

(2011) 09 UK CK 0018
In the Uttarakhand High Court
Case No : Special Appeal No. 199 of 2011

Munshi Ram Gupta

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(3A), 13(4)

Citation : (2011) 09 UK CK 0018

Hon'ble Judges : Barin Ghosh, C.J.;V.K. Bist, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—In the writ petition, Appellant sought to challenge the validity of the notice dated 3rd December, 2010 issued by the Respondent Bank u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act"). It was contended that recourse to the provisions contained in Section 13(2) of the said Act could only be taken by the Respondent Bank, provided the cash credit account of the Appellant had become a non-performing asset. The Appellant sought to demonstrate in the writ petition that the cash credit account of the Appellant did not become a non-performing asset at or before the said notice was issued. The writ petition has been dismissed by the judgment and order under appeal holding that the Appellant has an efficacious remedy of filing objection before the authority concerned. The learned Judge, while doing so, took notice of the judgment of the Hon'ble Supreme Court rendered in the case of Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.,

2. In the appeal, Appellant is contending that in terms of the said judgment of the Hon'ble Supreme Court, the Appellant, though, is entitled to make a representation, but the out come of the said representation cannot be challenged

before the Debt Recovery Tribunal and, accordingly, whether the account of the Appellant had, in fact, become a non-performing asset or not is a question for which the Appellant has no other forum available except this Court under Article 226 of the Constitution of India.

3. The right to take recourse to a judicial proceeding arises no sooner cause of action therefor arises. In the instant case, the Respondent Bank contended that the account of the Appellant has become a non-performing asset. The Appellant denied the same. By reason of such denial, no cause of action for the Appellant arose entailing it to initiate a judicial proceeding. In other words, assertion by the Respondent Bank that the account of the Appellant has become a non-performing asset and denial thereof by the Appellant, did not raise any cause of action for the Appellant to take recourse of any judicial proceedings.

4. A look at the scheme of Section 13 of the Act would show that the said Section entails a secured creditor to take steps against a security without taking recourse to the other laws available for taking steps against those securities in the manner and to the extent provided in the said Section. Sub-section (4) thereof entails taking effective and actual steps against the securities. No sooner such steps are taken, the same affects the person against whom such steps are taken, and a right accrues immediately in favour of such affected person to take legal recourse. For that purpose the affected person is required to go before the Debt Recovery Tribunal.

5. Inasmuch as, steps, which can be taken under Sub-section (4) of Section 13 of the said Act, are drastic steps, the law makers required the secured creditor to give a notice to the borrower. That is provided in Sub-section (2) to the section. When the law thus stood, the matter was considered by the Hon"ble Supreme Court in the case mentioned above. The Hon"ble Supreme Court felt that when a notice is contemplated under Sub-section (2) of Section 13 of the Act, the same entails a representation in respect thereof and, accordingly, the same entails consideration of the same after due application of mind. The observation of the Hon"ble Supreme Court made in the said judgment, upon being considered, was accepted by the legislature and, accordingly, Sub-section (3A) was added to Section 13 of the Act. In terms thereof, while a borrower, who has received a notice u/s 13(2) of the Act, has become entitled to make a representation, the creditor is equally obliged to consider the same and to apply its mind thereto while considering the same. Sub-section (3A) of Section 13 of the Act, however, makes it clear that the decision of the creditor, one way or the other, on the representation cannot be the subject matter of a lis before the Debt Recovery Tribunal for the simple reason that even if such a decision is averse to the borrower, still then it is not obligatory on the part of the creditor to take steps under Sub-section (4) of Section 13 of the Act. Only after a decision has been rendered in terms of Sub-section (3A) of Section 13, steps can be taken u/s 13(4) and, as aforesaid moment, such steps are taken, the same affects the borrower entailing the borrower to take recourse to legal remedies and the law

on the subject directs the borrower to take such steps before the Debt Recovery Tribunal. In the circumstances, whether the stand taken by a secured creditor within the meaning of the said Act that the credit facility granted by it to a borrower has become a non-performing asset or not, can only be adjudicated by the Tribunal when steps have been taken on such holding out by the secured creditor against its borrower by taking recourse to Sub-section (4) of Section 13 of the Act. In other words, these disputes, whether the credit facility has or has not become a non-performing asset, can not be gone in in the writ jurisdiction.

6. We, accordingly, dismiss the appeal.