(2010) 09 CAL CK 0042

In the Calcutta High Court

Case No : A.S.T. No. 564 of 2010

Mihir Pal — APPELLANT

Vs

United Commercial Bank and Others — RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 10, 13, 13(2), 13(3), 13(3A)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2004 — Rule 2, 8

Citation : AIR 2011 Cal 44

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Shiv Sankar Banerjee and Bhaskar Prosad Banerjee, for the Appellant; Samrat Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—The Petitioner in this Article 226 petition dated September 3, 2010 is questioning the validity of the things stated in para 3. of a letter of the Chief Manager and Authorised Officer, UCO Bank. Basara Branch, Howrah dated August 14, 2010 (at p. 35).

2. The relevant contents of the letter are quoted below:

1. Please refer the Notice dated 6-10-2007 addressed by the Bank to you in terms of Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (No. 54 of 2002).

2. You have failed to repay the Bank''s dues as claimed in the said notice. Accordingly, Bank will now exercise all or any of the right stated under Sub-section (4) of Section 13 of the said Act and other applicable provisions under the said Act.

3. In this connection, Bank has engaged M/s. Gats Financial Reconstruction Limited, as Bank''s Enforcement Agency to assist the Bank to take all necessary step for exercise of rights u/s 13(4) of the Act, which please note.

3. Mr. Banerjee, counsel for the Petitioner, has argued as follows. In view of the provisions of Sections 2(1)(v), 3, 5, 10, 13 and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Rules 2(a) and 8 of the Security Interest (Enforcement) Rules, 2002, the Bank did not have any power or authority to appoint any enforcement or recovery agent for exercising rights of the Bank u/s 13(4) of the Act.

4. Over the course of arguments Mr. Mukherjee, counsel for the Bank, has clarified the whole situation saying as follows,, The reconstruction company whose name has been mentioned in para 3 of the letter has been engaged by the Bank only for assisting the Bank in enforcement of the Bank''s rights u/s 13(4) of the Act. The reconstruction company is not supposed to exercise any right of the Bank conferred by Sub-section (4) of Section 13 or to take any step u/s 14. All rights of the Bank will be exercised only by the authorised officer of the Bank according to provisions of the Act and the Rules, and not by anyone of the reconstruction company.

5. In view of the above-noted situation. 1 am of the view that involvement of the reconstruction company cannot prejudice the Petitioner in any manner whatsoever. The Petitioner will not be required to deal with the reconstruction company separately, and there is no reason to say that its involvement has changed or affected the relationship between the Bank and the Petitioner. The reconstruction company has not been engaged to do anything independently. Under the circumstances, I do not find any reason to hold that engagement of the reconstruction company for the above-noted purposes is illegal.

6. Mr. Banerjee has sought to argue that the Section 13(2) notice, according to him not issued in terms of the provisions of Sub-section (3) of Section 13, is bad in law. The notice was issued as back as October 16, 2007, and the Petitioner''s reply to the notice was dated December 1, 2007. No case has been stated anywhere that the authorised officer of the Bank did not send a reply in terms of the provisions of Section 13(3A). In the letter dated August 14, 2010 the authorised officer of the Bank has stated that the Bank intends to take measures under Sub-section (4) of Section 13. Needless to say that if any measure is taken under Sub-section (4) of Section 13. the Petitioner will be entitled to appeal to the Debts Recovery Tribunal u/s 17, and that in such appeal the Petitioner will be entitled to take the point that the Section 13(2) notice is bad in law. Under the circumstances, I do not find any reason to entertain the plea.

7. The petition shall be deemed to be disposed of. No costs. Certified xerox.

