
(2012) 06 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11841 of 2012

M/s. Pragati Hightech Products Pvt. Ltd.	APPELLANT
Vs	
District Magistrate, Yamuna Nagar and Others	RESPONDENT

Date of Decision : 08-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 14, 17
State Financial Corporations Act, 1951 — Section 32G

Citation : AIR 2012 P&H 141

Hon'ble Judges : Tejinder Singh Dhindsa, J; L.N. Mittal, J

Bench : Division Bench

Advocate : Rahul Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—M/s. Pragati Hightech Products Pvt. Ltd. - borrower from respondent No. 3 -- Oriental Bank of Commerce has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India impugning order dated 21.05.2012 (Annexure P-7) passed by District Magistrate (respondent No. 1) and notice dated 30.05.2012 (Annexure P-8) issued by Tahsildar (respondent No. 2). Respondent No. 3 - Bank has initiated proceedings u/s 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short - the Act) for taking possession of the secured assets. The petitioner is already said to have filed appeal u/s 17 of the Act before Debts Recovery Tribunal (in short - the Tribunal), but interim stay has not been granted to the petitioner.

2. Respondent No. 3 moved respondent No. 1-District Magistrate u/s 14 of the Act to take over physical possession of the secured assets. Accordingly, respondent No. 1 has passed order Annexure P-7 addressed to Tahsildar -- respondent No. 2 for taking possession of the secured assets/mortgaged

property and to hand over the same to respondent No. 3 - Bank. Pursuant thereto, respondent No. 2 Tahsildar has issued notice Annexure P-8 to the petitioner for handing over possession of the secured assets, failing which the possession would be taken by breaking open the locks, if necessary.

3. We have heard counsel for the petitioner and perused the case file.

4. Counsel for the petitioner vehemently contended that District Magistrate was required to afford opportunity of hearing to the petitioner before passing impugned order Annexure P-7. Reliance in support of this contention has been placed on judgment of Single Bench of Gujarat High Court in the case of Authorised Officer, Canara Bank v. Sulay Traders through Bipin Kantilal Vakta in Special Civil Application No. 1123 of 2010 : (AIR 2010 Guj 91). Reference has also been made to judgment of Hon''ble Supreme Court namely Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others, relating to interpretation of Section 32-G of State Financial Corporation Act, 1951.

5. We have carefully considered the aforesaid contentions, but find ourselves unable to accept the same.

6. The very purpose of the Act is to expedite the enforcement of the security interest of Banks and other Corporations covered by the Act. Principles of natural justice are complied with by issuing notice u/s 13 of the Act. Aggrieved person also has right to appeal against order passed by the Bank or Financial Institution u/s 13 of the Act by preferring appeal u/s 17 of the Act. In the instant case, the petitioner has even availed of the said remedy and his appeal is said to be pending before the Tribunal. However, interim stay has not been granted to the petitioner. Consequently, respondent No. 3 - Bank has right to take possession of the secured assets and also has right to seek assistance of the District Magistrate u/s 14 of the Act to take possession of the secured assets. In this view of the matter, District Magistrate is again not required to afford opportunity of hearing to the defaulting borrower. In this view, we are supported by Division Bench judgment of Bombay High Court in the case of M/s. Trade Well and another v. Indian Bank and another passed in Criminal Writ Petition No. 2767 of 2006 pronounced on 02.04.2007 : (AIR 2007 (NOC) 1634 (Bom)).

7. Judgment of Gujarat High Court in the case of Authorised Officer, Canara Bank (supra) does not lay down the proposition of law sought to be canvassed by the counsel for the petitioner. It does not lay down that District Magistrate, while acting u/s 14 of the Act, has necessarily to grant opportunity of hearing to the defaulting borrower before rendering assistance to the Financial Institution or Bank for taking possession of the secured assets. On the contrary, according to this judgment, only if the District Magistrate entertains any doubt about compliance with requirement of Section 13 of the Act, the District Magistrate would have two options i.e. either to call upon the Bank to supply the necessary details or to issue notice to the borrower for verifying the satisfaction of requirement of Section 13 of the Act. In other words, if the District Magistrate

has no doubt about compliance with Section 13 of the Act, then even according to this judgment, District Magistrate has to straightway proceed to take possession of the secured assets and to hand over the same to the Bank or Financial Institution, without affording opportunity of hearing to the borrower. Consequently, this judgment of Gujarat High Court also does not support the contentions raised by counsel for the petitioner.

8. Judgment of Hon"ble Supreme Court in the case of Delhi Financial Corporation (supra) has no applicability to the instant case because the same pertains to Section 32-G of the State Financial Corporations Act, 1951 and not to Section 14 of the Act. Both these provisions are not pari materia.

9. For the reasons aforesaid, we find that there is no infirmity or illegality in the impugned order (Annexure P-7) passed by respondent No. 1 and impugned notice (Annexure P-8) issued by respondent No. 2. No opportunity of hearing was required to be afforded to the petitioner before passing of order Annexure P-7. Resultantly, we find no merit in this writ petition, which is, therefore, dismissed in limine.