
(2019) 03 UK CK 0076

In the Uttarakhand High Court

Case No : Writ Petition (M Of S) No. 3713 Of 2018

M/S Badesha Rice Mill & Others

APPELLANT

Vs

Uttarakhand Gramin Bank & Others

RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(3A), 13(4), 14, 14(3), 17(1)
Security Interest (Enforcement) Rules, 2002 — Rule 8(1)
Constitution Of India, 1950 — Article 226

Citation : (2019) 03 UK CK 0076

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Atul Kumar Bansal, K.N. Joshi, D.S. Patni

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. This Court is agonized to pass this judgment, for the reasons which are going to be assigned in the body of the judgment. The Court is constrained to record the following reasons on the basis of the misleading arguments which have been deliberately extended by the learned counsel for the petitioners by not putting the true, complete and correct facts before the Court during arguments. Cutting short the controversy and without dealing the wider provisions and the factual aspects involved in the matter, this Court is starting its finding from the stage of the proceedings which were drawn by the petitioners by invoking Section 17(1) of the SARFAESI Act by approaching before the Debt Recovery Tribunal.

2. Apparently, as per the reliefs which was sought by the petitioners it had questioned the order passed under Section 13(4), as well as the impugned order passed by the Additional District Magistrate (Finance/Revenue), Udham Singh Nagar, dated 9.10.2017, while exercising his powers under Section 14 of the Act, as well as the possession notice dated 22.02.2018. For the purposes of brevity

the reliefs as sought for by the petitioners before the Tribunal is quoted hereunder:

"Relief sought

In view of the facts mentioned in paragraph 5 above, the applicant pray for the following relief:

That the whole proceeding initiated u/s 13(4) including the order dated 9.10.2017 passed by the ADM(F/R) Udham Singh Nagar (annexure no. 6), the possession notice dated 22.2.2018 (annexure no. 7) and the possession process be quashed and further the notice issued u/s 13(2) of the SARFAESI Act, 2002 dated 18.7.2016 (annexure no. 4) be quashed and further to restore the possession of the said secured asset (Khata no. 23 Khasra No. 358 min area 0.809 hectare) land and building to the applicants herein."

3. The proceedings ultimately before the Debt Recovery Tribunal culminated by the judgment rendered by the Tribunal on 18.05.2018, and as a consequence thereto to the judgment, as per the concluding part of the judgment it was provided that after obtaining the order of possession from the learned Additional District Magistrate a fresh exercise ought to have been taken by the Bank, prior to taking over the possession and the possession notice in terms of Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 ought to have been issued. The procedure as resorted to by the respondent-Bank by mere pasting of notice over the mortgage premises and by putting a lock on the gate was arbitrary and was not justified. Thus, the Debt Recovery Tribunal in fact had particularly interfered only with regards to the order and action taken on 22.02.2018 of taking over of possession. What would be relevant and which is to be considered by this Court is pertaining to the challenge given to the impugned notice dated 09.10.2017, as issued by the Additional District Magistrate under Section 14 of the SARFAESI Act, 2002. Apart from the fact and as would also be apparent from the reliefs quoted above that the same was also questioned before the Debt Recovery Tribunal but the Debt Recovery Tribunal while dealing with S.A. No. 29 of 2018 'M/s Badesha Rice Mill & Ors. vs. Uttarakhand Gramin Bank' has dealt with the propriety of the order/notice dated

22. 02.2018 only and has assigned the reasons for not interfering into the notice issued under Section 13(3-A), as well as Section 14 of the SARFAESI Act, and the relevant reasons which has been assigned by the Debt Recovery Tribunal in its judgment is quoted hereunder:

"Since, the Applicants neither submitted any objection/representation against the legality of aforesaid Demand Notice or secured asset in question in terms of Sec. 13(3-A) of the SARFAESI Act, 2002 nor before Ld. ADM (F/R) Udham Singh Nagar in proceedings U/s 14 of the SARFAESI Act, 2002. Hence, they cannot raise any objections qua the legality of Demand Notice or validity of mortgage of secured asset in question at this stage. Therefore, Respondent Bank has rightly proceeded against present secured asset in question under the SARFAESI Act,

2002."

4. The simple reading of the language which has been used by the Debt Recovery Tribunal, while parting with the judgment dated 18.05.2018 while declining to interfere into the notice issued under Section 13(3-A) and Section 14 was to the effect that since after the issuance of the aforesaid notices the applicant had not filed any objection/representation questioning the legality of the aforesaid demand notice. The secured assets of the Company were taken over by virtue of the possession order, which was passed on 22.02.2018, which was the only order interfered by the Debt Recovery Tribunal.

5. Looking to the reasons assigned, and as a matter of fact, rationally any prudent person with a slightest legal acumen would infer that admittedly though there was a challenge given to the order dated 09.10.2017, as passed by the Additional District Magistrate under Section 14 of the Act and for the grounds which has been narrated in the proceedings of the S.A. No. 29 of 2018 'M/s Badesha Rice Mill & Ors. vs. Uttarakhand Gramin Bank' yet the Debt Recovery Tribunal had rather declined to interfere, as far as the challenge to the notice under Section 14 is concerned. Meaning thereby, since there was a specific finding that "they cannot raise any objection qua the legality of the Demand Notice or validity of mortgage of secured asset in question".

6. This finding in itself will amount that the Debt Recovery Tribunal has in fact in specific terms had declined to interfere as far as the notice under Section 13(3-A) is concerned or to the notice under Section 14, as issued by the Additional District Magistrate (Finance/Revenue) on 09.10.2017. The Debt Recovery Tribunal has decided the matter on 18.05.2018. Thereafter, though the judgment of the Debt Recovery Tribunal was placed on record and was made as part of the writ petition which was preferred on 10.12.2018, the petitioner has voluntarily chosen to only challenge the notice under Section 14, i.e. 09.10.2017, and has modulated his reliefs in the writ petition in the following manner, which is quoted hereunder:

"I. To issue a writ, order or direction in the nature of certiorari to quash the order dated 9.10.2017 (Annexure No. 1) passed by the ADM (F/R) Udham Singh Nagar/ respondent no. 3 herein in Case No. 51/2017 "Authorized Officer Uttarakhand Gramin Bank Pratappur vs. M/s Badesha Rice Mill"

II. To issue any other writ, order or direction or grant such other further relief in favour of the petitioners which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

III. Award the cost of the petition to the petitioners."

7. This writ petition was entertained on 11.12.2018 and a counter affidavit was called for by the Coordinate Bench of this Court by issuing notice to the respondent on 11.12.2018 and thereafter the matter was taken up on 13.03.2019 before this Court.

8. During the course of arguments, the learned counsel for the petitioners had placed reliance on a judgment of the Division Bench rendered in Special Appeal No. 901 of 2018 'The Nainital Bank Ltd. vs. M/s Naveen Kisan Rice Mill and Others' of this Court as decided on 10.01.2019, whereby, based on the ratio as propounded by the judgment of the Division Bench of this Court has held that as far as the powers which are to be exercised under Section 14 of the Act, it is to be exclusively exercised by the District Magistrate and for the purposes of exercising powers under Section 14, the Additional District Magistrate (Finance/Revenue) would not be an authority competent to issue notice under Section 14.

9. Yesterday exclusively based on the said assertion and the reliance which was placed by the counsel for the petitioners on the judgment rendered by the Division Bench of this Court in Special Appeal No. 901 of 2018 'The Nainital Bank Ltd. vs. M/s Naveen Kisan Rice Mill and Others' as dealt by the Division Bench on 10.01.2019, had concluded the arguments, dictated the judgment and holding thereof that since the notice under Section 14 being beyond the competence, this Court quashed the notice. But in the post-lunch session, yesterday a mention was made by the counsel for the respondent-Bank that the writ petition at the behest of the petitioners challenging the order dated 09.10.2017 as issued by the Additional District Magistrate (Finance/Revenue), would not be tenable on his request the writ petition was posted for today for hearing.

10. The following grounds are raised by respondents against the cause agitated in the writ petition:

(i) Because the petitioners themselves have voluntarily chosen to challenge this order dated 09.10.2017 before the Debt Recovery Tribunal in the proceedings of S.A. No. 29 of 2018 and it did constitute to be the part of the relief sought for before the Debt Recovery Tribunal, which was declined to be granted by the Tribunal.

(ii) Even if at all they were aggrieved against non-interference by the Debt Recovery Tribunal, to the order dated 09.10.2017, as passed by the Additional District Magistrate (Finance/Revenue), Udham Singh Nagar, they ought to have given challenge to the judgment of the DRT dated 18.05.2018 before this Court or before the DART, i.e. appellate forum available to the petitioner under the Act.

(iii) Once the relief has been claimed by the petitioner against the order dated 09.10.2017, has been declined or relief granted is silent on the order dated 09.10.2017 the same would be treated to have been declined, in such circumstances the judgment of the Tribunal should have been challenged, in absence of challenge to it, exclusively challenging the order dated 09.10.2017 passed by ADM (F/R) under Section 14 of the Act cannot be challenged as it stands denied and merged with final judgment of the Tribunal.

11. Yesterday when the matter was taken up the learned counsel for the petitioners who happens to be having a sufficient background and professional acumen he ought to have made reference to the proceedings of the DRT and he

was duty bound as an officer of the Court to have informed the Court that as against the order dated 9.10.2017, he has already approach the DRT and the DRT has not interfered, as far as the order dated 09.10.2017 is concerned. The initiation of the arguments intelligently was exclusively extended by him based on the ratio propounded by the Division Bench judgment pertaining to the competence of the Additional District Magistrate to issue notice under Section 14 of the Act. Since being a legal preposition, this Court was bound to accept that argument, and the writ petition was to be allowed. In the post-lunch session a mention was made by the learned counsel for the Bank and then it was informed thereto that the order which has been put to challenge before this Court, i.e. 09.10.2017 as issued by the Additional District Magistrate (Finance/Revenue) was an order which was already challenged by the petitioners before the Debt Recovery Tribunal and the DRT has declined to interfere as far as the order dated 09.10.2017 is concerned, the same would attain finality as Tribunal judgment was not challenged by the petitioner.

12. This Court is of the view that it was the duty of the petitioners counsel as an officer of the Court primarily to maintain the magnanimity of this Court and he ought to have come up with clean hands informing the Court that the challenge was already given to the order dated 09.10.2017 before the Tribunal which already stands denied by the Debt Recovery Tribunal, rather placing forwarded the arguments exclusively based on the judgment rendered in S.P.A. No.901 of 2018 'Nainital Bank Ltd. vs. M/s Naveen Kisan Rice Mills and Others', not even touching the magnitude and the effect, which it would have on the judgment being rendered by this Court. Based on the ratio laid down by the Division Bench of this Court on 10.01.2019, this Court has intended and rather passed the judgment allowing the writ petition.

13. But after coming to know that the order under challenge in this petition, i.e. dated 09.10.2017, has already attained finality, because DRT has declined to interfere and even thereafter filing the writ petition before this Court yet again, against same order would make the writ petition as not maintainable, because under law if a person aggrieved against an action of an adversary approaches the Forum/Court for number of reliefs and if the Forum/Court only grants few reliefs claimed for and the judgment remains silent on some of the reliefs claimed and even if the judgment remains silent with regards to the other reliefs, it would amount that the relief as claimed for has been denied. Though, this situation is not here in the instant case because as referred from the extracts of paragraph of S.A. No. 29 of 2018 'M/s Badesha Rice Mills & Others vs. Uttarakhand Gramin Bank', as quoted above the findings as recorded by the DRT would amount to be a specific denial to interfere against the order dated 9.10.2017 passed under Section 14, and, if that be so then this Court is of the view that the present writ petition would not lie for same relief which stood denied by the DRT or if at all it would lie it would only be maintainable when the petitioners challenges the judgment of the DRT dated 18.05.2018, may be limited to the challenge to the extent of the denial by the DRT to interfere against the impugned order dated

09.10.2017. Thus, this writ petition would be successive proceeding against the order dated 09.10.2017.

14. Surprisingly, the petitioners had been opportunist in approaching to the Court, why this language is being used here is that there had been a malicious intent on part of petitioner for not challenging the judgment dated 18.05.2018, because his purpose as against the order dated 22.02.2018, by virtue of which his unit was locked has been achieved by the judgment dated 18.05.2018 rendered by the DRT and the same was desealed in pursuance to the said order.

But so far as the order passed under Section 14 is concerned, he could not have filed a writ petition because the relief finally stood denied by the Debt Recovery Tribunal with the following observations:

"Since, the Applicants neither submitted any objection/representation against the legality of aforesaid Demand Notice or secured asset in question in terms of Sec. 13(3-A) of the SARFAESI Act, 2002 nor before Ld. ADM (F/R) Udham Singh Nagar in proceedings U/s 14 of the SARFAESI Act, 2002. Hence, they cannot raise any objections qua the legality of Demand Notice or validity of mortgage of secured asset in question at this stage. Therefore, Respondent Bank has rightly proceeded against present secured asset in question under the SARFAESI Act, 2002."

15. Learned counsel for the respondent-Bank has places his arguments from the view point that if at all the petitioners was aggrieved by the denial of relief as against the order dated 09.10.2017 passed under Section 14 of the Act, the remedy available to the petitioners was to approach the appellate forum, i.e. the DART. While controverting the said argument as extended by the learned counsel for the respondent-Bank Mr. D.S. Patni, Mr. A.K. Bansal, Advocate on behalf of the petitioners, had made reference to the provisions contained under sub-section (3) of Section 14 of the Act, which provides that any act of the District Magistrate or the Chief Metropolitan Magistrate taken under Section 14, attains finality because of the import of sub-section (3) of Section 14, what he wants to submit that it would be that their action cannot be put to challenge before any Court or before any authority. Section 14(3) of the SARFAESI Act reads as under:

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorized by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority."

16. With all profound regards at my command this embargo of restraint from approaching the Court as against the order passed by the Magistrate under Section 14 as contemplated under Section 14(3) would not exclude the jurisdiction of the writ courts under Article 226 of the Constitution of India, as

already observed above. The intention of the petitioners was quite apparent by not giving challenge to the order dated 18.05.2018 and challenging the order dated 09.10.2017 only, which otherwise stood finalized was with a deliberate intent to mislead the Court to procure a favourable order against an order dated 09.10.2017, which otherwise stood finalized by the judgment of the Debt Recovery Tribunal dated 18.05.2018 and without placing the same in his arguments before the Court. The manner in which the Court was convinced to allow the writ petition against the order dated 09.10.2017, was absolutely uncalled for from an officer of the Court. He ought to have either challenge the order dated 18.05.2018 or during the course of arguments, he was duty bound to inform the Court that the order dated 09.10.2017 impugned in the writ petition was already challenged before the Debt Recovery Tribunal and the DRT has not interefered with that, and has rather derived the relief against the order dated 09.10.2017, which quite obviously he cannot challenge it recurringly without challenging the DRT judgment in appeal before DART by filing an appeal.

17. This action of the counsel is highly deplorable and there cannot be any forgiveness for the same. The petitioners could not have had cumulative recourse against the order dated 09.10.2017, before the two different Forums, after having lost from the one, accepting the said judgment and not challenging the same. On this conduct of the petitioners this Court though endorses the ratio laid down by the Division Bench of this Court pertaining to the competence of the Additional District Magistrate to issue notice under Section 14, but simultaneously the petitioners would be bound by the judgment dated 18.05.2018 and he would be estopped from challenging the order dated 09.10.2017 cumulatively by filing a writ petition now when it had attained finality.

18. In view of the above, this Court dismisses the writ petition with a cost of ` 50,000/- on the petitioners to be paid in the Advocates' Welfare Fund for making a deliberate and intentional attempt to mislead the Court.

19. The writ petition stands dismissed.