

(2022) 02 TEL CK 0036

In the Telangana High Court

Case No : Writ Petition No. 23643 Of 2020, 20046 Of 2021

M/S NECX Pvt. Ltd.

APPELLANT

Vs

Union Bank Of India And Another

RESPONDENT

Date of Decision : 09-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Securities
Interest Act, 2002 — Section 13, 13(2), 13(3), 13(3A), 13(4), 17, 17A, 17(1)
Transfer Of Property Act, 1882 — Section 58(f), 69, 69A

Citation : (2022) 02 TEL CK 0036

Hon'ble Judges : Ujjal Bhuyan, J;A.Venkateshwara Reddy, J

Bench : Division Bench

Advocate : Maruti Rao Srungarapu, Pratap Narayan Sanghi

Final Decision : Dismissed

Judgement

1. Subject matter of both the writ petitions being interlinked, those were heard together on 18.01.2022 and are being disposed of by this common

judgment and order.

2 Though 25.01.2022 was fixed for delivery of judgment, for unavoidable circumstances, the judgment could not be delivered on that date and is now being delivered today.

3 Heard Mr.C.B.Ram Mohan Reddy, learned counsel for the petitioner in W.P.No.20046 of 2021; Ms. V.Dyumani, learned counsel for respondent

Nos.1 and 2 i.e. Union Bank of India in both the writ petitions; and Mr. S. Maruti Rao, learned counsel for respondent No.3 in W.P.No.20046 of 2021

and for the petitioner in W.P.No.23643 of 2020.

4 For the sake of convenience, we take up Writ Petition No.23643 of 2020 first.

5 In this case, petitioner is M/s. NECX Private Limited. By filing this writ petition under Article 226 of the Constitution of India, petitioner seeks

quashing of notice dated 16.11.2020 issued by the first respondent under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets

and Enforcement of Securities Interest Act, 2002 (briefly referred to hereinafter as "the SARFAESI Act").

6 According to the petitioner it is a company incorporated under the Companies Act, 1956, having its registered office at Plot No.5A/4, Sy.No.48, IDA

Nacharam, Road No.1, Hyderabad. Petitioner is engaged in the business of making I.T solutions and working for private and government agencies.

7 Petitioner had availed loan from the first respondent i.e. Union Bank of India, Chikkadapalli Branch, Hyderabad for about Rs.12.00 crores.

Petitioner is carrying on banking transactions with the first respondent for the last more than 14 years.

8 It is stated that first respondent wrongly classified the loan account of the petitioner as Non Performing Asset (NPA) on 31.03.2020. It was

thereafter that first respondent issued the impugned notice dated 16.11.2020 under Section 13 (2) of the SARFAESI Act.

9 The aforesaid action of the first respondent has been assailed on various grounds. It is contended that classification of the loan account of the

petitioner as NPA itself was wrong which was further aggravated by delayed intimation to the petitioner on 01.07.2020. According to the petitioner,

first respondent failed to take into consideration the effect of the pandemic and the resultant nationwide lockdown which brought all business and

commercial activities to a standstill. This naturally affected the repaying capacity of the petitioner. Further, first respondent failed to take into

consideration payments made by the petitioner into the loan account. First respondent also overlooked guidelines issued by the Reserve Bank of India

(RBI). Representations filed by the petitioner failed to evoke any response.

10 Petitioner has stated that corporate office of the petitioner was sold, whereafter a sum of Rs.1.5 crores was paid to the first respondent to show

the bona fides of the petitioner. Petitioner requested the first respondent to issue No Objection Certificate (NOC) to such sale so that petitioner could

realize the balance of the sale amount and pay the same to first respondent. However, such NOC was not issued by the first respondent for which the

sale deed could not be executed.

11 It is stated that petitioner had duly complied with the provisions of Section 13 (3A) of the SARFAESI Act by making detailed representations. But

how the first respondent dealt with such objection has not been informed to the petitioner. Aggrieved, present writ petition has been filed seeking the relief as indicated above.

12 Respondents have filed a common counter affidavit through Sri K.Naga Srikanth, Chief Manager of first respondent who is also the authorized

officer of respondent No.1 under the SARFAESI Act. Respondents have contended that a writ petition challenging a notice under Section 13 (2) of

the SARFAESI Act is not maintainable. In fact, such a notice does not give rise to any cause of action for initiating an action in law. Writ petition is

premature. It is only if and when the respondents take steps under Section 13 (4) of the SARFAESI Act that the petitioner would have the statutory

remedy of filing securitization application before the jurisdictional Debts Recovery Tribunal under Section 17 of the SARFAESI Act.

13 On merit it is stated that in response to letter dated 01.07.2020 issued by first respondent, petitioner replied vide its letter dated 29.09.2020

undertaking to pay an amount of Rs.2.10 crores directly by the purchaser to the bank and promised to clear the over dues. Though petitioner

submitted action plan to take the loan account out of NPA and to regularize the same, it failed to do the needful. First respondent, by letter dated

06.10.2020 pointed out that the loan account of the petitioner was classified as NPA on the basis of circulars of RBI. It was also pointed out that

petitioner had failed in repayment of outstanding dues.

14 It is further stated that vide letter dated 24.11.2020 petitioner raised objection under Section 13 (3A) of the SARFAESI Act to the impugned

demand notice dated 16.11.2020 which was duly replied to by the first respondent vide letter dated 04.12.2020. In the letter dated 04.12.2020

respondent No.1 asserted that the loan account of the petitioner was classified as NPA in accordance with the guidelines issued by the RBI. Further,

first respondent provided the details of outstanding dues payable by the petitioner.

15 Respondents have also referred to the Master Circular dated 01.07.2014 issued by the RBI laying down broad guidelines as to when a loan account

can be declared as NPA which according to the respondents have been duly followed in the present case. Amount recoverable by first respondent

from the petitioner is Rs.884.36 lakhs together with interest and other charges as on 31.03.2020. In the circumstances it is submitted that there is no

irregularity or infirmity in the impugned notice dated 16.11.2020.

16 Petitioner has filed a rejoinder to the aforesaid counter affidavit of the respondents.

17 Learned counsel for the petitioner submits that respondents have acted in a very highhanded manner without considering the ground realities. Such

action is wholly arbitrary and unreasonable and is liable to be interfered with by this Court under Article 226 of the Constitution of India. Referring to

the decision of the Supreme Court in *Mardia Chemicals Vs. Union of India* (2004) 4 SCC 311 he submits that while exercising power under Section

13 of the SARFAESI Act, the secured creditor has to act in a fair and judicious manner. Its action should be reasonable, given the wide range of

power and discretion conferred on it by the statute to take coercive recovery action without the intervention of any judicial or quasi judicial authority.

His submission is that the very foundation for invoking jurisdiction by the first respondent under Section 13 (2) of the SARFAESI Act is absent in the

present case as classification of the loan account of the petitioner as NPA itself is wholly erroneous and contrary to law.

18 On the other hand, learned counsel for the respondents submits that the writ petition is premature. Notice under Section 13 (2) of the SARFAESI

Act or the decision of the secured creditor rejecting the objection raised against such notice would not give rise to any cause of action under the

SARFAESI Act to initiate an action in law. He further submits that if and when respondents initiate action under Section 13(4) of the SARFAESI

Act, petitioner would have the statutory remedy of filing securitization application under Section 17 of the SARFAESI Act before a jurisdictional

Debts Recovery Tribunal. In the circumstances, learned counsel for the respondents seeks dismissal of the writ petition.

19 Submissions made by learned counsel for the parties have received the due consideration of the Court.

20 Before we advert to Section 13 of the SARFAESI Act, we may refer to the impugned notice dated 16.11.2020 issued by the first respondent. As

per the said notice, petitioner was informed that its loan account was classified as NPA on 31.03.2020 on which date the outstanding dues were

Rs.8,96,45,013-00. Petitioner was called upon to pay the aforesaid amount together with contractual rate of interest within 60 days from the date of

receipt of such notice, failing which it was mentioned that the first respondent would be constrained to enforce the securities mentioned therein

created by the petitioner in favour of the first respondent by exercising any or all the rights under the SARFAESI Act.

21 Section 13 of the SARFAESI Act deals with enforcement of security interest. As per Sub-Section (1), notwithstanding anything contained in

Sections 69 or 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced without the

intervention of the court or tribunal by such creditor in accordance with the provisions of the SARFAESI Act. Sub-Section (2) says that where a

borrower makes any default in repayment of secured debt or any installment thereof and his account in respect of such debt is classified by the

secured creditor as Non Performing Asset, then the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to

the secured creditor within 60 days. Sub-Section (3) clarifies that a notice under Sub-Section (2) should provide for the details of the amount payable

by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debt by the borrower.

22 Sub-Section (3A) of Section 13 along with its proviso are relevant. Those are extracted hereunder:

(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall

consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or

tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation

or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any

right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

23 Before deliberating upon Sub-Sections (2), (3) and (3A) of Section 13, it would be useful to refer to Sub-Section (4) of Section 13. It says that in

case the borrower fails to discharge his liability in full within the period specified in Sub-Section

(2), the secured creditor may take recourse to one or more of the measures mentioned thereunder to recover the secured debt, including taking over of possession of the secured asset.

24 The remaining provisions of Section 13 of the SARFAESI Act may not have much relevance insofar the present writ petition is concerned.

25 From a conjoint reading of Sub-Sections (2), (3) and (3A) of Section 13 of the SARFAESI Act, it is seen that if upon receipt of a notice under Sub-

Section (2) of Section 13, the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or

objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate

the reasons for nonacceptance of the representation or objection to the borrower within a period of 15 days of receipt of such representation or

objection. However, as per the proviso, the reasons so communicated or the likely action of the secured creditor at the stage of communication of

reasons shall not confer any right upon the borrower to prefer an application to the jurisdictional Debts Recovery Tribunal under Section 17 of the

SARFAESI Act or to the Court of District Judge under Section 17A of the SARFAESI Act.

26 At this stage we may also mention that under Section 17(1) of the SARFAESI Act, any person including a borrower who is aggrieved by any of

the measures referred to in Sub-Section (4) of Section 13 taken by the secured creditor or by his authorized officer may make an application before

the jurisdictional Debts Recovery Tribunal within 45 days from the date on which such measure has been taken. The Explanation to Sub-Section (1)

clarifies that the communication of reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely

action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person concerned including the borrower

to make an application to the jurisdictional Debts Recovery Tribunal under Sub-Section (1) of Section 17 of the SARFAESI Act.

27 Reverting back to Sub-Section (3A) of Section 13 of the SARFAESI Act, this Court in Smt. Gudupati Laxmi Devi Vs. Canara Bank,

W.P.No.28291 of 2021, decided on 10.11.2021, held as follows:

5. A careful analysis of sub-section (3-A) of Section 13 of the SARFAESI Act would go to show that upon receipt of notice issued by the secured

creditor under sub-section (2), the borrower has a right to make a representation, or raise any objection, as to the notice so issued. If the borrower exercises that right, then, it is incumbent upon the secured creditor to consider such representation or objection. The use of the word 'shall' in

sub-section (3-A) is indicative of the legislative intent of considering such representation or objection, by the secured creditor mandatory. If the

secured creditor is not satisfied with the representation or objection, and finds it to be unacceptable, or untenable, he shall communicate such decision

within fifteen days along with the reasons to the borrower.

6. While the statute is silent as to what happens in case of a positive decision by the secured creditor on consideration of such representation or

objection, it is axiomatic that once the decision is taken either way, the same has to be communicated to the borrower, notwithstanding the fact that it

would not give rise to a cause of action for moving an application either under Section 17 or under Section 17(A). But the fact remains that it would be

obligatory on the part of the secured creditor to consider the representation or objection of the borrower, and then take a conscious decision one way

or the other, which should be communicated to the borrower within fifteen days of receipt of such representation or objection.

28 Supreme Court in Mardia Chemicals (supra) and in ITC Limited Vs. Blue Coast Hotels Limited 2018 SCC Online SC 237 stressed upon the need

of the secured creditor to consider the representation / objection of the borrower and to communicate the decision taken thereon within the stipulated

period. The secured creditor has to act in a fair and reasonable manner.

29 In the instant case, respondent No.1 issued the impugned notice under Section 13 (2) of the SARFAESI Act on 16.11.2020. Petitioner raised

objection to such notice vide letter dated 24.11.2020 under Section 13 (3A) of the SARFAESI Act, which was replied to by the authorized officer of

the first respondent on 04.12.2020.

30 Thus, on a careful consideration of the statutory language employed in the

proviso to Sub-Section (3A) of Section 13 of the SARFAESI Act read with the Explanation to Sub-Section (1) of Section 17 of the SARFAESI Act, it is crystal clear that a notice under Section 13 (2) of the SARFAESI Act or the rejection of the objection raised to it including the reasons in support thereof would not give rise to a cause of action for instituting an action in law. To that extent, we find sufficient force in the contention advanced by the respondents that the writ petition filed is premature. The statute does not contemplate any intervention at this preliminary stage. Only when the process ripens into a definitive action taken by the secured creditor under Sub-Section (4) of Section 13 of the SARFAESI Act, the aggrieved person can avail the statutory remedy under Section 17 of the SARFAESI Act by filing securitization application before the jurisdictional Debts Recovery Tribunal.

31 This aspect was highlighted by the Supreme Court in Punjab National Bank Vs. Imperial Gift House (2013) 14 SCC 622. In that case, the High Court had interfered with the notice issued under Section 13 (2) of the SARFAESI Act and quashed the proceedings initiated by the Bank. Setting aside the order of the High Court, Supreme Court held that the High Court was not justified in entertaining the writ petition before any further action could be taken by the Bank under Section 13 (4) of the SARFAESI Act.

32 That being the position, we are of the view that filing of this writ petition is misconceived. Consequently Writ Petition No.23643 of 2020 is dismissed. However, dismissal of the writ petition would not foreclose the remedies available to the petitioner under the law as and when the cause of action arises.

33 Let us now take up Writ Petition No.20046 of 2021.

34 In this writ petition Katepalli Lavanya is the petitioner. Prayer made in this writ petition is for a direction to respondent No.2-Union Bank of India, Chikkadapalli Branch, Hyderabad, to release the documents of title pertaining to the building property bearing D.No.5-a/4 in Sy.No.48, IDA, Nacharam, Uppal, Hyderabad by receiving the balance of the outstanding loan amount of the third respondent thereby enabling the third respondent to execute and register a sale deed in favour of the petitioner.

35 Third respondent is M/s. NECX Private Limited, petitioner in W.P.No.23643 of 2020. According to Katepalli Lavanya, the petitioner, third

respondent is the owner and possessor of the building property bearing D.No.5-a/4 in Sy.No.48, IDA, Nacharam, Uppal, Hyderabad (schedule

property or secured asset hereinafter). Respondent No.3 had obtained loan from respondent No.2 by mortgaging the aforesaid schedule property by depositing the title deeds.

36 It is stated that in November, 2019, third respondent had approached the petitioner to sell the schedule property. According to respondent No.3, he

had availed loan from respondent No.2. But the loan account had become NPA. To avoid auction of the schedule property, third respondent requested

the petitioner to clear the outstanding loan amount. In this regard, petitioner and respondent No.3 had entered into an agreement for sale on 17.11.2019

as per which the sale consideration was required to be paid by the petitioner directly to the second respondent which amount was worked out at

Rs.3.50 crores. Respondent No.2, by letter dated 25.11.2019, agreed on the sale consideration of Rs.3.50 crores to be adjusted against the loan

account of the third respondent and thereafter to release the schedule property. It is stated that in terms of the aforesaid agreement dated 17.11.2019,

petitioner paid an amount of Rs.1.00 crore on 19.11.2019. The balance amount of Rs.2.50 crores was agreed to be paid at the time of execution of the

sale deed for which the outer time limit was fixed at three months from the date of the agreement.

37 Though respondent No.3 failed to show the original link documents of title to the banker / financier of the petitioner to enable her to arrange the

necessary finances, nonetheless, petitioner paid the following further amounts by way of cheques:

(i) Rs.10.00 lakhs on 27.02.2020

(ii) Rs.5.00 lakhs on 27.02.2020

(iii) Rs.5.00 lakhs on 15.06.2020

(iv) Rs.25.00 lakhs on 29.06.2020

38 Thus, according to the petitioner she had paid a total amount of Rs.1,45,00,000-00 and was ready to pay the remaining balance amount of

Rs.2,05,00,000-00 to respondent No.2 whenever the third respondent released the title deeds of the schedule property. It is asserted that the amount of

Rs.1,45,00,000-00 paid by the petitioner to the third respondent has been deposited in the loan account of the third respondent.

39 On one pretext or the other, third respondent did not show the original documents of title of the schedule property to the petitioner and in the meanwhile the pandemic broke out. As a result the sale deed could not be executed.

40 Third respondent issued a notice dated 25.06.2021 calling upon the petitioner to pay the balance amount within 15 days and to get the sale deed executed. Petitioner replied on 10.07.2021, marking a copy to respondent No.2, stating that she was ready to pay the balance amount and sought for fixation of a date for execution of the sale deed. However, respondent No.2 informed the petitioner by letter dated 19.07.2021 that it was not a party to the agreement between petitioner and respondent No.3.

41 It is in such circumstances that the present writ petition has been filed seeking the relief as indicated above.

42 Respondent Nos.1 and 2, in their common counter affidavit, have stated that there is no privity of contract between the petitioner and respondent Nos.1 and 2. On the contrary, it is respondent No.3 who is liable to pay a sum of Rs.884.366 lakhs together with interest as on 31.03.2020 to respondent No.2.

43 The dispute is between petitioner and respondent No.3 and it is for the petitioner to initiate a civil action for specific performance of contract against third respondent. According to respondent Nos.1 and 2, third respondent has created mortgage by way of deposit of title deeds under Section 58 (f) of the Transfer of Property Act, 1882, over the secured asset on 16.11.2009. The alleged agreement for sale dated 17.11.2019 is subsequent to the creation of mortgage by respondent No.3.

44 Respondent No.3 had approached respondent No.2 seeking permission for release of the secured asset. Respondent No.2, vide letter dated 25.11.2019, conveyed the permission for sale of the secured asset subject to the condition that the entire sale consideration should be deposited with respondent No.2. Respondent No.2 has acknowledged receipt of Rs.1.00 crore out of the sale consideration of Rs.3.50 crores. It is stated that once the total sale proceeds of Rs.3.50 crores as per the agreement for sale is received, respondent No.2 would release the secured asset. However, respondent No.3 has not yet paid the balance amount of Rs.2.50 cores as per the agreement.

45 On the contrary, the loan account of respondent No.3 became NPA pursuant to which respondent No.2 initiated proceedings under the SARFAESI Act and issued demand notice dated 16.11.2020 which is the subject matter of challenge in W.P.No.23643 of 2020 filed by the third respondent.

46 Third respondent has also filed counter affidavit. It is stated that because of financial crunch respondent No.3 had entered into agreement for sale with the petitioner on 17.11.2019 for sale of the office building (schedule property) for a total sale consideration of Rs.3.50 crores payable within three months from the date of agreement. While the petitioner paid Rs.1.00 crore out of the total sale consideration, she failed to pay the balance amount within the time period as per the agreement for sale. Because of such default on the part of the petitioner, respondent No.2 has initiated action against respondent No.3 under the SARFAESI Act.

47 Respondent No.3 has denied that petitioner had ever approached it for link documents. It is stated that it was well within the knowledge of the petitioner that such documents are in the custody of respondent No.2 and would be released only upon full payment of the sale consideration.

48 Contending that the remedy of the petitioner is to approach the competent civil court for specific performance of contract, respondent No.3 seeks dismissal of the writ petition.

49 Rival submissions made are on pleaded lines. Therefore, a detailed reference to the same is considered not necessary. However, the submissions so made have received the due consideration of the Court.

50 From the materials on record what is discernible is that respondent No.3 had availed a loan from respondent No.2 by mortgaging the schedule property. The title documents of the schedule property are in the custody of respondent No.2. Because of the financial crisis, respondent No.3 found it difficult to repay the loan for which the loan account was classified as NPA leading to action under the SARFAESI Act. To tide over the difficult situation, respondent No.3 and petitioner entered into an agreement for sale dated 17.11.2019 for sale of the schedule property at a sale consideration of Rs.3.50 crores which was to be adjusted towards the loan account of respondent No.3. In terms of the loan agreement, petitioner paid an amount of Rs.1.00 crore on 19.11.2019. The balance amount of Rs.2.50 crores was

required to be paid within three months from the date of agreement. It

appears that petitioner failed to pay the balance of the sale consideration amount which has led to the present stalemate.

51 Having noticed the above, we may advert to letter dated 25.11.2019 of respondent No.2 addressed to respondent No.3. As per the said letter, third respondent was informed that the competent authority of respondent No.2 had permitted sale of the corporate office of respondent No.3 (schedule property) on the following terms and conditions:

i. The entire sale consideration should be deposited with respondent No.2 in order to clear the outstanding dues.

ii. Competent authority had instructed respondent No.2 to take fresh valuation of the property. As a result, respondent No.2 had entrusted valuation works to its panel valuers.

iii. Once the total sale proceeds i.e. Rs.3.50 crores is adjusted against the outstanding dues, respondent No.2 would be free to release the schedule property in the name of the third respondent.

52 Thus from the above, it is evident that the proposed sale of the secured asset by respondent No.3 to the petitioner through the agreement of sale dated 17.11.2019 had the approval of respondent No.2. However, it was a bipartite agreement between petitioner and respondent No.3 and respondent No.2 was not a party to the said agreement.

53 While both respondent Nos.1 and 2 as well as respondent No.3 have asserted that the remedy of the petitioner is by way of a civil suit for specific performance of contract and therefore the writ petition is not maintainable, nonetheless, respondent Nos.1 and 2 have stated in paragraph No.6 of their counter affidavit that once the total sale proceeds of Rs.3.50 crores as per the agreement for sale is received, the bank would be free to release the secured asset.

54 While admittedly the dispute raised by the petitioner is private and contractual between petitioner and respondent No.3 and therefore a writ petition under Article 226 of the Constitution of India may not be the proper remedy, nonetheless, Court is of the view that this is a matter which can be sorted out by the petitioner, respondent No.3 and respondent No.2 by way of negotiations. Therefore, in the facts and circumstances of the case, while the

Court is not inclined to entertain the writ petition, Court is however of the view that there is scope for redressal of the grievance of the petitioner

Katepalli Lavanya if all the stakeholders sit together and thrash out a settlement which will not only benefit respondent No.2 but also lessen the burden

of respondent No.3 to a large extent.

55 In the ultimate analysis, while we leave it to the wisdom of the parties in W.P.No.20046 of 2021 to strive for and reach an amicable settlement,

intervention of the writ Court is not possible.

56 Accordingly, both the writ petitions are dismissed. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in these two writ

petitions, shall also stand dismissed.