
(2022) 02 UK CK 0079

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 278 Of 2022

M/s KMC Plastochem & Another

APPELLANT

Vs

Canara Bank & Others

RESPONDENT

Date of Decision : 17-02-2022

Acts Referred:

Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(4)
Constitution Of India, 1950 — Article 226

Citation : (2022) 02 UK CK 0079

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : Sahil Mullick, Ashutosh Thakral, Narayan Dutt, Maneesh Bisht, Vipul Sharma

Final Decision : Disposed Of

Judgement

Manoj Kumar Tiwari, J

1. Heard learned counsel for the parties through video conferencing.
2. Petitioner took a loan from Canara Bank, Branch Kotdwar, Pauri Garhwal for setting up an industrial unit. Since the loan was not repaid in time, therefore, recovery proceedings were initiated by invoking provision of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act") against the petitioners.
3. In the writ petition, petitioner has challenged the possession notices issued under Section 13(4) of SARFAESI Act by respondent bank on 24.09.2021.
4. It is not in dispute that petitioner has filed Securitisation Application before Debts Recovery Tribunal, Dehradun on 25.10.2021 challenging the notices issued under Section 13(4) of the SARFAESI Act. It is also not in dispute that DRT, Dehradun is vacant, due to expiry of term of Presiding Officer, therefore, petitioner had approached Debts Recovery Appellate Tribunal, Allahabad for

transfer of his Securitisation Application to DRT, Lucknow or DRT, Allahabad.

5. Learned counsel for the petitioner submits that subsequent to petitioner approaching DRAT, Allahabad, the term of Presiding Officer of DRAT, Allahabad also expired and now DRAT is also vacant due to non-availability of Presiding Officer. Learned counsel for the petitioner further submits that apprehending coercive measure at the hands of the respondent bank, petitioner has approached this Court under Article 226 of the Constitution, for protection.

7. Per contra, Mr. Ashutosh Thakral, learned counsel appearing for the respondent bank submits that petitioner has already approached DRAT, Allahabad seeking transfer of his case to some other DRT, therefore, he is not entitled to the relief, as claimed in the writ petition. He further submits that as of now only symbolic possession of the secured asset has been taken and auction proceeding has not been initiated so far, therefore, the writ petition is pre-mature.

8. Learned counsel for the petitioner has placed reliance upon an order dated 16.12.2021 passed by Hon'ble Supreme Court in the case of State Bar Council of Madhya Pradesh vs Union of India & others passed in SLP No. 10911 of 2021 in support of his contention that in circumstances like the present one, where DRTs/ DRATs are unable to function due to non-availability of Presiding Officer, a borrower can approach jurisdictional High Court under Article 226 of the Constitution, for relief.

9. Since petitioner has approached DRT, Dehradun against the order under Section 13(4) of SARFAESI Act, however, his Securitisation Application has not been considered on account of vacancy on the post of Presiding Officer, therefore, having regard to the peculiar fact of the case, the writ petition is disposed of by providing that till 15.04.2022 or till appointment of Presiding Officer in DRT, Dehradun, whichever is earlier, no coercive action shall be taken against the petitioner.

10. However, it is made clear that learned DRT, Dehradun will decide the matter on merit untrammelled by any observation made in this order.