

(2006) 03 KAR CK 0087
In the Karnataka High Court
Case No : Writ Petition No. 9694 of 2005

Mrs. Sunanda Kumari and L.R. Raghunath APPELLANT
Vs
Standard Chartered Bank Previously known as ANZ Grindlays Bank RESPONDENT

Date of Decision : 23-03-2006

Acts Referred:

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 13 (2), 13 (3A), 14, 17

Citation : (2007) 135 CompCas 604 : (2006) ILR (Kar) 16 : (2006) 4 KCCR 2216

Hon'ble Judges : Cyriac Joseph, C.J;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Padubidri Raghavendra Rao, for the Appellant; Rangarajan, for the Respondent

Final Decision : Allowed

Judgement

Cyriac Joseph, C.J.—The petitioners took a loan from the respondent bank. When they defaulted to pay the instalments, the respondent bank filed a suit as O.S.No. 6139/2000 in the Court of City Civil Judge, Bangalore, for recovery of the amounts due to the bank. While the suit is pending trial, the respondent bank issued to the petitioners a notice under Sub-section (2) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Act"). Annexure-"B" is the copy of the said notice. In response to Annexure-"B" notice, petitioners sent Annexure-"C" reply dated 29-7-2003. In Annexure-"C" reply the petitioners did not dispute their liability. The only defence was that the bank had already filed a suit for recovery of the amount and therefore the provisions of Section 13 of the Act could not be enforced against the petitioners. However, the bank filed Annexure-D" application dated 27-1-2005 u/s 14 of the Act in the Court of Chief Metropolitan Magistrate, Bangalore, The application was registered as Crl. Misc. No. 69/2005 on 28-1-2005. On 31-1-2005 the Chief Metropolitan Magistrate passed Annexure-"E" order directing the police to assist the applicant

(respondent-Bank) to secure possession of the petition schedule property from the respondents (petitioners). Challenging Annexure-"E" order of the Chief Metropolitan Magistrate, the petitioners have filed this writ petition.

2. When the writ petition came up for consideration before a learned single Judge on 16-3-2005, the learned single Judge passed the following order:

On the petitioner depositing Rs. 1,00,000/- with the respondent, the respondent shall restore possession of the schedule property to the petitioner, as an interim arrangement pending disposal of the writ petition on merits. Restoration of possession does not confer any right on the petitioner and is subject to the result of the writ petition. This order would not come in the way of petitioner approaching the Bank, settling the claim and making payment.

Pursuant to the said order dated 16-3-2005, the petitioners deposited a sum of Rs. 1,00,000/- and the possession of the property was restored to the petitioners. However, the claim of the bank has not been settled so far and the petitioners have not made any further payments.

3. When the writ petition came up for further hearing before the learned single Judge on 18-11-2005 the learned single Judge directed to place the matter before the Division Bench to consider and decide whether the Chief Metropolitan Magistrate was required to issue notice to the petitioners before passing an order u/s 14 of the Act.

4. We have heard the learned Counsel for the petitioners and the learned Counsel for the respondent bank.

5. Sub-section (3A) was inserted in Section 13 of the Act with effect from 11-11-2004. Sub-section (3A) is extracted hereunder:

(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 u/s 17 or the Court of District Judge u/s 17A.

It is not disputed that even though the petitioners had submitted Annexure-"C" reply to Annexure-"B" notice issued under Sub-section (2) of Section 13, the respondent bank had not sent any communication to the petitioners as required under Sub-section (3A) of Section 13. Annexure-"D" application was filed before the Chief Metropolitan Magistrate only on 27-1-2005 i.e., after Sub-section (3A) was inserted in Section 13. Sub-section (3A) casts a duty on the secured creditor

to consider the representation made or objection raised by the borrower and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he is bound to communicate to the borrower the reasons for non-acceptance within one week of receipt of the representation or objection. Thus, Sub-section (3A) confers on the borrower a right to know the reasons for the non-acceptance of his representation or objection by the secured creditor. Hence the secured creditor is statutorily bound to consider the borrower's representation or objection and if the representation or objection is not tenable or acceptable, he is also bound to communicate the reasons for such non-acceptance. If the borrower does not receive any communication from the secured creditor conveying the reasons for non-acceptance of the objection, he is entitled to presume that the secured creditor has found the representation acceptable and the objection tenable. Since the respondent-bank failed to discharge its statutory obligations under Sub-section (3A) of Section 13 of the Act, the action initiated by the respondent under Sub-section (4) of Section 13 and Section 14 is illegal and irregular. Hence the impugned proceedings under Sub-section (4) of Section 13 and Section 14 including Annexure-"E" order passed by the Chief Metropolitan Magistrate are liable to be quashed. Accordingly, the said proceedings and Annexure-"E" order are hereby quashed. The amount of Rs. 1,00,000/- deposited by the petitioners pursuant to the interim order passed in this case shall be credited to the account of the petitioners. Notwithstanding, the quashing of Annexure-"E" order, the respondent will be entitled to issue a fresh notice to the petitioners u/s 13(2) of the Act and to proceed with the matter in accordance with law.

6. Regarding the question whether the Magistrate is required to issue notice to the borrower before passing an order u/s 14, we are of the view that, in the absence of any provision in the Act or the Rules framed thereunder requiring such notice, the Magistrate is not required to issue any notice to the borrower before passing an order u/s 14. Learned Counsel for the petitioners contended that even though there is no specific provision in the Act or the Rules requiring such notice, principles of natural justice require that a notice should be issued by the Magistrate before passing an order u/s 14. We are not inclined to agree with the above contention. The borrower is given a notice under Sub-section (2) of Section 13 which specifically says that if the liabilities are not discharged in full within 60 days from the date of notice the secured creditor shall be entitled to all or any of the rights as mentioned in Sub-section (4) of Section 13 of the Act, Again the borrower is given a reply under Sub-section (3A) stating why his representation or objection against the notice under Sub-section (2) is not acceptable and untenable. Thus the borrower has sufficient notice regarding the steps being initiated, the amount sought to be recovered and the consequences of not discharging the liability within the period stipulated in the notice under Sub-Section (2). In other words, the borrower is informed in advance that if the liabilities are not discharged within the stipulated period, the secured creditor will be resorting to any of the remedies available under Sub-section (4) of Section 13

of the Act and may file an application u/s 14 and the Magistrate may pass an order u/s 14. In our view, the above safeguards satisfy the principles of natural justice and no further notice by the Magistrate is required before passing an order u/s 14.

7. Learned Counsel for the respondent-bank contended that the stand taken in Annexure-"C" notice is untenable as the pendency of the suit is not a bar for invoking the provisions of Sub-section (4) of Section 13 and Section 14. There is no provision in the Act or the Rules which indicates that merely because the secured creditor has filed the suit for recovery of the amount, he is prevented from resorting to the provisions of Sections 13 and 14 of the Act. Therefore, the learned Counsel for the respondent is right in contending that the pendency of the suit cannot prevent the respondent from resorting to the remedies available to the respondent under Sections 13 and 14 of the Act. However, it does not mean that the respondent need not consider the petitioners' objection or representation against the notice issued under Sub-section (2) of Section 13 or that the respondent need not comply with the provisions of Sub-section (3A) of Section 13. Hence this Court is justified in quashing the impugned proceedings and Annexure-"E" order.

The writ petition is allowed in the above terms.