(2007) 11 PAT CK 0051

In the Patna High Court

Case No : CWJC No. 13368 of 2007

M/s Civmi Industries Pvt. Ltd. APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 05-11-2007

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4), 17(2)

Citation : (2008) 2 PLJR 193

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navaniti Pd. Singh, J.—The petitioners are aggrieved by an action of the State Bank of India taken in terms of Section 13(4) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"). Undisputedly the petitioners are debtors to the respondent-Bank. It appears that apprehending proceeding for recovery of substantial sum of money, the petitioners had filed a civil suit in the Patna Civil Court with the prayer for rendition of accounts. During the pendency of the suit Bank resorted to proceeding under the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 before the Debts Recovery Tribunal, Bihar, Patna. In those proceedings petitioners had ultimately filed its written statement denying the liability. In the meantime the bank has taken action in terms of Section 13(4) of the SARFAESI Act by attaching mortgaged property, which includes the residential house at Patna.

2. The validity of this action has been challenged and it is submitted by Mr. Y.V. Giri, learned senior counsel appearing for the petitioners that the petitioners have been asking for accounts repeatedly from the bank and the bank without reason is not submitting accounts. It is submitted that without accounts being rendered the petitioners cannot make specific challenge to show that the very

foundation of claim of the bank is without substance. It is this aggrieved action that they are raised at all forums.

3. On the other hand, learned counsel for the bank has pointed out that initially before the Debt Recovery Tribunal, petitioners had a similar grievance. Petitioners were directed to file written statement. Petitioners objected. Objection was over-ruled, which brought the petitioners to this Court against the order of Debt Recovery Tribunal in C.W.J.C. No. 10561 of 2004 which was ultimately withdrawn, on 12.5.2006. The petitioners thereafter filed its written statement before the Debt Recovery Act. it is pending consideration.

4. Learned counsel for the bank further submits that in terms of Section 17(2) of the SARFAESl Act the petitioners had efficacious effective alternative remedy by filing an appeal before the Debt Recovery Tribunal against the action taken u/s 13(4) of the SARFAESl Act.

5. Mr. Giri, learned senior counsel for the petitioners submits that in terms of Section 17(2) thereof before such an appeal can be filed there is a requirement of pre-deposit of 75% of amount, as claimed in the notice in terms of Section 13(4) of the SARFAESl Act.

6. In my view, learned counsel for the bank has rightly pointed out that the said provision of Section 17(2) of the SARFAESI Act was declared ultra vires by the Hon''ble Supreme Court in the case of Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., and the provision has since been deleted from the Act and substituted by new provision by Amendment Act of 2004 with effect from 11.11.2004, there is no question of any pre-deposit now.

7. In that view of the matter, this Court is of the view that the petitioners have quick, effective and not onerous remedy before the Debt Recovery Tribunal in terms of Section 17(2) of the SARFAESI Act. He should first move the said Tribunal against the action taken. The Tribunal is bound to decide the matter and if it finds that the petitioners have not been rendered accounts then the bank would be obliged, if so directed to render accounts. It may be mentioned here that the State Bank of India is a public undertaking. It has to act reasonably and fairly and not base its claim on technicality. If accounts or accounting principally are disputed then in all fairness it should furnish accounts to satisfy any debtor or any authority as to correctness of its account and not take the shelter of technical plea depriving the authority or the debtor of the true accounts. It must be kept in mind that if the only controversy is account then bank, who is custodian of public finance can easily submit the account and get over objection rather than fighting and litigating and giving cause to debtor of objection to the action of the bank. These matters, the Tribunal shall keep in kind.

8. With the aforesaid observation and direction giving liberty to the petitioners to move the Tribunal in terms of section 17(2) of the SARFAESI Act this writ petition is dismissed. Needless to say that the bank may not precipitate the situation so as to deprive the petitioners an opportunity to effectively appeal before the Debt

Recovery Tribunal in terms aforesaid. This writ petition is thus not maintainable and is dismissed in view of alternative remedy available.

