
(2012) 03 UK CK 0081

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 437 of 2012

M/s Dolmar Resorts Pvt. Ltd.

APPELLANT

Vs

Oriental Bank of Commerce

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17

Citation : (2012) 03 UK CK 0081

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

Hon"ble B.S. Verma, J.—Heard learned counsel for the parties. By means of this writ petition, the petitioner has sought the following relief:-

A. Issue a writ, order or direction in the nature of certiorari quashing the impugned sale/public auction notice dated 03-03-2012 (Annexure No.7).

B. Issue a writ, order or direction in the nature of certiorari quashing the impugned notice u/s 13(2) of the Act dated 30-7-2011 (Annexure No. 4).

C. Issue a writ, order or direction in the nature of certiorari quashing the impugned notice u/s 13(4) dated 3-11-2012 (Annexure No.5).

D. Issue a writ, order or direction in the nature of mandamus declaring the entire proceedings initiated by the respondents against the petitioners under the Act as illegal and without authority.

E. Issue any other suitable writ, order or direction, which this Hon"ble Court may deem fit and proper in the circumstances of the case.

F. Award the cost of the writ petition to the petitioner.

2. A perusal of the record shows that the proceedings u/s 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (for short the Act) have already been drawn against the petitioner and the respondent Bank has already taken possession of the mortgaged property of the petitioner.

3. An alternate remedy of statutory appeal u/s 17 of the Act before the Debt Recovery Tribunal is available to the petitioner.

4. A Division Bench judgment of this Court in the case of Smt. Alpana Shankar v. Union Bank of India and another reported in 2005(1) U.D., 692, has observed in paragraph no.6 as under:-

6. Admittedly, the petitioner was given notice u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. If the petitioner failed to discharge the liabilities within sixty days, the respondent Bank is entitled to take recourse to one or more of the measures mentioned u/s 13(4) of the said Act to recover the secured debt. If the petitioner is aggrieved by any such action taken by the Bank u/s 13(4) of the Act, the petitioner has a right of appeal to the Debt Recovery Tribunal u/s 17 of the said Act. From the averments made in the writ petition, it is not clear whether the respondents have taken any action u/s 13(4) of the Act. If any such action has already been taken or as and when such action is taken, the petitioner can approach the Debt Recovery Tribunal u/s 17 of the Act for redressal of her grievance. For this reason also, this Court cannot interfere in the matter in exercise of the power under Article 226 of the Constitution of India. Unless there are extreme and compelling circumstances, the High Court cannot exercise jurisdiction under Article 226 of the Constitution of India when the party has got an effective alternate remedy available under the Statute. The petitioner has not made out any such extreme and compelling circumstance to persuade this Court to exercise the jurisdiction under Article 226 of the Constitution of India.

5. An effective alternate remedy of filing statutory appeal u/s 17 of the Act before the Debt Recovery Tribunal is available to the petitioner. Hence I am not inclined to entertain the writ petition. The writ petition is dismissed in limine. No order as to costs. However, the petitioner may approach appropriate Forum for redressal of his grievance. All pending applications stand disposed of.