(2009) 02 KL CK 0021

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30813 of 2008 (R)

Smt. Pushapalatha, S. APPELLANT

Vs

State Bank of Travancore and Another RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 11, 13(2), 13(4), 17

Citation : AIR 2009 Ker 181 : (2009) 2 ILR (Ker) 472 : (2010) 7 RCR(Civil) 1877

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : John Joseph Roy and Lawrence D''Cunha, for the Appellant; P.N. Purushothama Kaimal, P. Jayakrishna Kaimal and Saji Varghese, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—The petitioner availed a loan from the first respondent. According to her, that was on the basis of a then available financial assistance scheme of the second respondent, Khadi and Village Industries Commission. She states that the second respondent recommended her application and forwarded it to the first respondent, Bank, however, that the bank did not duly honour its commitments and hence margin money and other amounts payable by the second respondent, Commission was not appropriately released.

2. On default in repayment, the bank initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, Sarfaesi Act). A notice u/s 13(2) was issued. The petitioner replied to that as per Ext. P11, stating that in view of the disputes between the petitioner and the first respondent regarding the total amount outstanding from her to bank, the parties have to go for arbitration in terms of Section 11 of Sarfaesi Act read with the provisions of Arbitration and Conciliation Act, 1996.

3. If a measure is taken u/s 13(4), the obvious remedy for the petitioner is to take recourse to Section 17 of sarfaesi Ace and move the Debt Recovery Tribunal. If further action u/s 13(4) has not followed, the petitioner would not have any right to challenge the decision of the bank, rejecting the objections to the notice u/s 13(2). This proposition settled by Apex Court in the judgment in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., . It is contended that the said ratio is not applicable, in view of the fact that the petitioner''s challenge is to the bank''s decision that it does not agree for arbitration in terms of Section 11 of Sarfaesi Act.

4. It therefore needs to be considered as to whether the petitioner has the locus to initiate or ask for an arbitration by invoking Section 11 of Sarfaesi Act. That provision reads as follows:

Resolution of disputes - Where any dispute relating to securitization or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank or financial institution or securitization company or reconstruction company or qualified institutional buyer, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

5. A reading of Section 11 of the Sarfaesi Act shows that the disputes which could be resolved by recourse to that provision are disputes relating to securitisation or reconstruction or non-payment of any amount due including interest. Such a dispute could be resolved only when that arises amongst any of the parties stated in that said provision. They are the bank or the financial institution or the securitisation company or the reconstruction company or a qualified institutional buyer. Therefore any dispute between a secured creditor and a debtor in relation to the security interest or secured debt does not fall for arbitration under that provision. For that clear reason, Section 11 of Sarfaesi Act cannot be initiated by a debtor. Hence the decision of the bank as contained in Ext. P12 to that extent is sustainable.

6. Therefore, the petitioner''s plea based on Section 11 of the Sarfaesi Act is rejected. Having rejected the plea u/s 11 of the Sarfaesi Act, I do not find any ground to issue any order in relation to the other disputes between the parties, which relate to the release of margin money, etc. They do not call for determination in writ jurisdiction.

7. Learned Counsel for the second respondent, on instructions, submitted that as If now, the scheme relied on by the petitioner is not in force and a different scheme has been later brought in. This submission is recorded. In the result, rejecting the plea raised by the petitioner on the basis of Section 11 of the Sarfaesi Act and leaving open all other issues, this writ petition is dismissed. No costs.

