(2015) 05 AHC CK 0155

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 31674 of 2015

Rakesh Sharma APPELLANT

Vs

Central Bank of India RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 2(o)

Citation : (2015) 05 AHC CK 0155

Hon'ble Judges : Tarun Agarwala, J;Amar Singh Chauhan, J

Bench : Division Bench

Advocate : Ravindra Kumar Gaur, for the Appellant; S. Tiwari, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. Against the possession notice dated 2.3.2015 issued under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Act), the petitioner has filed the present writ petition. The petitioner contends that he had taken a loan and committed a default as a result of which a notice under Section 13(2) was issued to which the petitioner responded and paid the defaulted amount in spite of which the respondent bank has issued the notice under Section 13(4) of the Act. Sri S. Tiwari, learned counsel for the respondent bank was directed to receive instructions who has informed that as on date there is no defaulted amount to be paid by the petitioner and that the entire defaulted amount has already been cleared by the petitioner. Section 13(2) of the Act provides that if a borrower makes a default in the repayment of the secured debt, the secured creditor can classified the debt of the borrower as a non performing asset. The secured creditor may require the borrower by notice in writing to discharge in full his liabilities. Non performing asset has been defined under Section 2(o). For facility the same has extracted hereunder:

"2(o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, [doubtful or loss asset,--

(a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;

(b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank;"

2. From a perusal of the aforesaid, it is clear that the non performing asset is required to be declared in accordance with the directions or guidelines relating to assets classification issued by the Reserve Bank. The Reserve Bank of India has issued a master circular known as "Master Circular-Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances", which was revised on 1.7.2014.

3. The RBI guidelines has categorised the NPAs in para 4 as "Substandard Assets", "Doubtful Assets" and "Loss Assets". The petitioners'' case falls under "Substandard Assets", which is indicated in para 4.1.1, which is extracted hereunder:

"4.1.1 Substandard Assets.

With effect from March 31, 2005, a substandard asset would be one, which has remained NPA for a period less than or equal to 12 months. Such an asset will have well defined credit weaknesses that jeopardise the liquidation of the debt and are characterised by the distinct possibility that the banks will sustain some loss, if deficiencies are not corrected."

4. Paragraph 4.2 provides guidelines for classification of assets. Classification of assets into above categories should be done after taking into account the degree of well-defined credit weaknesses and the extent of dependence on collateral security for realisation of dues.

5. Paragraph 4.2.4 provides for accounts with temporary deficiencies as under:

"The classification of an asset as NPA should be based on the record of recovery. Bank should not classify an advance account as NPA merely due to the existence of some deficiencies which are temporary in nature such as non-availability of adequate drawing power based on the latest available stock statement, balance outstanding exceeding the limit temporarily, non-submission of stock statements and non-renewal of the limits on the due date, etc."

6. Paragraph 4.2.5 provides for upgradation of loan accounts classified as NPAs, which is extracted hereunder:

"If arrears of interest and principal are paid by the borrower in the case of loan accounts classified as NPAs, the account should no longer be treated as non-performing and may be classified as ''standard'' accounts. With regard to upgradation of a restructured/rescheduled account which is classified as NPA contents of paragraphs 12.2 and 15.2 in the Part B of this circular will be applicable."

7. From the aforesaid, it is clear that a substandard asset is one, which has remained NPA for a period less than or equal to 12 months. The guidelines provides that such asset will have well defined credit weakness that jeopardise the liquidation of the debt and are characterised by the distinct possibility that the banks will sustain some loss, if deficiencies are not corrected, meaning thereby that if the borrower corrects the deficiency then the substandard asset would be upgraded to a standard account as per para 4.2.5 of the RBI guidelines, which provides that if arrears of interest and principal is paid by the borrower, the account would no longer be treated as non-performing and would be classified as a standard account. In this regard, the Court further finds from a reading of para 4.2.4 of the guidelines that the classification of an account as NPA must be done by Bank based on the record of recovery and that the Bank could not classify an account as NPA merely due to the existence of some deficiencies which are temporary in nature such as balance outstanding exceeding the limit temporarily.

8. In the light of the aforesaid, since the petitioner has cleared the defaulted amount, the respondent bank was required to regularize the account of the petitioner and upgrade it into a regular account instead the respondent bank is proceeding to recover the balance amount by issuing a possession notice under 13(4) which is wholly incorrect and is illegal against the guidelines issued by the Reserve Bank of India.

9. Consequently, for the reasons stated aforesaid and without calling for a counter-affidavit, the impugned possession notice is quashed. The writ petition is allowed.