(2013) 04 MP CK 0064

In the Madhya Pradesh High Court

Case No : Writ petition No. 1320/2013

Ramjilal Agrawal APPELLANT

Vs

UCO Bank and Another RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Citation : (2013) 04 MP CK 0064

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Judgement

Sujoy Paul, J.—This writ petition is directed against the order dated 14.1.2013 whereby representation of the petitioner is rejected by the respondent-Bank. The petitioner obtained a loan from respondent No. 2-Bank. It is stated that the petitioner paid the loan on regular basis for some time but in 2008 on wards he could not deposit the loan amount because of his ailment. A notice under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) was issued for recovery and for taking symbolic possession. The petitioner''s account was declared as Non Performing Asset (NPA). The notice dated 19.6.2009 (Annexure P-3) was issued and petitioner was informed that he was directed to repay the amount within 60 days under the SARFAESI Act. After completion of the said period, the Bank has taken physical possession of the property and published the notice in accordance with law. Another notice dated 3.11.2012 (Annexure P-7) was issued. In this notice issued u/s 13(2) of the SARFAESI Act, the petitioner was informed to discharge his full liabilities within 60 days. It is the case of the petitioner that he preferred detailed representation (Annexure P-8) against the said notice which was decided by Annexure P-1. P-1 is called in question mainly on the ground that u/s 13(3-A), the respondents are under an obligation to communicate the reasons on the decision of the representation. Shri Suresh Agrawal, learned counsel for the petitioner placed heavy reliance on Section 13(3-A) and Section 17(1) (Explanation) to submit his two fold submissions as under:-

(i) The impugned order does not contain any reason and, therefore, it runs contrary to Section 13(3-A).

(ii) The proviso to Section 13(3-A) and Section 17(1) (Explanation) makes it clear that at this stage the petitioner has no remedy under the Act. In other words, at this stage, petitioner cannot prefer any appeal. On these grounds the impugned order is sought to be quashed with the direction to the respondents to decide his representation in accordance with law.

2. It is opposed by Shri Sushil Chaturvedi, learned counsel for the Bank. He relied on various judgments passed by various Courts including Analkumar Rajkishore Mishra and Others Vs. Dena Bank and Another, , Kasturi Devi Jain Vs. Union Bank of India and others, , United Bank of India Vs. Satyawati Tondon and Others, and Deepak Panch and Another Vs. Sent Bank Home Finance Limited and Others, .

3. I have heard the learned counsel for the parties and perused the record.

4. The basic question is whether it is justiciable to entertain the writ petition against a notice u/s 13(2) of the Act or against a rejection order which does not contain reasons.

5. In the judgments of various High Courts cited by Shri Sushil Chaturvedi, the uniform view is that at this stage no interference is required to be made. However, I find that this question is no more res integra and the Division Bench of this Court in Velocity Ltd. Indore Vs. State Bank of India, has drawn the curtain on this issue. The relevant paragraph reads as under:-

It is not justifiable to entertain a writ petition against the notice u/s 13(2) of the Act of 2002 and also against the communication of reason by the secured creditor to the borrower about non-acceptability or untenability of the representation or objection. Such communication is not an order/action causing harm to the borrower but is a step before taking recourse to one or more of the measures provided u/s 13(4). It is only when such measure u/s 13(4) is taken, it can be said that the borrower is aggrieved and only on taking of such measure the borrower can take recourse to the provision of appeal provided u/s 17 of the Act of 2002. The communication of reasons is only for the purpose of information/ knowledge of the borrower, and the same being not an action to cause harm to the borrower, at that stage it cannot be assailed. Having regard to the scope of provisions of section 17 of the Act of 2002, the reasons so communicated can be well assailed in case measures referred to in sub-section (4) of section 13 are taken by the secured creditor. This being the scheme of the Act of 2002, any interference in a writ petition under Article 226 of the Constitution of India at the stage of notice u/s 13(2) and at the stage of communication of rejection of representation/objection u/s 13(3-A) of the Act of 2002 would hamper the process of recovery, defeating the very purpose of enactment of the Act of 2002 and the purpose of introducing section 13(3-A) in the Act of 2002.

The underlined portion makes it clear that this Court in no uncertain terms made it clear that the rejection order is enough for the purpose of information to the borrower and at this stage it cannot be assailed. The reasons so communicated can be assailed in case measures referred to in sub-section (4) of Section 13 are taken by the secured creditor. I am bound by the aforesaid Division Bench judgment. Accordingly, the rejection order cannot be assailed at this stage in this writ petition. If the respondents take any measure u/s 13(4) of the Act, it will be open for the petitioner to avail the appellate remedy and assail the rejection order also in the said proceedings. In view of the said Division Bench judgment, I find no reason to interfere this petition. Petition is dismissed with the aforesaid observations. No cost.