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**(2013) 11 UK CK 0016**

**In the Uttarakhand High Court**

**Case No : Writ Petition No. 1841 (M/S) of 2013**

M/s. Sahara Industries and Others

APPELLANT

Vs

State Bank of India

RESPONDENT

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**Date of Decision : 25-11-2013**

**Acts Referred:**

**Citation : AIR 2014 Utt 19 : (2014) 2 BC 669**

**Hon'ble Judges : Sudhanshu Dhulia, J**

**Bench : Single Bench**

**Advocate : M.C. Bansal and Atul Bansal, for the Appellant; S.K. Jain and B.S. Thind, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Sudhanshu Dhulia, J.—Petitioners had borrowed a loan from the respondent-Bank, namely, State Bank of India, Main Branch, Kashipur, District-Udham Singh Nagar in the year 2010, for an amount of Rs. 65.00 lakhs. This loan could not be repaid and, consequently, the respondent-Bank proceeded under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (from hereinafter referred to as "the SARFAESI Act"). A notice u/s 13(2) of the SARFAESI Act, 2002 was given to the petitioners to which petitioners gave a reply. Meanwhile, the respondent-Bank also filed an Original Application before the Debt Recovery Tribunal, Lucknow u/s 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (from hereinafter referred to as "the DRT Act"). Thereafter, the Bank proceeded u/s 13(4) of the SARFAESI Act and took a symbolic possession of the secured asset, namely, the land which was mortgaged to the Bank.

2. Now, actual possession is being taken and further proceeding are to be done by the Bank, as indicated u/s 13(4) of the SARFAESI Act. Meanwhile, the respondent-Bank proceeded to file another application before the DRT u/s 19(1) of the DRT Act.

3. Being aggrieved, the petitioners filed present writ petition before this Court, wherein the ground taken by the petitioners is that when an application u/s 19(1) of the DRT Act has already been filed by the Bank before the DRT, it cannot further proceed u/s 13(4) of the SARFAESI Act. This argument is based on two grounds, (a) Bank has already given a notice u/s 13(2) of SARFAESI Act, they cannot proceed under any other provision of law against the borrower and, (b) they have to take prior permission of the Debt Recovery Tribunal before proceeding further against the borrower in terms of proviso to Section 19(1) of the DRT Act. Section 19(1) of DRT Act reads as follows:

19. Application to the Tribunal.--(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction--

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(c) the cause of action, wholly or in part, arises

Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under subsection (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.

4. In short the argument of the petitioners would be that the Bank had two remedies by which it could recover its loan, (a) either by moving an application before the DRT, or (b) by invoking provisions provided under SARFAESI Act. Since the respondent-Bank has elected to proceed under the DRT Act to recover its loan, it cannot proceed against the petitioners under the SARFAESI Act.

5. Learned counsel for the petitioners, in order to strengthen his case, relied upon a case in M/s. Purnea Cold Storage Vs. State Bank of India,

6. On the other hand, submission of the learned Senior Counsel Mr. S.K. Jain is that two remedies available to the respondent under the DRT Act as well as under the NPA Act are complementary to each other and Bank is at liberty to proceed either under the NPA Act or even to file an application before the DRT and both the proceedings are, infact, not two remedies but it is only one remedy to recover its loan from the borrower.

7. The argument of the petitioners that respondent is restrained to take benefit of provisions of SARFAESI Act, 2002, as it has already moved an application before the Debt Recovery Tribunal is totally misconceived. Provisions of Section 35 of the SARFAESI Act, 2002 have overriding effect over other laws and the Hon"ble Apex Court in the case of Transcore Vs. Union of India (UOI) and Another, has also held that both DRT Act as well as SARFAESI Act are complementary to each other and there is no provision in either of the Acts to debar initiation of a proceeding under the SARFAESI Act during the pendency of the proceeding under DRT Act. Section 35 of the SARFAESI Act, 2002 reads as follows:

35. The provisions of this Act to override other laws.--The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

8. The provision which is contemplated u/s 19(1) of the DRT Act is a provision which only emphasizes a particular contingency. Hon"ble Apex Court in the case of Transcore Vs. Union of India (UOI) and Another, has dealt the purpose of Section 19 of the DRT Act, which reads as follows:

The question still remains as to the object behind insertion of the three provisos to Section 19(1) of DRT Act vide amending Act 30 of 2004. The DRT is a tribunal, it is the creature of the statute, it has no inherent power which exists in the civil courts. Order XXIII, Rule 1(3), CPC states inter alia that where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim then the civil court may, on such terms as it thinks fit, grant the plaintiff permission to withdraw the entire suit or such part of the claim with liberty to institute a fresh suit in respect thereof. Under Order XXIII, Rule 1(1)(4)(b), in cases where a suit is withdrawn without the permission of the court, the plaintiff shall be precluded for instituting any fresh suit in respect of such subject-matter. Order XXIII, Rule 2 states that any fresh suit instituted on permission granted shall not exclude limitation and the plaintiff should be bound by law of limitation as if the first suit had not been instituted. Order XXIII, Rule 3 deals with compromise of suits. It states that where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise or where the defendant satisfies the plaintiff in respect of whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith.

The object behind introducing the first proviso and the third proviso to Section 19(1) of the DRT Act is to align the provisions of DRT Act, the NPA Act and Order XXIII CPC. Let us assume for the sake of argument, that an O.A. is filed in the DRT for recovery of an amount on a term loan, on credit facility and on hypothecation account. After filing of O.A., on account of non-disposal of the O.A. by the tribunal due to heavy backlog, the bank finds that one of the three accounts has become sub-standard/loss, in such a case the bank can invoke the NPA Act with or without the permission of the DRT. One cannot lose sight of the fact that even an application for withdrawal/leave takes time for its disposal. As stated above, with inflation in the economy, value of the pledged property/asset depreciate on day to day basis. If the borrower does not provide additional asset and the value of the asset pledged keeps on falling then to that extent the account becomes non-performing. Therefore, the bank/FI is required to move under NPA Act expeditiously by taking one of the measures by Section 13(4) of the NPA Act. Moreover, Order XXIII, CPC is an exception to the common law principle of non-suit, hence the proviso to Section 19(1) became a necessity.

For the above reasons, we hold that withdrawal of the O.A. pending before the DRT under the DRT Act is not a pre-condition for taking recourse to NPA Act. It is for the bank/FI to exercise its discretion as to cases in which it may apply for leave and in cases where they may not apply for leave to withdraw. We do not wish to spell out those circumstances because the said first proviso to Section 19(1) is an enabling provision, which provision may deal with myriad circumstances which we do not wish to spell out herein.

In view of the aforesaid facts and circumstances, the writ petition has no force. It is hereby dismissed. Interim order dated 22.10.2013 stands vacated.