(2008) 01 PAT CK 0049

In the Patna High Court

Neelu Gupta — APPELLANT

Vs

State Bank of India and Another — RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 36

Citation : AIR 2008 Patna 73 : (2010) 2 BC 183 : (2008) 2 PLJR 713

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—Petitioner has taken cash credit facility from the State Bank of India who was to run a shop. As per policy of the State Bank of India the goods in the shop had to be hypothecated and was insured by the bank. Soon after getting the cash credit facility there was a theft in the shop. When in spite of the obligation on the part of the State Bank of India to pursue the insurers claim, nothing was done the petitioner moved the District Consumer Forum, Patna for settlement of its insurance claim. In those proceedings the respondent State Bank of India was also a party. In those proceedings order was passed granting compensation along with interest and the entire amount awarded was paid by the insurance company directly to the State Bank of India for the credit of the petitioner along with interest. It appears on petitioners account still there was some dues with the State Bank of India. The State Bank accordingly filed a certificate proceedings being certificate case No. 12 of 1996 for recovery of balance due from the petitioner. Petitioner contested the proceedings and after hearing both the parties the certificate case No. 12 of 1996 was dismissed by order dated 14-12-2000 by the Certificate Officer, Patna holding the recovery of dues to be barred by limitation and as such not recoverable. It is not in dispute that the State Bank of India did not challenge the said order and its contents. The result was that the dues of State Bank of India could not be enforced for recovery as a consequence of order of certificate court holding it to be time barred. Those finding that the recovery of the debts has become barred by limitation had attained finality. Now in 2002 the Securitisation and Reconstruction of Financial Assets and Enforcement of security Interest Act 2002 was passed. Thus, it appeared to the State Bank of India that it got a fresh lease of life to recover its dues. It has accordingly noticed the petitioner in terms of Section 13(2) of the SRFAESIA Act which has brought the petitioner to this Court.

2. Heard the parties including the learned Counsel for the State Bank of India and with their consent this application is being disposed of at the stage of admission itself.

3. Facts that are not in disputes are that after the State Bank of India received substantial amount from the Insurance company on account of the petitioner there were still some dues left. For recovery of those dues the bank chose to move the certificate officer under the provision of the Bihar and Orissa Public Demand Recovery Act. Pursuant to the notice issued and after hearing the parties the certificate officer clearly held that the dues being sought to be enforced is barred by limitation thus the finding as to limitation being based on fact and in law was a finding between the parties by a competent forum in exercise of its competent jurisdiction and this order was never challenged before any authority by the State Bank of India and they allowed it to attain finality.

4. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act has come in 2002 much after the order of the certificate officer which had already attained finality. The petitioner submits that the said Act does not revive and permit the recovery of liability held to be barred by limitation. In my view the contention of the learned Counsel for the petitioner is very correct and has to be accepted for three reasons:

5. Firstly, once a Court of competent jurisdiction had held the recovery of dues to be time barred by limitation then the same finding could not be ignored or overlooked in any further collateral proceedings. The principle of constructive res judicata will come into play. The parties would be estopped from reagitating the same issue; secondly the SRFAES1A Act defines" Debts". u/s 2 (i) ''(ha) "debt" to mean the same as defined under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)''. The latter Act in Section 2 (g) defines what the debts are. Apart from other things the debts are qualified by the expression legally recoverable pn the date of application.

6. In my view the finding of the certificate officer that the recovery of dues was barred by limitation, the debts in no more legally recoverable and it ceases to exist in terms of D.R.T. Act and consequently in terms of the certificate Act. Lastly Section 36 of the SRFAESI Act itself provides limitation and makes the provision of limitation Act applicable. In the present case it is undisputed that the debts related to the period 1988-89 and now action was sought to be taken for its recovery in 2003 which was clearly barred by limitation.

7. For the reasons aforesaid the noticed issued in terms of Section 13(2) of the

SRFAESI Act is wholly without jurisdiction. Being without jurisdiction the same is quashed and the respondents are restrained from proceeding to recover the dues which have already been held to be barred by limitation in a proceeding as between the parties itself. The documents of the petitioner which is kept with the respondent bank must now be released to the petitioner. The notice is quashed and the writ application is allowed.