegal and that the recovery from a lease could not be made. In support of his submission, the learned counsel submitted that the factory has been erected on a lease land which was outside the purview of the Act in view of the provision of Section 31(e) of the Act.

Necessary details in this regard is lacking, namely, the title deeds have not been filed in the writ petition to indicate as to whether the land in question is a lease or not. Nonetheless, assuming without admitting that the land on which the petitioner's factory has been erected is on a lease, the question which is required to be answered is whether such lease comes within the purview of the Act or not. For facility, the provision of Section 31(e) of the Act is extracted hereunder:

31. Provisions of this Act not to apply in certain cases. The provisions of this Act shall not apply to

(a)????

(b)????

(c)????

(d)????

(e) any conditional sale, hirepurchase or lease or any other contract in which no security interest has been created.?

A perusal of the aforesaid provision indicates that the Act would not apply to any conditional sale, hirepurchase or lease or any other contract in which no security interest has been created. The respondent in paragraph 13 of their counter affidavit contended that the petitioner had created a security interest over the property in question by deposit of the original deed. The fact that a security interest has been created has not been denied by the petitioner in paragraph 11 of their rejoinder affidavit. The learned counsel for the petitioner however contended that the fact that the land is a lease was enough to take the property outside the purview of the Act and that a reading of Section 31(e) of the Act would indicate that security interest was not required to be created for a lease and that security interest was only required to be created for any other contract.

Having perused the provision of Section 31(e) of the Act, it is clear that the words ?in which no security interest has been created? also qualifies for the words ?conditional sale, hirepurchase and lease? and that the words ?in which security interest has been created? is not confined to the words ?any other contract?. If the submission of the learned counsel for the petitioner is accepted, it would bring the other portions of Section 31(e) nugatory and redundant and would not make any sense at all.

In the light of the aforesaid, the Court is of the opinion that a lease will not come under the purview of the Act, but, if a security interest has been created on a lease by deposit of title deeds etc., then the Act becomes applicable on such lease. In the present case, the petitioner has not denied the fact that they

have created a security interest on a lease and consequently, the Court is of the opinion that the asset indicated in the notice under Section 13(2) of the Act and possession being taken thereafter, was perfectly justified.

The learned counsel for the petitioner further submitted that the notice under Section 13(2) was wholly illegal since the respondent bank had not followed the RBI guidelines with regard to the declaration of nonperforming assets. The contention of the petitioner is that its account had not become a nonperforming asset and that the decision of the respondent bank in declaring the petitioner's account as a nonperforming asset was wholly illegal and against the guidelines. In the opinion of the Court, the fact as to whether the account of the petitioner's factory had become a nonperforming asset or not, is a question of fact which cannot be adjudicated in a writ forum and the appropriate remedy to ventilate

such grievance is to file an appeal before the Debts Recovery Tribunal as has also been held by the Supreme Court in the case of Mardia Chemicals vs. Union of India, J.T. 2004 (4) SC 308, wherein the Supreme Court has said that the High Court should not interfere in such matters in a writ jurisdiction as far as possible.

The learned counsel for the petitioner, in the end, submitted that the provision of Section 13(3) has not been adhered to by the respondent bank. The learned counsel for the petitioner submitted that the list of assets, which has been shown in the notice under Section 13(2), is different and distinct from the sale proclamation notice issued by the respondent

bank during the pendency of the writ petition. The Court cannot accept such arguments from the learned counsel for the simple reason that such facts are not before the Court. Neither the sale proclamation notice nor the averments raised during the arguments are brought on record. Consequently, such submission cannot be accepted by the Court.

In the light of the aforesaid, the writ petition is devoid of any merit and is accordingly dismissed.

Before parting, the Court observes that the petitioner has concealed material facts. The writ petition was filed in May, 2011 and at that stage, possession of the assets had already been taken over by the respondent bank on 23rd March, 2011 and publication was made on 28th March, 2011. Further, the objection of the petitioner filed pursuant to the notice under Section 13(2) was also disposed of by the respondent bank as far back on 9th September, 2010. Such material facts have not been disclosed by the petitioner. The Court is of the opinion that once possession has been taken over by the respondent bank under Section 13(4), it was no longer open to the petitioner to only question the veracity of the notice issued under Section 13(2) of the Act.