

---

**(2012) 02 AP CK 0024**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 28734 of 2010**

Sampoorna Battu

APPELLANT

Vs

ICICI Bank and Another

RESPONDENT

---

**Date of Decision : 16-02-2012**

**Acts Referred:**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(12), 13(2), 13(4), 17(1)

**Citation : (2012) 3 BC 341**

**Hon'ble Judges : V.V.S. Rao, J;G. Krishna Mohan Reddy, J**

**Bench : Division Bench**

**Advocate : Ragi Vikram, for the Appellant; Gopala Rao Amancharla V. and Mr. J. Lokesh Reddy, for the Respondent**

**Final Decision : Allowed**

---

## **Judgement**

V.V.S. Rao, J.—A significant question of considerable importance falls for consideration in this writ petition filed by a borrower against the possession notice purportedly issued pursuant to notice of demand dated 25.11.2009 issued by the authorised officer of the second respondent. The brief fact of the matter is that the petitioner availed housing loan from the first respondent agreeing for deduction of loan instalments from her salary. She also mortgaged the immovable property to secure the loan. The second respondent to whom the financial asset was transferred treated the loan as non-performing asset and got issued notice of demand u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the Act), through their Advocate. The said notice was countersigned by the authorised officer of the second respondent. Be that as it is, as the petitioner failed to comply with the notice of demand, the authorised officer of the second respondent issued possession notice u/s 13(4) of the Act informing that the secured asset has been taken possession and the general public were cautioned not to deal with the property.

2. In this writ petition filed assailing the notice dated 18.6.2010, the question of jurisdiction and impropriety is raised by the Counsel for the petitioner. According to Counsel, the basis for possession notice being the notice of demand dated 25.11.2009 issued by an Advocate of the second respondent, who is not an authorised officer, the entire proceedings are unsustainable or vitiated. Per contra, the Counsel for the respondents would submit that when the notice is countersigned by the authorised officer of the second respondent, the action initiated under the Act is not vitiated. Counsel relied on the decision of Calcutta High Court in Asset Reconstruction Company India Ltd. Vs. Amit Ventures Private Ltd. and Others,

3. The Act enables the Banks/financial institutions (secured creditors) to enforce security interest in accordance with the provisions contained in Chapter III of the Act. Section 13 of the Act is a comprehensive provision which not only permits the secured creditor to enforce the security interest and also the procedure to be followed. The action for enforcement is initiated by issue of notice u/s 13(2) of the Act by the secured creditor. The notice referred to thereunder has to be issued in accordance with Rule 3 of the Security Interest (Enforcement) Rules, 2002 (the Rules).

4. u/s 13(12) of the Act such a right to issue notice of demand is exercised by the secured creditor by one or more of his officers authorised for the purpose. The term "authorised officer" is not defined in the Act. But, Rule 2(a) of the Rules, defines "authorised officer". Rules 2(a) and 2(b) read as follows:

2(a) "authorised officer" means an officer not less than a Chief Manager of a Public Sector Bank or equivalent, as specified by the Board of Directors or Board of Trustees of the secured creditor or any other person or authority exercising powers of superintendence, direction and control of the business or affairs of the secured creditor, as the case may be, to exercise the rights of a secured creditor under the ordinance;

(b) demand notice means the notice in writing issued by a secured creditor or authorised officer, as the case may be, to any borrower pursuant to Sub-section (2) of Section 13 of the Act.

5. An officer not less than a Chief Manager of a Public Sector Bank or equivalent as may be specified (notified) by the Board of Directors of the secured creditor (Bank/financial institution) or any other person or authority exercising powers of superintendence, direction and control of the business or affairs of the secured officer is an "authorised officer" for the purpose of Section 13(2) read with Section 13(12) of the Act. The question, therefore, is whether an Advocate of a Bank/financial institution can be treated as an authorised officer for the purpose of Section 13(2) read with Section 13(12) of the Act and Rules 2(a) and 2(b) of the Rules. We are afraid, the answer must be in the negative.

6. To be an authorised officer, a person has to be a Chief Manager of a Public Sector Bank or an officer of equivalent rank. Secondly, such officer shall have to

be specified by the Board of Directors of the Bank to be authorised officer for the purpose of exercising powers under Chapter III of the Act. As per Rule 2(b) of the Rules, a demand notice can be issued by the secured creditor or authorised officer. Needless to mention that the secured creditor means as defined in Section 2(zd) of the Act, and an authorised officer through whom the secured creditor exercises the rights (Section 13(12) of the Act) is the one who falls within the ambit of Rule 2(a) of the Rules. An Advocate, even if instructed by a Bank/financial institution and even if such Advocate is specified by the Board of Directors, cannot be treated as an authorised officer. Even if the Board of Directors of a Public Sector Bank specifies Advocate(s) to be authorised officer, the same would be ultra vires the provisions referred to hereinabove.

7. The decision of the Calcutta High Court on which reliance is placed by the Counsel for respondents no doubt refers to all the sub-sections in Section 13 as well as the Rules 2(a) and 2(b) of the Rules. The Counsel has not brought to our notice any portion of the judgment which specifically deals with the effect of Rule 2(a) of the Rules which defines "authorised officer". On a plain reading of Rules 2(a) and 2(b) which enable only an officer of the Bank as specified by the Board of Directors is an authorised officer, who can issue a notice of demand u/s 13(2) of the Act as contemplated under Rule 2(b) of the Rules. We are, therefore, respectfully not able to agree with the view of the High Court of Calcutta.

8. We are aware that there is abundant authorities law under the Act which ordinarily bar a writ petition at the stage of demand notice or possession notice *United Bank of India Vs. Satyawati Tondon and Others*, and *Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others*, Any person aggrieved, has to necessarily approach the Debts Recovery Tribunal having jurisdiction u/s 17(1) of the Act and if any adverse order is passed, such person can even approach the Debts Recovery Appellate Tribunal. In this case, however, though possession notice was issued by the authorised officer of the second respondent, the same is based on a notice of demand issued by the Advocate of the second respondent, which is without jurisdiction and ultra vires. Therefore, in the facts and circumstances of the case, we are inclined to entertain the writ petition. In the result, the writ petition is allowed and the impugned notices are set aside. This, however, does not preclude the respondents from taking action in accordance with the provisions of the Act. There shall be no order as to costs.