(2017) 01 JH CK 0204

In the Jharkhand High Court

Case No : 120 of 2017

Most. Sabeyani Lugun APPELLANT

Vs

State of Jharkhand & Ors RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 14, Section 13(2), Section 13(4) - Chief Metropolitan Magistrat

Citation : (2017) 01 JH CK 0204

Hon'ble Judges : Aparesh Kumar Singh

Bench : SINGLE BENCH

Advocate : A.K. Das, A.R. Choudhary, Shyam Narsaria

Judgement

1. Petitioner has approached this Court seeking a direction upon the Respondent No. 1 not to execute the delivery of physical possession of a secured asset being Flat No. C-4 Maharana Apartment, P.P. Compound, Hindpiri, Ranchi by Magistrate and force in purported exercise of Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short ''Act of 2002'').

2. According to the petitioner, he is a partner of M/s Avas Food Processing. Two loans were advanced by the Respondent Bank being Cash Credit Account No. 4111050000030 and Term Loan Account No. 41110600000123 for a total sanctioned amount of Rs. 40.00 lakhs and Rs. 20.00 lakhs respectively. Petitioner had created a equitable mortgage of flat No. C-4, 4th Floor of Maharana Apartment at P.P. Compound, Hindipiri, Ranchi in the name of the petitioner and his wife where they are staying. Petitioner contended that he had paid about Rs. 5.00 lakhs in Term Loan, where-after he was served with a notice under section 13(2) of the Act of 2002. Both his accounts were declared non performing assets (NPA) on 28.09.2015 and he was called to pay the liabilities of the Bank aggregating to Rs. 42,94,872.64 + interest in the Cash Credit Account and Rs.

17,69,169.70 + interest in the Term Loan Account within 60 days, as per notice dated 03.02.2016. Petitioner claims to have sought rescheduling of the loan amount thereafter vide Annexure-2 letter dated 10.03.2016. Petitioner contends that due to blockage of fund in the market, he was unable to pay the requisite amount since June 2015 and was intending to liquidate the outstanding amount in a healthy manner. Petitioner however claims to have paid certain amount as per receipt enclosed at Annexure-7. Petitioner is in receipt of notice dated 19.05.2016 intimating action contemplated under section 13(4) of the Act of 2002. Petitioner thereafter approached the learned Debt Recovery Tribunal, Ranchi in SARFAESI Appeal No. 66/2016. On 09.09.2016 petitioner was again served with a notice published in the newspaper in terms of section 13(4) of the Act of 2002 (Annexure-9) giving details of the immovable properties mortgaged with the Respondent Bank which were prohibited from being conveyed during pendency of the SARFAESI proceedings. According to the petitioner, however he was telephonically informed by the Respondent No. 2 that it will take delivery of physical possession of the Flat No. C-4, Maharana Apartment, P.P. Compound, Hindpiri, Ranchi on 10.01.2017 for non-payment of loan by force. That compelled the petitioner to approach this Court in the present writ application with a prayer to restrain the Respondents from executing the Delivery of Possession of the secured asset of the Company.

3. When the matter was taken up yesterday, following order was passed. "Counsel for the petitioner undertakes to remove the surviving defects during the course of the day. Counsel for the petitioner submits that petitioner is ready to repudiate the entire outstanding over dues along with interest by Saturday i.e., 14th January, 2017. Petitioner is agreeable to pay the expenses incurred in the matter of realization of its outstanding dues within the same time.

Counsel for the Bank, Mrs. Anubha Rout Choudhary submits that petitioner may approach the competent authority under Respondent Bank before closing hours today with such an undertaking. In that case, she submits that appropriate instruction would be obtained from the Bank by tomorrow.

List this case tomorrow (10.1.2017) accordingly.

Let the name of Mrs. Anubha Rout Choudhary appear in the daily cause list as counsel for the Respondent Bank."

4. Counsel for the Bank has also taken a plea of maintainability of the writ application in the presence of alternative remedy which the petitioner has already invoked. Counsel for the Bank and the Respondent State has however not been able to produce the order passed in the proceedings under section 14 of the Act of 2002 by the Deputy Commissioner, Ranchi at the instance of the Respondent Bank, pursuant to which, delivery of possession of Flat in question is to be executed today itself. Counsel for the Respondent Bank submits that due to short time, only a response on the request made by the petitioner yesterday could be filed. She however reiterates that petitioner should have invoked the

remedy before the Debt Recovery Tribunal for interim relief.

5. Pursuant to the order passed yesterday, petitioner claims to have made a request to settle the dispute by making payment of the entire overdues as on date along with actual expenses incurred by the Bank by Saturday to regularize the loan account. The Authority of the Respondent Bank has communicated its rejection also yesterday itself, as per the statement made in the counter affidavit of the Respondent Bank stating that on inspection earlier, Unit was found closed without any activity.

6. Counsel for the petitioner submits that now, in view of the intransigence shown by the Respondent Bank, petitioner is willing to deposit 25% of the entire outstanding dues by Saturday and would submit a structured proposal for payment of the balance dues within a strict time frame of six months.

7. Learned counsel for the Respondent Bank submits that proposal of the petitioner has to be considered by the competent authority of the Respondent Bank. She also submits that the petitioner is already before the Debt Recovery Tribunal in SARFAESI Appeal No. 66/2016 against the possession notice served on it on 09.09.2016. Therefore, petitioner has wrongly invoked the remedy before this Court.

8. Counsel for the petitioner submits that in view of the exigency occurred due to sudden move to evict the petitioner from the residential premises, as communicated telephonically from the office of the Deputy Commissioner, Ranchi on Saturday i.e. 07.01.2017, petitioner has not been able to take recourse of remedy before the learned Debt Recovery Tribunal in the pending appeal. He submits that in case, interim protection is granted for a short time, petitioner may be able to approach the learned Debt Recovery Tribunal in the pending appeal for interim protection and would also approach the Bank for consideration of its proposal for repayment of the loan amount and closure of NPA.

9. Upon consideration of the conspectus of facts and submissions made by the parties, this Court is not inclined to enter into the merits of the case of the parties specifically for the reason that the petitioner has already approached the learned Debt Recovery Tribunal in SARFAESI Appeal being aggrieved by the actions taken by the Respondent Bank under the provisions of the Act of 2002. However, petitioner is allowed liberty to approach the learned Debt Recovery Tribunal to seek relief in the matter. Accordingly, interim protection is granted till 13.01.2017 to the petitioner to avail of the remedy before the learned Debt Recovery Tribunal for any interim protection in the matter. Let it be also made clear that this Court has not gone into the merits of the case of the parties. It is also observed that in case the petitioner moves such an application in the pending SARFAESI Appeal in view of exigency shown, the learned Debt Recovery Tribunal would endeavour to take it up expeditiously and consider in accordance with law after due hearing to the other side. In that view of the matter, Deputy Commissioner, Ranchi would keep the matter relating to delivery of physical

possession of the property in question being a secured asset i.e. C-4 Maharana Apartment, P.P. Compound, Hindpiri, Ranchi in abeyance till 13.01.2017. Let it be also made clear that interim protection granted today, shall expire on 13.01.2017.

10. Writ petition is disposed of accordingly.