(2012) 09 AHC CK 0064

In the Allahabad High Court

Case No : Writ C. No. 49113 of 2012

M/s. Awasthi Cold Storage Pvt. Ltd. — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 24-09-2012

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17

Citation : (2013) 4 ALJ 677

Hon'ble Judges : Ashok Bhushan, J;Abhinava Upadhya, J

Bench : Division Bench

Advocate : V.S. Chauhan, for the Appellant; Anadi Krishna Narayana, for the Respondent

Final Decision : Disposed Of

Judgement

1. Heard Sri Shashi Nandan, learned senior advocate assisted by Sri V.S. Chauhan, learned counsel for the petitioner and Sri Maneesh Mehrotra, learned counsel for the respondent Bank. By this petition, the petitioner has prayed for quashing the order dated 25.7.2012 by which the Bank has communicated the petitioner mat the petitioner''s offer under ''One Time Settlement Scheme'' is turned down.

2. Sri Shashi Nandan, learned senior advocate challenging the order contended that the petitioner received the intimation on 15.6.2012 that one time settlement scheme is current in the Bank and before the petitioner can submit the offer, the auction sale was already conducted on 22.6.2012. He submitted that the petitioner''s one time settlement offer was in accordance with the Reserve Bank of India''s guidelines and the Bank committed an error in not accepting the offer. Learned counsel for the petitioner has placed reliance on the judgment of the Apex Court, reported in Sardar Associates and Others Vs. Punjab and Sind Bank and Others, where the Apex Court held that one time settlement scheme and guidelines issued by the Reserve Bank of India are binding on the public sector

Banks. He also placed reliance on a Division Bench decision, reported in (2012) 3 UPLBEC 1859, M/s. Shyam Ice & Cold Storage (P) Ltd. & others v. M/s. Syndicate Bank and another.

3. We have considered the submissions of learned counsel for the petitioner and perused the record.

4. The auction which was held of the mortgaged assets on 22.6.2012 under the provisions of SARFAESI Act, 2002 has already been confirmed on 23.7.2012 and sale certificate has also been issued on 23.7.2012. The petitioner has already filed an application No. 11 of 2010 before the Debts Recovery Tribunal in which an order was also passed by the Tribunal on 17.7.2012 refusing to grant stay of execution of sale certificate. Against the said order dated 17.7.2012, the petitioner also filed an appeal being R-109 of 2012 which was disposed of by the Tribunal on 23.7.2012 giving opportunity to the applicant to move an application for interim relief afresh after the impleadment application is allowed. Till then it was directed that any action taken shall be subject to the final decision of the Securitization application pending before the Debts Recovery Tribunal.

5. Learned counsel for the petitioner submitted that the Appellate Tribunal has also not correctly observed that the application for interim relief can be filed only after impleadment application is allowed. He submits that the impleadment application had already been allowed by the order dated 17.7.2012 where the purchaser was impleaded as one of the respondents.

6. Be that as it may, the Appellate Tribunal has directed the applicant to move a fresh application and the impleadment application having been already allowed, there is no impediment in moving a fresh application for interim relief. The submission which has been much pressed by the learned counsel for the petitioner is that one time settlement has not been correctly considered by the Bank which was under obligation to consider the same under the guidelines of the Reserve Bank of India. Challenge to the auction proceeding is on the ground that the Bank instead of considering the application for one time settlement has proceeded with the auction.

7. In the case of Sardar Associates and Others Vs. Punjab and Sind Bank and Others, , the Apex Court has observed that even the Appellate Tribunal was not precluded from considering the proposal for one time settlement. Following was laid down in para 29:

It may be that no specific prayer was made but the same, in our opinion, keeping in view the provisions of the 2002 Act, did not preclude the Appellate Tribunal to consider the offer of the appellants. The Appellate Tribunal n terms of the provisions of the Act like the original Tribunal is interested only in recovery of the amount. While doing so, it, in our considered opinion, has the requisite jurisdiction to consider the prayer made by a debtor for one time settlement particularly in view of the fact that the same is within the purview of One Time Settlement Scheme of the Reserve Bank of India. If a public sector bank is otherwise bound by any guidelines issued by the Reserve Bank of India, we see no reason as to why the same cannot be enforced in terms of the provisions of the Act by the Tribunal and consequently by the Appellate Tribunal....

8. When the Appellate Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 can consider One Time Settlement, keeping in view the provisions of 2002 Act, we are of the view that in the application filed u/s 17 by the petitioner all the issues can be looked into.

9. The Division Bench judgment in M/s. Shyam Ice & Cold Storage(P) Ltd. and others, (supra) the Division Bench has held that so long as One Time Settlement proposal remains pending with the Bank, it would neither be proper nor permissible for the Bank to proceed to recover the amount under the 2002 Act.

10. In the present case, as noted above, the proceedings under SARFAESI Act were initiated much before the submission of proposal by the petitioner for One Time Settlement. Mortgaged assets were also auctioned on 22.6.2012, that is, much before the submission of proposal by the petitioner which was only made on 4.7.2012. Thus, the Division Bench judgment in M/s. Shyam Ice & Cold Storage (P) Ltd. (supra) does not help the appellant petitioner in the present case. As observed above, it is open for the petitioner to press all his pleas before the Tribunal.

11. Learned counsel for the petitioner next submits that this Court may issue direction to the Bank to consider one time settlement. At this stage when the auction has already taken place, it is not the stage for this Court to decide these issues. It is for the Tribunal to consider all the aspects of the matter where section 17 application of the petitioner is still under consideration. The petitioner has already availed the statutory remedy which is to be decided by the Tribunal, therefore, we are not inclined to entertain the writ petition. We may make it clear that we are expressing no opinion on the merits of the case. Subject to the aforesaid observations, the writ petition is disposed of.