

(2019) 12 UK CK 0004
In the Uttarakhand High Court
Case No : Special Appeal No. 1005 Of 2019

M/s Solitaire Enterprises

APPELLANT

Vs

Punjab National Bank, SIDCUL Branch, Haridwar

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(4)
Arbitration And Conciliation Act, 1996 — Section 7(4)(c), 11
Security Interest (Enforcement) Rules, 2002 — Rule 8(6)
Constitution Of India, 1950 — Article 226

Citation : (2019) 12 UK CK 0004

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Shikhiar Kacker, V.K. Kohli, Rajni Supyal

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. This intra-Court appeal is preferred by the petitioner in Writ Petition (M/S) No. 3476 of 2019 aggrieved by the order dated 15.11.2019 passed by the learned Single Judge disposing of the writ petition.
2. The appellant herein invoked the jurisdiction of this Court seeking a writ / direction to quash the letter of the respondent-Bank dated 16.10.2019 directing the appellant-writ petitioner to deposit Rs. 6,51,238.52 with respect to interest for the period from 01.01.2018 to 15.10.2019, and legal charges of Rs. 2,00,000/-; and for a writ of mandamus directing the respondent-Bank to forthwith issue a 'No Dues Certificate' to the appellant-writ petitioner, and return the original title-deed in respect of the immovable property mortgaged with the respondent-Bank against the appellant-writ petitioner's loan account.
3. Facts, to the limited extent necessary, are that the appellant-writ petitioner availed cash credit facility from the respondent-Bank, which was secured against

the mortgage of the dwelling unit of the guarantor. On a notice being issued under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the 'SARFAESI Act') on 09.02.2018, declaring the appellant-writ petitioner's loan account as a 'non-performing asset', a demand notice for Rs. 41,73,748, with further interest with effect from 01.01.2018 until payment in full is made and for other charges, was issued on 31.01.2019.

4. The appellant-writ petitioner deposited a part of the loan amount, and reduced the outstanding balance. After proceedings under Section 13(4) of the SARFAESI Act, read with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (for short the '2002 Rules'), was issued informing the appellant-writ petitioner of e-auction of the dwelling unit on 11.03.2019, the appellant-writ petitioner invoked the jurisdiction of the Debts Recovery Tribunal by way of SA No. 58 of 2018, which was disposed of without giving any relief to the appellant-writ petitioner. The appellant-writ petitioner, thereafter, filed Writ Petition (M/S) No. 584 of 2019 before this Court and, while directing the appellant-writ petitioner to deposit 25% of the total outstanding dues, this Court, by its order dated 29.03.2019, permitted the appellant-writ petitioner to pay the entire outstanding dues in four equal quarterly installments, first of which was to be paid within two months from the date of the order i.e. before 30.05.2019. The appellant-writ petitioner claims to have deposited the amount in compliance with the orders of this Court.

5. While matters stood thus, the appellant-writ petitioner received a notice from the District Legal Services Authority, Haridwar on 12.07.2019 regarding Pre-Litigation Suit No. 2 of 2019, instituted by the respondent-Bank, claiming Rs. 10,63,053 as the outstanding amounts due towards the loan-account of the appellant-writ petitioner. The fact, however, remains that no settlement was arrived at between the parties, nor was any award made under the provisions of the Legal Services Authorities Act, 1987. The appellant-writ petitioner, thereafter, deposited Rs. 3,00,000/-, and requested the respondent-Bank, by his letter dated 27.08.2019, to permit him to pay the balance amount within twenty days. Again, by his letter dated 18.09.2019, the appellant-writ petitioner requested the respondent-Bank to receive the balance amount of Rs. 2,63,053/-. The respondent-Bank, however, issued the impugned proceedings informing the appellant-writ petitioner that the total outstanding amount was Rs. 6,51,238.52 with respect to interest for the period 01.01.2018 to 15.10.2019, besides legal charges of Rs. 2,00,000/-. Questioning this order, the appellant-writ petitioner again invoked the jurisdiction of this Court.

6. In the order under appeal, the learned Single Judge, after taking note of the rival submissions and with a view to resolve the dispute, directed the appellant-writ petitioner to deposit Rs. 3,00,000/- within a period of two weeks from the date of the order and directed the respondent-Bank, thereafter, to consider granting the appellant-writ petitioner the one-time settlement, as also the appellant-writ petitioner's plea not to insist on legal charges. The respondent -

Bank was directed to take a decision within one month. Aggrieved thereby, the appellant-writ petitioner is now in appeal before us.

7. Sri Shikhar Kacker, learned counsel for the appellant-writ petitioner, would submit that the claim of the respondent-Bank, in the pre-litigation case filed before the District Legal Services Authority, Haridwar, must be treated as a plaint; it is on the basis of such a claim was the Secretary, District Legal Services Authority required to consider the possibility of settlement between the parties; and having made such a claim before a duly constituted Tribunal, the respondent-Bank cannot later be permitted to resile therefrom, and claim a higher amount. Learned counsel would place reliance in this regard on *G. Kapoor vs. Reacon Engineers Pvt. Ltd.*: 2019 SCC OnLine Del 10667.

8. In *G. Kapoor* the question, which arose for consideration before the Delhi High Court, was whether an arbitration agreement could be inferred from the exchange of letters between the parties, for the jurisdiction of the High Court under Section 11 of the Arbitration and Conciliation Act, 1996 (for short the '1996 Act') to be invoked. It is in this context that the Delhi High Court, relying on the judgments of the Supreme Court in *S.N. Prasad Hitek Industries (Bihar) Ltd. vs. Monnet Finance Ltd* : (2011) 1 SCC 320, held that the words, 'statements of claim and defence', occurring in Section 7(4)(c) of the Arbitration and Conciliation Act, were not restricted to the statement of claim and defence filed before the arbitrator; if there was an assertion of the existence of an arbitration agreement in any suit, petition or application filed before any court, and if there was no denial thereof in the defence / counter / written statement thereto filed by the other party to such suit, then it could be said that there was an 'exchange of statement of claim and defence' for the purposes of Section 7(4)(c) of the Act; even if, in the application filed under Section 11 of the Act, the applicant asserts the existence of an arbitration agreement, and the respondents do not deny such an assertion in their statement of defence, the Court can proceed on the basis that there is an arbitration agreement in writing between the parties. The aforesaid observations, made in the context of determining whether there exists an arbitration agreement for the jurisdiction of the High Court under Section 11 of the 1996 Act to be invoked, cannot be extrapolated and be applied in a completely different context such as in the facts and circumstances of the present case.

9. While it is true that the respondent-Bank instituted a pre-litigation case before the Secretary, District Legal Services Authority, and the amount mentioned in the summons issued thereunder is now contended by them to be erroneous, the High Court, in the exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India, would not exercise its discretion to interfere in a manner which would result in the respondent-Bank being deprived of the amounts which is legitimately due to it. Since the jurisdiction which this Court exercises is in larger public interest, and public interest would only be served if the amounts due to public sectors banks and financial institutions are

safeguarded, we see no reason to exercise jurisdiction under Article 226 of the Constitution of India to come to the aid of the appellant-writ petitioner, and thereby disable the respondent-Bank from seeking to recover such amounts which it is legally entitled to.

10. In the present case the respondent-Bank had for the first time, by its letter dated 16.10.2019, called upon the appellant-writ petitioner to pay the outstanding amount of Rs. 6,51,238.52 with respect to interest for the period 01.01.2018 to 15.10.2019, and legal charges of Rs. 2,00,000, after the petitioner had repaid the entire amount in terms of the earlier notices issued by the respondent-Bank from time to time. It is in such circumstances that the learned Single Judge has exercised his discretion to interfere and, while permitting the appellant-writ petitioner to pay Rs. 3 lacs thereof, directed the respondent-Bank to consider his claim for a one-time settlement, besides waiver of legal expenses.

11. Sri Shikhar Kacker, learned counsel for the appellant-writ petitioner, states that he has been instructed by the appellant-writ petitioner to submit that the appellant-writ petitioner is ready and willing to pay Rs. 3,00,000/- in full and final settlement of all claims.

12. While this Court may not be justified in directing the respondent-Bank to arrive at such a settlement for these are all matters for the Bank to consider, we consider it appropriate to modify the order of the learned Single Judge, in the peculiar facts of this case, where the appellant-writ petitioner has re-paid the entire amount which the respondent-Bank has hitherto claimed (i.e. prior to the impugned proceedings dated 16.10.2019). Suffice it, therefore, to dispose of the writ petition permitting the appellant-writ petitioner to make an application for a one-time settlement on payment of Rs.3 lacs. The appellant-writ petitioner shall enclose a cheque for Rs. 1,50,000/- along with such an application. In case, any such application is filed within one month from today, the respondent-Bank shall consider his request for grant of a one-time settlement within six weeks thereafter. On fulfillment of the aforesaid conditions, the respondent-Bank shall not take any coercive steps for recovery of the amounts due, in terms of the proceedings dated 16.10.2019, till it passes an order on the appellant-writ petitioner's request for grant of a one-time settlement, and communicates its decision to the appellant-writ petitioner.

13. Needless to state that, if the appellant-writ petitioner does not make an application for a one-time settlement, fulfilling the conditions aforementioned, within the stipulated period of one month from today, it is open to the respondent-Bank to take necessary action, thereafter, in accordance with law for recovery of the amounts which it claims it is entitled to.

14. The sum of Rs. 1,50,000/- , which the appellant-writ petitioner shall deposit along with his application, may be appropriated by the respondent-Bank towards the amounts due.

15. The Special Appeal is, accordingly, disposed of. No costs.