
(2020) 10 DRT CK 0003

In the Debts Recovery Tribunal

Case No : Securitisation Application No. 238 Of 2020

M/s. SLN Gaja Industries And Ors.

APPELLANT

Vs

Syndicate Bank

RESPONDENT

Date of Decision : 26-10-2020

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(3-A), 13(4), 14, 17

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(20)
Limitation Act, 1963 — Section 5

Citation : (2020) 10 DRT CK 0003

Hon'ble Judges : S.V. Gowramma, J

Bench : Single Bench

Advocate : M.A.Rajendra, Vignesh Shetty

Final Decision : Dismissed

Judgement

1. The present SA No.238/2020 is filed by the Applicant to declare that all the measures initiated by the Respondents under the provisions of the SARFAESI Act, 2002 under section 14 read with section 13(4) of the Act, is invalid and to quash/set aside - Annexure- "A-I" THE Order dated 18.09.2019 in Case No.RAJIKA/MISC/PETITION/41/2018-19. The amount due to the respondent bank as per Annexure A-1 is Rs.2,53,38,055.37/- [Rupees Two Crores Fifty Three Lakhs Thirty Eight Thousand and Fifty Five and Paise Thirty Seven Only).

2. The 1stApplicant is a registered partnership firm consisting of two partners who are none other than husband and wife, who are arrayed here as 3rd and 4th Applicants.

3. The applicant had availed credit facilities to an extent of Rs.2,30,00,000/- under a priority sector which falls under the category of MSME which is entitled for subsidy facility.

4. It is the case of the applicant that the Respondent Bank classified the account

as "Non-performing Assets" as on 29.10.2018, and have Issued Annexure-A-3, the Demand Notice dated 03.11.2018. In the said notice the bank has bifurcated the loan which are classified as "Non Performing Assets", hence the applicants cannot contest on the determination of the "Debt", alleged to have been arrived at by the Respondent Bank.

5. However, on receipt of the demand notice, the applicant raised objection to which the respondent bank has not replied and have issued Annexure-"A-4" the Possession Notice dated 10.01.2019, claiming therein a sum of Rs.2,53,38,055.37 as on 01.11.2018. The Applicant approached the Bank and requested to regularise the account or to settle the account under OTS scheme of the bank, without any discrimination.

6. The Respondent Bank have obtained the Order dated 18.09.2019 from the Hon'ble Dy.Commissioner/District Magistrate, Ramnagar Aggrieved by Annexure A1, the present SA is filed. In the grounds of the SA, it is contended that all the measures initiated by the Respondent Bank under Section 13(2) of the SARFAESI Act, 2002, is void ab-initio and has to be set aside in lumine with exemplary cost., in view of non-compliance of mandatory provision of Section 13(3-A) of the Act.

7. The claim of the Respondent Bank cannot be constructed as legally recoverable "Debt", unless amount outstanding in each of the loan account is furnished, with break up figures, thereon. Further the mandatory and statutory notices are not served/affixed as per the provisions of the Act, to all the Applicants herein.

8. Therefore, the Applicants prayed to declare and order that all measures initiated by the Respondents under the provisions of the SARFAESI Act, 2002 under Section 14 read with Section 13(4) of the Act, - Annexure-"A1 is invalid and liable to be quashed/set aside- Annexure-"A-1". The applicant has filed application under section 5 of the limitation Act for condoning the delay of 19 days in filing the Securitization application.

9. The respondent bank has filed their objections inter alia contending that the application u/s 17 of the SARFAESI Act, 2001 is not maintainable either in law nor on facts of the case as the applicant has approached this Hon'ble Tribunal with most unclean hands and concealing the true facts before seeking the order from this Hon'ble Tribunal applicant. The Interim Application for condonation of delay has been filed with mala fide intentions and ulterior motives purely to delay the enforcement of the security interest held by Respondent No.1.

10. The Applicant nowhere in the Interim Application or affidavit in support thereof enumerated what prevented them in challenging the SARAFESI measures adopted by the Respondent No.1 Bank. It is incumbent upon the Applicant to put forth the reasons of each and every days delay in filing the Application for Condonation of Delay of 19 days.

10.1 The present application is based on gross suppression of material facts, misrepresentation and is a malafide attempt on the part of the applicant from restraining the respondent Bank and /or its assignees from proceeding against the borrower under the provisions of the SARFAESI Act, 2002. No credence is required to be given to the preset application and the same does not even require any consideration for a proper and effective adjudication.

10.2 It is the case of the bank that the 1st applicant approached the Bank for financial assistances and after due diligence, the bank sanctioned financial assistances to Applicant No.1, a sum of Rs.55.00 lakhs towards working capital and Rs.230 towards term loan vide sanction letter dated 12.10.2017 subject to creating first charge on hypothecation of stock, book debts and other current assets on working capital requirements and additional charge on term loan asset created out with bank finance and associated with business.

11. The credit facilities were secured by the 1st and 2nd applicant by creating mortgage of schedule properties vide Memorandum of Deposit of Title Deed dated 07.10.2017. However, after availing the loans, the applicants failed and neglected to make payment of the EPIIs as per the terms and conditions stipulated in the loan agreement and the account became irregular and ultimately declared as Non-Performing Asset on 29.10.2018 as per the guidelines of the RBI Plaster Circular UBDBPD[PCB] MCNo.3/09.14.000/2014-15 dated 01.07.2014 and under Clause 2.2.2 it enumerates that a single/solo borrower having availed various facilities from the bank and the classification of NPA to be done in together even if the other accounts of the borrowers are regular.

12. Hence, the respondent Bank issued a notice dated 03.11.2018 u/s 13(2) of the SARFAESI Act, 2002 calling upon the applicants to make payment of the outstanding loan amount of Rs.2,53,28,055.37/- within 60(sixty) days from the date of the notice. The same was duly accepted and acknowledged. Even after receipt of demand notice, Applicants failed and/or neglected to repay the outstanding liabilities to the bank, hence, the respondent Bank was compelled to issue the possession notice u/s 13(4) dated 10.01.2019 and took symbolic possession of the secured property. The said possession notice was also affixed on the conspicuous part of the subject property. In this connection.

13. After taking symbolic possession of the secured property, the respondent bank published the possession notice in the two widely circulated newspapers namely "The New India Express", English Edition and "Kannada Prabha", Kannada Edition dated 12.01.2019 in compliance with the provisions of the SARAFESI Act and the Rules framed there under.

14. In the meantime, the respondent bank had also proceeded further under Section 14 of the SARAFESI Act, 2002 and the same was also allowed by order dated 18.09.2019. the Learned District Magistrate, Ramanagar had also ordered to take physical possession of the subject property. (Annexure A-1 of the SARAFESI application)

15. The applicants are making up false, baseless and reckless allegations as and by way of afterthought, in an attempt to keep the subject property out of the process initiated against them under the said Act of 2002. No lawful or valid ground has been or could be made by the applicant in support of his purported reliefs.

16. It is submitted that a court cannot issue any direction to a party to enter into a compromise or settlement. By the very nature of things a settlement involves consent and it is a voluntary act of the party. In a matter where a creditor is enforcing its liability upon the debtor, the debtor has no legal right to claim that the claim be settled on favourable terms proposed by him whereby the claim of the creditor is reduced.

17. There is no substance in the present application and the same is wholly unmeritorious, contrary to the well settled proposition of law. The applicant is a dishonest litigant and has made false statements on oath thereby committed perjury of this Hon'ble Tribunal and the same would be evident from the facts state hereinabove.

18. It is denied that the Hon'ble Tribunal has any reason In declare that all the measures initiated by the respondent under the provision of SARFAESI Act, 2002 under section 14 read with Section 13(4) is invalid and not in accordance with the provision of the Act and liable to be quashed/set aside.

19. Hence, it is submitted that the present application is prima facie not maintainable, complete abuse of the process of the SARFAESI Act and is liable to be dismissed with exemplary costs.

Heard the submissions which came to be made by the Ld Counsels appearing for their respective parties and perused the records available fn the case.

20. It is acknowledged fact that the 1st applicant is a partnership firm and the 3rd and 4th applicants are its partners. The 1st applicant availed working capital of Rs. 55 lakhs and a term loan of Rs.230 lakhs for setting up RO plant in Ramangar vide sanction letter dated 12.10.2017. The credit facilities were secured by mortgage of industrial converted immoveable property bearing Sy. No. 443 Sy.No.453 measuring 1.3 acres and industrial converted land in Sy. No. 445 measuring 1.39 acres both situated at Veebhuthukere Village, Ramanagar Taluk by deposit of title deeds favouring the respondent bank.

21. There is no dispute in default for repayments towards the credit facilities resulting in the classification of the accounts as NPA. The only contention taken by the applicant is that the bank without bifurcating the loan accounts has classified the account as NPA where some of the accounts are regular.

22. The said contention is refuted by the respondent bank and takes this Tribunal to the Master Circular UBDBPD[PCB] MCNo.3/09.14.000/2014-15 dated 01.07.2014 and under Clause 2.2.2 it is clearly mentioned that if a single/solo borrower has availed various facilities from the bank and the classification of NPA

to be done in together even if the other accounts of the borrowers are regular. A reading of the clauses, it is clear that if one account of the borrower is irregular, all other accounts to be classified as NPA. Hence, the contention does not merit any further consideration and the same fails.

23. Undisputedly, the applicant have received the S. 13[2] demand notice and on receipt of the same the applicants claims to have raised an objection under S. 13[3A] and it is contended that the bank has not replied. However, it is categorically denied by the bank that no such representation is received by them.

24. It is seen from the case paper that the applicant has also not produced the copy of any such representation to S. 13[2] alleged to have been given to the bank. In absence of any documents to substantiate that the applicant had given representation and the respondent failed to reply needs no further adjudication does not arise.

25. It is revealed from the records that the applicants failed to liquidate the liability as demanded in S. 13[2] notice within 60 days, hence the respondent bank has proceeded further and issued S.13[4] possession notice dated 10.01.2019. There is no dispute with regard to the measures under S. 13[4] nor the applicants have any grievance with issuance of possession notice.

26. Since the applicants did not repay the outstanding due even after receipt of statutory notices, the respondent bank has approached the District Commissioner Ramanagar District under S.14 in Case No. RAJIK/MISC/PETITION?41/2018-19 to take the physical possession of the secured assets. The Ld. District Commissioner vide Order dated 18.09.2019 directed the Applicants to hand over the physical possession of the property within 30 days through Tahsildar Ramnagar. Further it is directed that in case, if the applicant hand over the possession, then the Tahsildar to take the possession of the property with the help pf the Superintendent of Police and then handover the property to the bank.

27. This order of the DC is challenged by the applicant with a delay of 19 days along with the affidavit of the G.Lokesh representing the 1st applicant firm and on behalf of the 3rd and 4th applicants. It is contended that the SA papers were accepted in principle and was returned for want of court fee and non compliance of the provisions the Act.

28. It is contended that the applicants were not in station and had gone to their village to attend the funeral of their relative and hence could not comply S.17 and the applicant signed the papers on 02.11.2019 and paid the court fee of Rs.6,000/-. Hence there occurred a delay of 19 days. On the contrary the applicants in their case papers under Limitation heading at SI. No.4. has falsely declared and confirmed that the application is filed within 45 days free the date of the DC order.

29. The contradictory averments made by the applicants is highly depreciated

and un called for, which shows their mala fide intentions in dragging the proceedings initiated by the bane. Further the applicants have not made out a case to condone the delay of 19 days, wherein each day's delay needs to be explained and justified. A mere submission that the applicants had gone to attend a funeral does not merit any attention. Hence, the delay application fails and the same is dismissed.

30. The applicants do not dispute the loan availment, creation of mortgage nor the measures initiated by the respondent bank. Concededly the statutory notices are received by them and the contention raised with regard to classification of account as NPA is countered by the respondent bank relying on the Master Circular.

31. It is evident from Annexure A2, the S.14 application and the affidavit, it is clear that the respondent has mentioned the details of the loan, the creation of security interest over property as collateral security towards the loan, default in repayment, classification of account as NPA, issuance of 13[2] notice and its postal acknowledgment cards at Annexure E and F for having received the notices and all the details enumerated in the clause i to ix prescribed under Section 14 Act is incorporated in the affidavit filed before the DC, Ramanagar. It is established by the respondent bank that they have complied with all the procedures under S. 14 as mandated under the Act.

32. On examination of factual matrix of the case coupled with the documents produced by the both the parties, the Tribunal comes to the conclusion that the Applicants have failed to establish any illegality in the proceedings initiated by the bank. Therefore all the grounds urged in this SA do not have any legal foundation and the said grounds urged do not rebut the proceedings initiated by the respondent bank which is in accordance with the procedures prescribed under the ACT and Rules thereunder.

33. For the forgoing reasons, the present SA 238/2020 is dismissed holding that the respondent bank as secured creditor has followed all the mandatory provisions and procedures as prescribed under the Act and the same are held as valid. Consequently, any interim order if any stands vacated and all pending IA/s if any are also disposed of.

No order as to cost,

(Dictated to the PS(PJ), after its transcription and necessary corrections, signed and pronounced by me in the Open Court on this 26th Day of October, 2020)

APPENDIX

LIST OF DOCUMENTS PRODUCED BY THE APPLICANT

SI No.

Date

Particulars

Annexure

1

D. C. Court order and Kannada to English Translated copy

A1

2

31.01.2019

Section 14 Petition

A2

3

03.11.2018

Demand Notice

A3

4

10.01.2019

Possession Notice

A4