
(2021) 12 UK CK 0026

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2544 Of 2021

Shubhra Khan & Another

APPELLANT

Vs

Bank Of Baroda & Others

RESPONDENT

Date of Decision : 02-12-2021

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(4), 14
Security Interest (Enforcement) Rules, 2002 — Rule 8

Citation : (2021) 12 UK CK 0026

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : Parikshit Saini, Siddhartha Jain, G.S. Negi

Final Decision : Disposed Of

Judgement

Manoj Kumar Tiwari, J

1. Petitioner no. 2 is a borrower; while, petitioner no. 1 is guarantor in respect of various term loans taken from Bank of Baroda. Since some default was committed by petitioner no. 2 in re-payment of the loan, therefore, respondent-Bank has initiated proceedings under SARFAESI Act.

2. By means of this writ petition, petitioners have sought following reliefs:

"I. Issue a writ of mandamus and/or any other appropriate writ/order/direction quashing the notice dated 24.06.2021 issued under Section 13(2) of the SARFAESI Act.

II. Issue a writ of mandamus and/or any other appropriate writ/order/direction quashing the possession notice dated 20.10.2021 issued under Section 13(4) of the SARFAESI Act, 2002 read with Rule 8 of the SARFAESI Rules.

III. Issue a writ of mandamus and/or any other appropriate writ/order/direction directing, commanding, and restraining the respondents from taking physical

possession of the Immovable Property of the petitioners.

IV. Issue a writ of mandamus and/or any other appropriate writ/order/direction directing and commanding the respondent no. 3 to not pass any orders for physical possession of the Immovable Property of the petitioners under Section 14 of the SARFAESI Act.

V. Issue a writ of mandamus and/or any other appropriate writ/order/direction directing the respondents to restructure the loan accounts of the petitioners."

3. It is not in dispute that for the reliefs claimed in this writ petition, petitioners have filed a Securitization Application, which is numbered as S.A. No. 154 of 2021 "Mrs. Shubhra Khan & another Vs. Bank of Baroda". It is also not in dispute that Debts Recovery Tribunal, Dehradun is lying vacant since 01.10.2021 and new Presiding Officer has not been appointed for the said Tribunal. The Securitization Application filed by the petitioners was adjourned on 17.11.2021 on the ground that Court is not available. Petitioners' counsel submits that on the next date fixed, i.e., 01.12.2021 also, the case was adjourned on the same ground.

4. Petitioners have expressed an apprehension that respondent-Bank may proceed against the petitioners under Section 14 of SARFAESI Act.

5. Learned counsel for the respondent-Bank submits that Bank is not contemplating any action under Section 14 of the Act against petitioners in near future, therefore, the apprehension expressed by petitioners is unfounded.

6. Having regard to the facts & circumstances of the case, it is provided that, till appointment of Presiding Officer of Debts Recovery Tribunal, Dehradun or for a period of four weeks from today, whichever is earlier, no coercive steps shall be taken against the petitioners.

7. With the aforesaid direction, the writ petition stands disposed of.