

(2010) 11 BOM CK 0120
In the Bombay High Court
Case No : Writ Petition No. 1898 of 2010

Satish D. Chaudhary and Others

APPELLANT

Vs

NKGSB Co­op. Bank Ltd. and Others

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Constitution of India, 1950 — Article 226, 227
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 14, 17

Citation : (2011) 2 ALLMR 195 : (2013) 1 ARBLR 199 : (2011) 4 BomCR 711 : (2011) 3 MhLj 451

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : H.S. Aanand, instructed by, Sarita Dorde, for the Appellant; A.K. Jalsadgi, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—The Petitioners have filed the writ petition under Article 226/227 of the Constitution of India thereby challenged an Award dated 13.01.2010 passed by the Arbitrator appointed u/s 84 of the Multi State Cooperative Societies Act, 2002 ("the MSCS Act") and also an order passed by the Chief Metropolitan Magistrate, Esplanade, Mumbai dated 11.03.2010, u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002).

2 The petition as such is not maintainable in view of the specific provision of Section 84(3) of the MSCS Act which itself contemplates a remedy against the award, if any, passed by the Arbitrator. The award is dated 13.01.2010. The present writ petition is filed in July, 2010. In view of the clear provisions of Section 34 of the Arbitration and Conciliation Act, 1996 which is governing law, the writ petition as such is not maintainable. The remedy, if any, as available need to be invoked by the Petitioner.

3. The challenge to the order so passed by the Magistrate u/s 14 of SARFAESI Act is also unentertainable in the present writ petition as the Petitioners have a remedy available under the said Act itself, as observed by us in M/s. Trade Well v. Indian Bank and Anr. AIR 2007 Bom. 656 (DB), of which I was a party, followed by the Division Bench of this Court in Union Bank of India v. State of Maharashtra 2010 (5) Mh. L.J. 270. The Supreme Court has confirmed the same view in the following words in Authorized Officer, Indian Overseas Bank and Anr. v. Ashok Saw Mill 2009(2) B.J. 721 :

22 In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the Banks or Financial Institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in subsection (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in subsection (3) thereof.

4. The submission, that there was no notice in existence u/s 13(2) of the SARFAESI Act, in view of the withdrawal of the notice by the Bank, as recorded in the order dated 31st May 2006 passed by the Presiding Officer, DRT II, Mumbai has no force, as the said appeal was withdrawn by the Bank upon certain conditions. Admittedly, the postdated cheques, issued by the Petitioner were dishonoured based upon which the appeal was withdrawn and, therefore, the Bank proceeded to take this step in accordance with law. In my view, the notices so initiated got revived and, therefore, the proceedings and the action so initiated u/s 14 of the SARFEASI Act is legal. However, without deciding anything further on merits, I am not inclined to interfere with the orders so passed.

5 The petition is accordingly dismissed with liberty. All the points are kept open. No costs.