(2008) 01 GUJ CK 0037

In the Gujarat High Court

Case No : Special Civil Application No. 21241 of 2007

Procurite Exports Pvt. Ltd. APPELLANT

Vs

I.D.B.I. Bank Ltd. and Others RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(4)

Citation : (2008) 01 GUJ CK 0037

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Premal R. Joshi, for Petitioner 1 and Kiran P. Joshi, for the Appellant; P.M. Dave, for Respondents 2 - 3, for the Respondent

Judgement

Jayant Patel, J.—Rule. Mr. Joshi, for Mr. Dave, learned Counsel for the respondents waives service of notice of rule. With the consent of the learned Counsel for both the sides, the matter is finally heard today.

2. The petitioner has preferred the petition for appropriate directions to the respondent Bank to accept the outstanding amount from the petitioner towards his loan account and it is also prayed by the petitioner to direct the respondents to issue no due certificate and to release the original documents pertaining to the property immediately after accepting the loan amount.

3. Heard Mr. Premal Joshi, learned Counsel for the petitioner and Mr. Asit Joshi for Mr. Dave, learned Counsel for the respondents.

4. It is an admitted position that the respondent Bank issued the notice dated 2.11.2006 calling upon the petitioner to make the payment of Rs. 5,87,393.53 and as per the petitioner, the petitioner was ready to make the payment, however, after payment of Rs. 1,00,000/-, the remaining amount was not accepted by the respondent Bank and the petitioner apprehended action under the Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (hereinafter referred to as the ''Act'') and, therefore, the present petition.

5. This Court when considered the matter for the first time on 22.8.2007 passed the following order:

The learned advocate for the petitioner states that as per notice u/s 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["Securitisation Act"] dated 2nd November, 2006, a sum of Rs. 5,87,393.53 ps. was outstanding along with interest. That, thereafter the petitioner has paid a sum of Rs. 1,00,000/- (Rupees One Lac) on 1.1.2007, and the petitioner is ready and willing to pay off the entire outstanding balance inclusive of interest till the date of payment. That the petitioner is not in a position to calculate the correct amount of interest and, therefore, the petitioner is ready and willing to make payment of the balance amount of Rs. 4,87,393.53 ps. to show the bona fides of the petitioner, along with an undertaking that the petitioner shall pay off the outstanding amount of interest as may be calculated and intimated by the respondent-Bank.

2. In the circumstances, notice subject to the petitioner''s depositing a sum of Rs. 4,87,393.53 ps. within a period of one week from today with the respondent-Bank. The respondent-Bank is directed to accept the aforesaid deposit without prejudice to the rights of the respondent-Bank. The respondent-Bank is further directed to compute the outstanding amount of interest and place the same on record on the returnable date.

Notice returnable on 17th September, 2007.

Direct Service permitted.

6. When the matter is further taken for hearing, Mr. Joshi, learned Counsel for the petitioner states that the amount of Rs. 4,87,393.53 has been deposited and Mr. Asit Joshi, learned Counsel for Mr. Dave for the respondent Bank confirms the said position.

7. Under these circumstances, it is an admitted position that the amount of notice of Rs. 5,87,393.53 is fully deposited by the petitioner. Therefore, as the amount is fully paid by the petitioner, there will not be any cause surviving to the respondents for proceeding under the Act for taking possession of the property u/s 13(4) of the said Act based on the notice dated 2.11.2006. As such on receipt of the payment of the aforesaid amount of the notice, it would be required for the respondent Bank to issue ''No Due Certificate'' for the said Housing Loan Account, for which reference has been made in the Notice at Annexure ''SA'' dated 2.11.2006. Mr. Asit Joshi, learned Counsel for the respondent Bank, however, submitted that as per the said notice, the interest is to be paid until the final payment and on behalf of the petitioner, it has been submitted that the agreed rate of interest rate is 13.5% per annum, whereas Mr.Joshi, learned Counsel for the respondent Bank submitted that the rate of interest is 15.25%.

8. In my view, if the petitioner was desirous to make the full payment and the Bank was not ready to accept, at least the Bank is not entitled to charge the penal interest. In any case, the period is very short and, therefore, the Bank shall calculate the interest on the outstanding amount at the rate of 13.5% per annum and the petitioner shall pay the said amount within two weeks from such intimation. After such amount is paid, the respondent Bank shall be required to issue the ''No Due Certificate'' so far as the loan account for which the reference is made in the impugned show-cause notice Annexure ''A''.

9. Mr. Premal Joshi, learned Counsel for the petitioner also submitted that the Bank should be directed to release the original documents of the property in view of the full amount received, whereas Mr. Asit Joshi, learned Counsel for Mr. Dave for the respondent Bank submitted that he is not aware as to where any charge is created by the Bank or not, in respect of any other transaction, but he fairly conceded that if there is no other charge of the respondent Bank on the very property in respect of any other loan, the respondent Bank should be at liberty to recover the said amount by resorting to appropriate proceedings.

10. It appears that, if any transaction of mortgage is created or any security interest is created in the property for Plot No. A-604, 6th Floor, Dananjay Tower, for which the impugned notice was issued by the respondent Bank, the Bank may not be required to release the property from such security interest until the amount is fully recovered. However, if the property in question is mortgaged in respect of the only transaction of housing loan, which is the subject matter of the Notice at Annexure ''SA'' and the payment having been received, it would be required for the Bank to release the original documents pertaining to the property in question.

11. In any case, the impugned Notice under the Act will not be acted upon since the payment has already been received by the respondent Bank.

12. Hence, the petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs. Direct service is permitted.

