
(2006) 10 MAD CK 0234

In the Madras High Court

Case No : Civil Revision Petition No. 22 of 2006 and C.M.P. No. 276 of 2006

Mrs. Dhanalakshmi and R. Anantha Kumar

APPELLANT

Vs

Standard Chartered Bank

RESPONDENT

Date of Decision : 12-10-2006

Acts Referred:

Constitution of India, 1950 — Article 227

Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (SARFAESI) — Section 13(1), 13(2), 13(3), 13(4), 14

Citation : (2007) 137 CompCas 946 : (2006) 5 CTC 436 : (2007) 74 SCL 233

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : N. Arun, for the Appellant; V. Jayachandran, for the Respondent

Final Decision : Dismissed

Judgement

S. Ashok Kumar, J.—The petitioners before the revision petition are the respondents/borrowers before the learned Chief Metropolitan Magistrate, Egmore, in an application filed by the applicant therein in CrI.M.P. No. 2741 of 2006, u/s 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (hereinafter referred to as "the Act").

2. The case in brief is as follows:

The respondent/applicant, at the request of the petitioners/respondents, had advanced loan to the tune of Rs. 12,92,000/- to them. The petitioners/borrowers have executed various documents in favour of the respondent/applicant and also had created equitable mortgage by way of depositing title deeds of the immovable property mentioned in the schedule. The petitioners/borrowers have failed to repay the amount due to the respondent/applicant in spite of repeated request and demands, and hence, the respondent/applicant issued notice to the borrowers u/s 13(2) of the Act on 17.05.2005, demanding the repayment of the amount due to him within a period of 60 days from the date of notice. In spite of notice, the petitioners/borrowers have failed to repay the dues and hence, the

respondent/applicant filed CrI.M.P. No. 2741 of 2005 before the learned Chief Metropolitan Magistrate, Egmore. The learned Chief Metropolitan Magistrate has passed an order by appointing an Advocate Commissioner to take possession of the property mentioned in the schedule therein and prepare a mahazar with details of the properties in the presence of two independent witnesses and hand over the same to the authorised officer of the applicant forthwith on acknowledgement. Aggrieved, the petitioners/borrowers have come forward with this civil revision petition.

2. Heard learned Counsel for the petitioners as well as the respondent.

3. Learned Counsel for the petitioners would submit that the respondent Bank has concealed the fact that the petitioners have given a detailed reply notice for the statutory notice. Further, the Court below has erred in passing the order ex parte by merely taking the averments made by the Bank, without verifying the veracity of the statements.

4. Learned Counsel for the respondent, while reiterating the contentions raised in his application filed before the Court below, would submit that the petitioners, without exhausting their remedy available u/s 17 of the Act, is knocking at the door of this Court, invoking Article 227 of the Constitution of India which is not maintainable and he prays for dismissal of the revision.

5. Learned Counsel for the petitioners relying on the decisions of our Supreme Court reported in *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, would submit that if a reply notice is given by the borrower for the statutory notice issued by the bank, the bank is duty bound to pass an order on the reply given by the borrower.

6. A perusal of the decision cited supra, paragraphs 45, 46 and 48 would read as follows:

45. In the background we have indicated above, we may consider as to what forums or remedies are available to the borrower to ventilate his grievance. The purpose of serving a notice upon the borrower under Sub-section (2) of Section 13 of the Act is, that a reply may be submitted by the borrower explaining the reasons as to why measures may or may not be taken under Sub-section (4) of Section 13 in case of non-compliance of notice within 60 days. The creditor must apply its mind to the objections raised in reply to such notice and an internal mechanism must be particularly evolved to consider such objections raised in the reply to the notice. There may be some meaningful consideration of the objections raised rather than to ritually reject them and proceed to take drastic measures under Sub-section (4) of Section 13 of the Act. Once such a duty is envisaged on the part of the creditor it would only be conducive to the principles of fairness on the part of the banks and financial institutions in dealing with their borrowers to apprise them of the reason for not accepting the objections or prints raised in reply to the notice served upon them before proceeding to take measures under Sub-section (4) of Section 13. Such persons, overruling the

objections of the borrower, must also be communicated to the borrower by the secured creditor. It will only be in fulfilment of a requirement of reasonableness and fairness in the dealings of institutional financing which is so important from the point of view of the economy of the country and would serve the purpose in the growth of a healthy economy. It would certainly provide guidance to the secured debtors in general in conducting the affairs in a manner that they may not be found defaulting and being made liable for the unsavoury steps contained under Sub-section (4) of Section 13. At the same time, more importantly we must make it clear unequivocally that communication of the reasons not accepting the objections taken by the secured borrower may not be taken to give an occasion to resort to such proceedings which are not permissible under the provisions of the Act. But communication of reasons not to accept the objections of the borrower, would certainly be for the purpose of his knowledge which would be a step forward towards his right to know as to why his objections have not been accepted by the secured creditor who intends to resort to harsh steps of taking over the management/business of viz., secured assets without intervention of the Court. Such a person in respect of whom steps u/s 13(4) of the Act are likely to be taken cannot be denied the right to know the reason of non-acceptance and of his objections. It is true, as per the provisions under the Act, he may not be entitled to challenge the reasons communicated or the likely action of the secured creditor at that point of time unless his right to approach the Debt Recovery Tribunal as provided u/s 17 of the Act matures on any measure having been taken u/s (4) of Section 13 of the Act. Failing to comply with any one of the three conditions, the order passed in this civil revision petition shall stand automatically cancelled without reference to this Court.

46. We are holding that it is necessary to communicate the reasons for not accepting the objections raised by borrower in reply to notice u/s 13(2) of the Act more particularly for the reason that normally in the event of non-compliance with notice, the party giving notice approaches the Court to seek redressal but in the present case, in view of Section 13(1) of the Act the creditor is empowered to enforce the security himself without intervention of the Court. Therefore, it goes with logic and reason that he may be checked to communicate the reason for not accepting the objections, if raised and before he takes the measures like taking over possession of the secured assets, etc.

48. The next safeguard available to a secured borrower within the framework of the Act is to approach the Debt Recovery Tribunal u/s 17 of the Act. Such a right secures only after measures are taken under Sub-section (1) of Section 13 of the Act.

7. Considering the facts and circumstances of the case, upon perusing the impugned orders and the materials available on records, upon hearing the arguments of the learned Counsel for the parties and upon perusing the decisions of our Hon'ble Apex Court, I find no merits in the case of the petitioners. On the other hand, the petitioners, without availing the proper

remedy available to them, viz., to file an appeal before the Debt Recovery Tribunal, in order to drag on the proceedings, have invoked Article 227 of the Constitution of India, which is not sustainable in law and hence, the civil revision is dismissed with costs of Rs. 25,000/- (Rupees twenty five thousand only). Consequently, connected C.M.P. No. 276 of 2006 is also dismissed.