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(2010) 05 AHC CK 0028

In the Allahabad High Court

Case No : C.M.W.P. No. 24789 of 2010

Smt. Rajrani Singh and Another — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 10-05-2010

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 14, 14(1), 17

Citation : (2010) 5 AWC 4861 : (2010) 1 BC 667 : (2011) 112 RD 113

Hon'ble Judges : Satyapoot Mehrotra, J;S.C Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satyapoot Mehrotra and S.C Agarwal, JJ.—It appears that the petitioners took loan from the respondent No. 4-Punjab National Bank.

2. The petitioners committed default in payment of the said loan. Consequently, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 have been initiated against the petitioners.

3. Notice u/s 13(2) of the aforesaid Act was issued to the petitioner. The said notice was followed a notice dated 27.2.2008 issued u/s 13(4) of the aforesaid Act. An application u/s 14 of the aforesaid Act was filed by the respondent No. 4-Bank for taking possession of the property given by the petitioners as security for the aforesaid loan.

4. By the order dated 26.10.2009 (Annexure-1 to the writ petition), the Additional District Magistrate (Finance and Revenue), Agra has issued directions for handing over the physical and actual possession of the property given as security by the petitioners to the respondent No. 4-Bank.

5. The petitioners have filed the present writ petition, inter alia, praying for quashing of the said order dated 26.10.2009.

6. We have heard Smt. Archana Singh, learned Counsel for the petitioners, the learned standing counsel appearing for the respondent Nos. 1 to 3 and Sri D. Vaish, learned Counsel for the respondent No. 4 -Bank.

7. Sri D. Vaish, learned Counsel for the respondent No. 4-Bank has raised preliminary objection that the petitioners have got an alternative remedy u/s 17 of the aforesaid Act, and the writ petition is liable to be dismissed on the said ground.

8. We have considered the submissions made by Sri D. Vaish, learned Counsel for the respondent No. 4-Bank, and we are inclined to accept the same.

9. Sub-section (4) of Section 13 of the aforesaid Act, inter alia, provides that in case the borrower fails to discharge his liability in full within the period specified in Sub-section (2) of Section 13, the secured creditor may take recourse to one or more of the measures mentioned in Sub-section (4) of Section 13 for recovery of his secured debt.

10. Clause (a) of Sub-section (4) of Section 13 of the aforesaid Act contemplates as one of the measures, taking possession of the secured asset of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset.

11. Sub-section (1) of Section 14 of the aforesaid Act, inter alia, provides that where the possession of any secured asset is required to be taken by the secured creditor, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate to take possession thereof.

12. Thus, Sub-section (1) of Section 14 of the aforesaid Act is for the purpose of execution of the measures which the secured creditor has decided to take under Sub-section (4) of Section 13 of the aforesaid Act. Sub-section (1) of Section 14 of the aforesaid Act is thus, consequential provision in order to execute the measures which the creditor has decided to take under Sub-section (4) of Section 13 of the aforesaid Act.

13. Sub-section (1) of Section 17 of the aforesaid Act, inter alia, provides that any person (including borrower), aggrieved by any of the measures referred to Sub-section (4) of Section 13 taken by the secured creditor or his authorised officer, may make an application to the Debts Recovery Tribunal within forty five days from the date on which such measures had been taken.

14. It will thus, be seen that the petitioners have got alternative remedy u/s 17 of the aforesaid Act.

15. It is true that Section 17 of the aforesaid Act does not provide remedy against the order passed u/s 14 of the aforesaid Act. It is also true that in view, of Sub-section (3) of Section 14 of the aforesaid Act, the action taken u/s 14 of the said Act attains finality. However, as noted above, Section 14 of the aforesaid

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Act is merely a consequential provision and is for the purpose of executing the measures taken under Sub-section (4) of Section 13 of the aforesaid Act. The order u/s 14 of the aforesaid Act is merely a consequential order.

16. Even though, the petitioners may not have remedy u/s 17 of the aforesaid Act against the order passed u/s 14 of the aforesaid Act but the petitioners may approach the Debts Recovery Tribunal against the measures taken by the respondent No. 4-Bank under Sub-section (4) of Section 13 of the aforesaid Act. Thus, the petitioners have got an alternative remedy u/s 17 of the aforesaid Act against the measure taken under Sub-section (4) of Section 13 of the aforesaid Act for taking possession of the property given as security.

17. Reference in this regard may be made to a decision of this Court in Virendra Kumar Jaiswal Vs. Chief Metropolitan Magistrate and Another,

18. Having regard to the nature of controversy involved in the present writ petition, we are of the opinion that it would be appropriate that the petitioners be relegated to avail the alternative remedy of filing application/appeal u/s 17 of the aforesaid Act.

19. In view of the above, the writ petition is liable to be dismissed on the ground of alternative remedy available to the petitioners.

20. The writ petition is accordingly dismissed on the ground of availability of alternative remedy to the petitioners.

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