

(2015) 08 MAD CK 0177

In the Madras High Court

Case No : Writ Petition No. 15033 of 2015 & M.P. Nos. 1 & 2 of 2015

Rathika Kumaran

APPELLANT

Vs

The Assistant General Manager, State Bank of India

RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

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

Citation : (2015) 08 MAD CK 0177

Hon'ble Judges : Satish K. Agnihotri, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : S. Ayyadurai, for the Appellant; T. Ramasamy, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.K. Sasidharan, J—The challenge in this writ petition is to the notice issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") calling upon the petitioner to discharge the dues within a period of sixty days failing which it was indicated that further proceedings would be taken under sub-section (4) of Section 13 of the Act.

The facts:

2. The petitioner along with her husband availed Housing Loan from the respondent. The Bank sanctioned a sum of Rs.33 Lakhs to purchase a flat in Pondicherry. As per the agreement, the loan has to be re-paid in 120 equal monthly instalments. The petitioner and her husband started paying the instalments as per schedule.

3. While so, the husband of the petitioner died on 16 August 2011. The petitioner even after the death of her husband paid the subsequent instalments. Subsequently, the petitioner came to know that as per the insurance policy taken

by the Bank, after the death of the borrower there is no requirement to pay the balance instalments. The petitioner thereafter discontinued the payment.

4. The Bank initiated proceedings against the petitioner invoking the provisions of SARFAESI Act and the same resulted in issuing notice under Section 13(2) of the said Act. The notice is under challenge in this writ petition.

5. The Bank filed a counter affidavit stating that as per the Insurance Policy issued by the New India Assurance Company Limited, in case only one of the borrowers died, 50% of the loan amount alone would be paid by the Insurance Company. In short, it is the contention of the Bank that the petitioner is liable to pay 50% of the outstanding after the death of her husband.

6. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

Discussion:

7. The petitioner along with her husband availed financial assistance from State Bank of India for purchasing a residential flat. The Home Loan Arrangement letter dated 23 August 2010 contained the details of the insurance policy taken by the Bank.

8. The provision reads thus:

"The loan is covered by a Free Personal Accident Insurance Policy and the insurance certificate issued by the Bank to you should be preserved carefully for use in case of need. The insurance cover will not cover partial or total disablement. The insurance cover will be total outstanding principal loan amount including the interest thereof as on the date of accident or Rs.40 lacs whichever is less."

9. Clause 7 of the Home Loan Arrangement extracted above would appear as if in case of the death of borrower there is no liability to pay the balance amount.

10. The husband of the petitioner died on 16 August 2011. Even thereafter the petitioner paid several instalments as agreed originally. The Bank has now taken up a contention that the policy issued by the New India Assurance Company Limited contained a clause providing that in case of loans taken under joint names by two persons, the sum insured shall be 50% of the loan amount along with the interest. The relevant provision reads thus:

SUM INSURED UNDER THE POLICY FOR EACH BORROWER:

Sum insured under the policy for each borrower shall be the total outstanding Principal Loan amount including the interest thereof as on the date of accident or Rs.40 lacs whichever is less. Hereinafter the term Sum Insured shall denote the total outstanding loan amount including interest thereof as on date of accident. The above capping of Rs.40 lacs is applicable for composite total of Car Loan and Home Loan in the event of both being taken by the same borrower.

The Sum insured under the policy being total outstanding principal loan amount including the interest thereof (subject to maximum of Rs.40 lacs) of the Loan Account(s) of the loanee, it is hereby agreed that in the case of loans being under joint names with two persons, (for e.g. Husband and wife) for each of the borrower, the Sum insured shall be 50% of the total outstanding loan amount with the interest thereof. Similarly in case of loans with more than two persons as joint borrowers, the Sum Insured of the total outstanding loan amount with interest thereof will be divided amongst all of them in equal proportion. The liability of the Insurance Company shall be limited to the equal proportion of the Sum Insured of the deceased borrower, subject to otherwise terms and conditions of the policy, subject to the following:

* Where the total outstanding loan amount for a joint account with two persons, is Rs.60 lacs as on date of death of one of the loanees, the maximum liability for this account shall be Rs.40 lacs, and in case of death of one of the loanees, the insurance company's liability shall be 50% of Rs.40 lacs, i.e. Rs.20 lacs.

11. Even though Clause 7 of the Home Loan Arrangement letter contained a provision that in case of death, there is no requirement to pay the remaining loan amount, the fact remains that the policy issued by the New India Assurance Company Limited contained a specific clause limiting the liability in case only one of the joint borrower died. In view of the policy issued by the New India Assurance Company Limited, there is no question of foreclosing the loan account. The petitioner is liable to pay 50% of the loan amount with interest due as on 16 August 2011.

12. The Bank appears to have received a sum of Rs.13,76,127/- from the Insurance Company being 50% of the outstanding dues as on the date of death. While calculating the total amount, payable by the petitioner as on the date of death of her husband, the said sum of Rs.13,76,127/- should be deducted. In short, the liability of the petitioner is only to pay the balance amount after deducting Rs.13,76,627/-.

13. The delay on the part of the Insurance Company to pay 50% of the amount would not give a right to the respondent to claim interest for the entire amount from the petitioner. The petitioner is not a party to the insurance policy. The policy was taken only by the respondent. Therefore, the delay caused by the Insurance Company to pay the amount would not make the petitioner liable to pay interest.

14. In the normal course, writ petition challenging the notice under Section 13(2) of SARFAESI Act would not be entertained. However, in this case there is an arbitrary action at the instance of the Bank and there is no disputed question of fact. We, therefore, entertained this writ petition and considered the merits of the matter taking into account the insurance policy covering the loan.

15. The impugned notice proceeds as if the petitioner is liable to pay interest on the entire amount due till 50% of the amount was paid by the Insurance

Company. The Bank is not entitled to claim interest on the entire amount due as on 16 August 2011 from the petitioner.

Direction:

16. The respondent is directed to calculate the amount due by freezing the interest on 16 August 2011. Out of the total amount due as on 16 August 2011, the amount received from the Insurance Company viz., Rs.13,76,127/- should be deducted. Thereafter the amount paid by the petitioner in instalments subsequent to 16 August 2011 should be deducted. The petitioner is liable to pay only the balance amount.

Disposition:

17. In the result, the impugned notice is quashed. The respondent is permitted to raise a fresh demand as indicated above. The petitioner should be given sixty days time to pay the overdue amount. After clearing the overdue amount, she should be permitted to pay the balance amount as per the original schedule, meaning thereby the petitioner should be permitted to pay the remaining amount taking into account the total period prescribed originally for repayment.

18. In the upshot, we allow the writ petition. Consequently the connected MPs are closed. No costs.