(2011) 03 JH CK 0110

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5184 of 2009

Satyam Associates APPELLANT

Vs

Canara Bank and Another RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(3A), 13(4), 17

Citation : AIR 2011 Jhar 102 : (2011) 2 JCR 514 : (2011) 8 RCR(Civil) 2092

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard.

2. Mr. Ramawatar Chamaria, learned Counsel for the Petitioner, submitted that the Respondent-bank has filed a case before D.R.T after this writ petition was filed, which has been heard and order is reserved, and therefore the notice u/s 13(2) of the SARFAESI Act could not be issued till the liability is decided. He further submitted that Petitioner has got no remedy of appeal in view of explanation to Section 17 of SARFAESI Act.

3. In reply, Mrs. Rawat, learned Counsel appearing for the Bank, submitted that it has been decided by the Hon''ble Supreme Court in the case reported in Transcore Vs. Union of India (UOI) and Another, that the secured creditor/bank can proceed under SARFAESI ACT even during pendency of the case before DRT. She further submitted that the bank was perfectly justified in issuing the notice u/s 13(2). She also submitted that the possession was taken on 4.1.2010 u/s 13(4) after considering Petitioner?s objection filed u/s 13(3-A) and Petitioner was fully aware of taking possession. Moreover, it was personally served on the Petitioner but Petitioner has wrongly stated that no such communication was made to him. She submitted that Petitioner had remedy of appeal within 45 days from taking possession of the property. She further clarified that explanation to

Section 17 debars a borrower from moving DRT against communication of the Bank but it did not debar the borrower from filing appeal against the measures taken by the bank referred to in sub Section (4) of Section 13 of SARFAESI Act.

4. I find force in the submission of Mrs. Rawat that the bank was justified in issuing the notice u/s 13(2) even if a case before DRT was pending. The contention of Mr. Chamaria that there is no provision of appeal is also not acceptable. It is not disputed that measures referred to in Sub-section (4) of Section 13 were taken by taking possession of the property on 4.1.2010. Petitioner did not chose to prefer appeal within 45 days. The explanation did not debar the Petitioner from filing appeal.

5. In the circumstances, I find no merit in this writ petition, which is accordingly dismissed.