
(2004) 05 PAT CK 0037
In the Patna High Court
Case No : C.W.J.C. No. 5297 of 2004

Rajesh Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-05-2004

Acts Referred:

Citation : (2004) 05 PAT CK 0037

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—Heard learned counsel for the petitioner and learned counsel for the respondent-bank.

2. In this writ petition, the petitioner is aggrieved by the notice, contained in annexure 1, issued under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act") by the creditor, whereby he has been called upon to pay the amount of Rs. 1,12,70,963 within sixty days from the date of the notice and further, indicating that, in default, besides exercising other rights of the bank available under law, the bank is intending to exercise any or all of the powers as provided u/s 13(4) of the Act.

3. Learned counsel for the petitioner initially submitted that the matter regarding the said debt is pending before the Debt Recovery Tribunal at the instance of the bank and, as such, availing of remedy under the Act by way of notice (annexure 1) and consequently, prosecuting both the remedies is not permissible in law in view of the law settled by the Supreme Court in numerous decisions. In support of this, learned counsel has cited the decision in the case of Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, .

4. Learned counsel for the bank has raised a preliminary objection regarding maintainability of this writ petition itself in view of the recent decision of the apex court in the case of Mardia Chemicals Ltd. v. Union of India [2004] 120 Comp Cas 373 ; [2004] 3 Supreme 243. Learned counsel submitted that the validity of

certain sections, including Section 13 of the Act, was under consideration in the said case and the apex court while upholding its validity has laid down the guidelines in paragraph 80 of the said judgment as to how the creditor and the debtors will proceed in the matter. Learned counsel submitted that in view of the said guidelines, the point urged before this court on behalf of the petitioner has no substance as the petitioner has remedy against the said notice by filing show cause before the creditor and the creditor is obliged to consider the same and dispose it of by a reasoned order and if the petitioner still feels aggrieved, he has remedy before the Debt Recovery Tribunal by way of appeal.

5. Mr. Chatterjee, learned counsel appearing for the petitioner, in reply, however, contended that, in fact, the said principle decided by the apex court may not be applicable in the present case as the petitioner has alleged commission of fraud by the creditor in collusion with the principal borrower and if following the guidelines laid down by the apex court, the petitioner is to go to the creditor, it will amount to going before the authority who will be the judge of his own cause leading to bias.

6. There may be some substance in the submission of Mr. Chatterjee but in view of the guidelines laid down by the apex court, this court finds that the petitioner cannot be held to be aggrieved at this stage in order to maintain the writ petition as he has remedy before the Tribunal.

7. Be that as it may, the petitioner in the light of the guidelines laid down by the apex court has to approach the creditor in response to the impugned notice raising all questions available to him in law and the creditor is bound to decide it by a reasoned order dealing with each and every objection raised by the petitioner. Further, if the petitioner still feels aggrieved, has remedy before the Tribunal.

8. In that view of the matter, this court does not feel persuaded to entertain this writ petition at this stage. The writ petition is, thus, dismissed.