(2007) 10 P&H CK 0133

In the Punjab And Haryana At Chandigarh

Paramjit Singh APPELLANT

Vs

UCO Bank and Another RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13

Citation : (2007) 4 PLR 747

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Judgement

Ajay Kumar Mittal, J.—The petitioner seeks protection of this Court praying for issue of Mandamus to the respondent-Bank not to take forcible possession of the property mortgaged with it i.e. a residential house of the petitioner, without complying with the procedure prescribed u/s 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "2002 Act".

2. The facts leading to the aforesaid circumstances, as enumerated in the petition, are that the petitioner took a housing loan of rupees three lacs from the respondent-Bank in the year 2004 and thereby his residential house measuring about 6 Marias was mortgaged with the bank. Since the petitioner failed to pay installments of loan as agreed, the respondent-bank sent a notice u/s 13(2) of the 2002 Act (Annexure P-1) to the petitioner. Thereafter, according to averments in the petition, on 25.4.2007 some bank officials accompanied by 10 to 20 persons and the police made an attempt to take forcible possession of the mortgaged house in which the petitioner had been living with his family. However, with the intervention of some neighbours they went back and threatened to come back again on 30.4.2007 for taking forcible possession of the residential house of the petitioner. The grievance raised by the petitioner is that the respondent-bank was adamant to take forcible possession of the mortgaged property without first following the proper procedure or giving any notice u/s

13(4) of 2002 Act. The further case of the petitioner is that after receipt of notice u/s 13(2) of 2002 Act he has deposited a sum of Rs. 90,000/- towards installments of the loan amount and he has been requesting the respondent - bank for the issue of a statement of account but his request is not being acceded to. The petitioner taking shelter of provisions of Section 13(2) of 2002 Act vehemently submitted in the petition that the action being taken by or at the instance of the respondent-bank was not justified and was clearly in violation of the provisions of the Act, in as much as under the provisions of Section 13(2) of 2002 Act, the respondent-bank was legally bound to adopt the next course of action or invoke the provisions of Section 13(4) of 2002 Act, after the expiry of period of 60 days as enshrined in the said Section, but the same having not been done, the proceedings for taking forcible possession of mortgaged property were wholly unjustified and deserved to be declared as illegal.

3. In the written statement the respondents have taken a stand that the petitioner was to repay the loan amount in monthly installments-of Rs. 3,700/- which he had failed to adhere to and, therefore, the resort to action of taking possession by the respondents was fully justified.

4. This Court, on 30.4.2007 while issuing notice of motion had directed the petitioner to deposit a sum of Rs. 40,000/- to establish his bona fide which has been faithfully complied with by him. By order dated 23.8.2007, the respondents were directed to place on record the calculations of the amount of installments payable by 30.9.2007 along with interest by ignoring the clause concerning penal interest and recovery of the whole amount on account of default in payment of installments. A statement has been filed by the respondents in compliance thereto. A perusal of the same shows that the petitioner is liable to pay Rs. 3,700/- per month for 42 months upto 30.9.2007 amounting to Rs. 1,55,400/-. Besides this, the respondents have claimed the following amounts.

Charges recoverable

1. Legal charges = 2,700 u/s 138 of NI 2. Publication charges paid = 11,000 3. Agency Fees Securitisation Act = 15,000 4. Advocate''s fee = 14,600 -------- 43,300

5. After deducting a sum of Rs.l,26,000/-which has been paid by the petitioner the outstanding amount according to the respondents comes to Rs. 72,700/-.

We have heard learned Counsel for the parties at length and find that the expenses amounting to Rs. 43.300/- which have been claimed by the respondents are not legally payable by the petitioner. The learned Counsel for the respondents attempted to justify the incurring of aforesaid expenses by citing Security Interest (Enforcement) Rules 2002, but could not refer to any specific rule or provision of law or any material on record to substantiate that the expenses incurred by the respondents amounting to Rs. 43,300/- were in any way mandatory and necessarily required to be incurred. In the absence of any legal or valid justification, the liability of the same cannot be fastened on the petitioner.

6. Accordingly after granting benefit of Rs. 43,300/- from the outstanding amount claimed by the respondents and allowing deductions of the amount of Rs. 1,26,000/- already paid by the petitioner liability of Rs. 29,400/- is still outstanding upto 30.9.2007. In the facts and circumstances of the case the ends of justice would be met if the petitioner is allowed to make the payment of balance amount of Rs. 29,400/- plus Rs. 3,700/-for the month of October 2007 on or before 31.10.2007. In case, the said payment is made by 31.10.2007, no coercive steps shall be taken by the respondents and further the petitioner shall adhere to time schedule of making payment of the balance installments as per loan agreement. It is, however, made clear that in case of default in payment of Rs. 33,100/- on or before 31.10.2007 or in the payment of any installment in future, it shall be open to the respondents to take steps for recovery of the balance outstanding amount in accordance with law.

The writ petition is disposed of m the above terms.