
(2009) 12 AHC CK 0168
In the Allahabad High Court

Naseem Fatima W/O Khurshid Hasan Khan	APPELLANT
Vs	
District Magistrate/Collector Raebareli And Others	RESPONDENT

Date of Decision : 24-12-2009

Acts Referred:

Citation : (2009) 12 AHC CK 0168

Hon'ble Judges : Rajiv Sharma, J and Satish Chandra, J

Final Decision : Disposed Of

Judgement

Dr. Satish Chandra, J.

Heard Sri Vyas Narayan Shukla, learned counsel for the petitioner and learned Standing Counsel? for respondent Nos. 1 and 2 and Sri C.M.Shukla holding brief of Sri R.P. Shukla, learned counsel for the respondent No. 3.

1. Through the instant writ petition under Article 226 of the Constitution of India, the petitioner is challenging the validity and authenticity of the impugned notice dated 6.11.2008 issued by the Authorized Officer of Punjab National Bank opposite party No.3 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as "2002 Act" for the sake of brevity].? It has also been assailed by the consequential order dated 5.12.2009 passed by the respondent No.2 City Magistrate, Raibareli.

2. Learned counsel for the petitioner submits that respondent No.4 M/s Shoe World applied a loan before the respondent No.3 for establishment of the M/s Shoe World and after scrutinizing his application, the Bank has sanctioned Rs.27,00,000/- in the year 2007 in favour of the respondent No.4.? The petitioner is a guarantor in the said loan by mortgaging her property situated at plot No. 41, Mi Mohalla Ahmadpur, Nazul, Raibareli. He submits that as the respondent No.3 failed to deposit the outstanding dues in installment within the stipulated period, the Bank served a notice under Section 13 (2) of the Act on 6.11.2008, requiring the petitioner to deposit Rs.31,06,456/- including interest, to which the

petitioner filed an objection on 10.11.2008 but the City Magistrate, Raebareli, vide order dated 5.12.2009, directed the petitioner to hand over the land in question to the Bank without looking to the fact that the objection, which has been filed against the notice dated 6.11.2008 is pending and till date no decision has been taken by the Bank on the said objection.

3. Learned counsel for the petitioner submits that? keeping in view the facts that as per the provisions of Section 13 (3A) of the Act, if on receipt of the notice under subSection (2) of the Act, the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable to shall communicate within one week of receipt of such representation or objection the reasons for non acceptance of the representation or objection to the borrower and further the petitioner herself made an objection against the notice dated 6.11.2008 and without taking any decision on the objection filed by the petitioner, consequence order dated 5.12.2009 passed by City Magistrate respondent No.3 is totally illegal and without jurisdiction.

4. Admittedly, the petitioner's objection has not been decided by the Bank till date and as such, the consequential order dated 5.12.2009 passed by the City Magistrate is not in accordance with 2002 Act.

5. Under the peculiar facts and circumstances of the case, the respondent No.3 Authorized Officer Punjab National Bank is directed to decide the objection of the petitioner, after affording opportunity to the petitioner, within a period of one month from the date of receipt of a certified copy of this order.

6. Till disposal of the objection filed by the petitioner, the notice dated 6.11.2008 issued by the respondent No.3 and the consequential order dated 5.12.2009 passed by the respondent No.2 shall be kept in abeyance.

7. The writ petition is disposed of finally