(2018) 05 CAL CK 0005

In the Calcutta High Court

Case No : WP 9 OF 2015

SIDDHARTH AGARWAL & ORS. APPELLANT

Vs

STATE BANK OF INDIA & ORS. RESPONDENT

Date of Decision : 02-05-2018

Acts Referred:

Securitization and Reconstruction of financial Assets and Enforcement of Security Interest Act of 2002 — Section 13(2)
Securitization and Reconstruction of financial Assets and Enforcement of Security Interest Act of 2002 — Rule 8
Constitution of India — Article 21

Citation : (2018) 05 CAL CK 0005

Hon'ble Judges : MOUSHUMI BHATTACHARYA J

Bench : Single Bench

Advocate : Satadeep Bhattacharya, Rajesh Upadhyay, Rajesh Upadhyay, Soumosru Chatterjee, Anirban Pramanik

Final Decision : Disposed Off

Judgement

The Court :- The instant writ petition has been filed by the petitioner Nos. 1 to 4 being the directors of R. Piyarelall Import & Export Limited

(hereinafter referred to as the â??said Companyâ?). The petitioners no. 5 & 6 are the guarantors of the financial assistance received by the

Company from the State Bank of India / respondent no. 1. The main prayer in the writ petition is for an injunction restraining the respondent

authorities from giving any effect to a letter dated 19.11.2014 by which the respondent no. 1 has alleged breach on the part of the petitioners of the

terms of the loan covenants entered with the State Bank of India and has threatened to publish photographs, names and addresses of the petitioners in

leading newspapers. From the statements made in the writ petition it appears that the

Company obtained credit facilities for its business from SBI/respondent no. 1 and the financial assistance granted to the company was enhanced from

time to time; the last revision being made in 2012. From the writ petition, it is evident that no statements have been made with regard to the alleged

defaults of the loan covenants on the part of the Company save and except the Company receiving a notice under Section 13(2) of the Securitization

and Reconstruction of financial Assets and Enforcement of Security Interest Act of 2002 (SARFAESI) on 19th June 2014 and a representation being

filed in response thereto by the Company on 16th August 2014. In the aforesaid notice the respondent bank has alleged that the Company has

acknowledged subsistence of the liability in respect of the credit facilities granted to the Company by executing confirmation of balance and revival

letters from time to time. In the representation the Company has pointed to the alleged failure of the respondent no. 1 bank is performing its obligations

in terms of the contract and the filing of a civil suit for the same in this Court in 2014. The representation does not address the specific point of the

admitted liability of the Company to the bank or any steps taken by the Company towards its repayment obligation.

Mr. Satadeep Bhattacharya, counsel appearing on behalf of the writ petitioners submits that his client would be seriously prejudiced if the threat

contained in the impugned letter dated 19th November, 2014 is carried out and the petitioners' photographs published in newspapers. He submits that

unlike other cases, the petitioners have not been declared as wilful defaulters under the RBI Guidelines/Master Circular and in the absence of such, no

coercive measures can be taken against his clients. He further submits that an application has been taken out by the petitioners, which is presently

pending before the Debts Recovery Tribunal and a suit has also been filed against the respondent no. 1 in this Court. He relies upon a Division Bench

Judgement of this Court delivered on 5th May, 2016 reported in AIR 2016 Cal 281 which considered Rule 8 of the SARFAESI Rules as to whether

there is any requirement for issuing notice to the general public in relation to a defaulting borrower and whether the aforesaid would entail publication

of photographs of the concerned borrowers.

In the said judgment, the Division Bench considered several decisions passed by the Honâ??ble Madras High Court in the matter of K.J.

Doraiswamy vs. The Assistant General Manager State Bank Of India of the Honâ??ble Madhya Pradesh High Court in Kumari Archana Chauhan

Vs. State Bank Of India and the Honâ??ble Bombay High Court in D.J.Exim (India) Private Limited And Others Vs. State Bank Of India all of

which held that there is no bar in publishing photographs of errant borrowers. On the other hand, the possibility of prejudice being suffered by

borrowers who are not wilful defaulters in the event of their photographs being published was considered in the said judgement.

The Division Bench came to the conclusion that there is â??neither positive direction nor negative indicationâ? in the RBI Master Circular in relation

to publishing of photographs, but was of the view that publication of photographs of defaulters should not be resorted to in a routine manner until and

unless there are special circumstances where the borrower has committed default with a mala fide intention so as to be categorised as to be a wilful

defaulter under the RBI Guidelines. The Division Bench further observed that publication of photographs may have a serious impact on the economy

since genuine borrowers would be deprived of financial assistance by banks. The Division Bench held that publication of photographs would be in

violation of a citizenâ??s right to live with dignity guaranteed under Article 21 of the Constitution of India.

Mr. Pramanik Counsel for the respondent no. 1 bank refutes the contentions of the petitioner and relies upon a Division Bench Judgment of the

Honâ??ble Madras High Court reported in 2016 SCC On Line Madras 32928 which had considered a similar case and had held that there is no

violation of any right or legal provision in publishing photographs of borrowers and the surety for non repayment of the loan. Earlier judgements of the

Honâ??ble Madras High Court namely K.J. Doraiswamy Vs. The Assistant General Manager State Bank of India, were considered in the said

judgment and a strong case made out in favour of the lender bank for resorting to appropriate measures to caution the public at large against the

defaulting borrowers.

Counsel also relies on a Division Bench Judgment of the Honâ??ble Bombay High Court D.J. Exim (India) Pvt. Ltd. & Ors. vs. State Bank of India

& Ors. which held that there is no legal impediment prohibiting a bank from publishing photographs of a defaulter. He relies upon two other judgements reported in (2005) 11 Supreme Court Cases 518; Trade Tax Officer, Saharanpur Vs Royal Trading Co. and (2007) 13 Supreme Court

Cases 270;

Union Of India And Another Vs. Vicco Laboratories for the proposition that a Court should be reluctant to interfere in matters involving issuance of a

showcause notice. Counsel for the petitioner submits that the decision of the Division Bench of the Honâ??ble Madras High Court has been

challenged before the Honâ??ble Supreme Court of India, but is unable to give further details as to the status of the Special Leave Petition. I have

considered the submissions of Counsel appearing for the parties. From the documents annexed to the writ petition there is no doubt that the Company

of which the petitioners are directors and guarantors (for the financial assistance availed of by the Company), have acknowledged and admitted their

liability in respect of the credit facilities obtained from the respondent bank. The response of the Company to the notice under Section 13(2) of the

SARFAESI does not dispute this liability. It is also clear from the impugned letter dated 19th November 2014, which is under challenge in this

proceeding, that the Company had been advised to repay the loan amount by 10th December 2014 and that admittedly no steps have been taken by

the Company thereafter to honour its financial obligations to the respondent bank. The company has instead filed a suit and an application before the

Debts Recovery Tribunal in an attempt to push back their obligations to the bank.

In the present Writ Petition this Court has been invited to only consider the case made out by the petitioners for the relief claimed namely, for a writ of

mandamus and prohibition restraining the respondent/bank from acting in terms of the impugned communication dated 19th November, 2014. In

considering whether such relief can be granted, the fact that the Company has not yet been declared a wilful defaulter under the RBI Master Circular

is relevant. It is also relevant that proceedings filed by the Company before this Court as well as the Debts Recovery Tribunal are pending as on date

and will consider the merits of the cross-claims at the time of adjudication.

Although the reasons stated in the decisions of the Division Bench of the Madras High Court, supported by the Bombay High Court in favour of the

banks are compelling, this Court is bound by the Division Bench Judgement rendered in State Bank of India & Ors. Vs. Ujjal Kumar Das & Anr.

where a note of caution has clearly been given against publishing of photographs of wilful defaulters in the backdrop of Article 21 of the Constitution

of India. It should be noted, however, that the judgement of this Court provides a window of â??Special Circumstancesâ? when the bank can proceed

with such coercive measures against borrowers who have committed deliberate default of the RBI Guidelines with mala-fide intention. This window

cannot, however, be applied in the present case since, it cannot be from the material on record said that the Company has wilfully defaulted in its

financial obligation to the respondents Bank or that the petitioner as Directors and Guarantors of the Company can be held liable for the conduct

complained of on the part of the Company. The decisions relied on by the Bank with regard to the limited sphere of interference of a Court in relation

to show-cause notices are not applicable since the impugned letter dated 19th November, 2014 cannot be construed as a show-cause notice per-se. In

the facts and circumstances as stated above, the interim order passed by this Court on 20th January, 2015 is confirmed. Let there be an order in terms

of prayer â??fâ?? of the Writ Petition. WP No. 9 of 2015 is disposed of on that basis. The order passed is without prejudice to the right of the

respondent No. 1 bank to pursue its remedies against the Company under the Sarfaesi Act and the Rules thereunder or the RBI Guidelines or under

any law other law presently in force.

