(2018) 03 UK CK 0026

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2876 of 2017

SMT RATNA DEVI — APPELLANT

Vs

UNION BANK OF INDIA AND OTHERS — RESPONDENT

Date of Decision : 13-03-2018

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002 — Section 2(f)
Indian Contract Act,1872 &madash; 141, 171
Recovery of Debts due to Banks and Financial Institutions Act, 1993 — Section 20

Citation : (2018) 03 UK CK 0026

Hon'ble Judges : SUDHANSHU DHULIA, J

Bench : Single Bench

Advocate : Shobhit Saharia, Arvind Vashishta, Monika Pant

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1.Â Petitioner was a guarantor to a loan taken by the Achievers Group which is a partnership firm and its partners i.e. Sri Ved Prakash Gwari and

Smt. Nitika Gwari. The loan amount was of Rs.9,00,000/- (Rupees Nine Lakhs Only) which could not be repaid. Meanwhile, another loan of

Rs.30,00,000/- (Rupees Thirty Lakhs Only) was taken by the partners, which they also failed to repay. Consequently, the mortgaged property was

sold in auction by the respondent-bank, in which the amount which has been received by the respondent-bank is over and above the amount payable at

the said loan.Â

2. According to the petitioner, the surplus amount which has been received by the respondent-bank is of Rs.45,50,000/- (Rupees Forty Five Lakhs

Fifty Thousand Only), which covers the liability of the principal borrower in the second loan as well in which the petitioner was the guarantor.

However, this fact has been denied by the learned Senior Counsel for the respondent-bank.

3. Undoubtedly, under the definition of a â??borrowerâ? under Section 2 (f) of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002, guarantor also stands in the same definition, but the fact remains that since the liability of the Bank as per

the petitioner has already been fulfilled, there is no occasion now for the respondent-bank to sell the property of the petitioner in auction.Â

4. The petitioner relies upon Section 141 read with Section 171 of the Indian Contract Act. However, there is one difficulty before this Court which is

that the respondent-bank had already approached the Debts Recovery Tribunal, Dehradun by filing an Original Application No. 36 of 2017.

Admittedly, the principal borrower i.e. Achievers Group and its partners did not even put in their appearance before the Debts Recovery Tribunal and

this Court has been informed that they are absconding and the matter proceeded ex-parte against them. The order, however, has been passed which is

against the present petitioner, which reads as under:-

â??(i) The Original Application is allowed declaring that the Defendant No. 2 to 5 are liable to pay jointly and severally a total sum of

Rs.11,21,883.80ps/- (Rupees Eleven Lac

Twenty-One Thousand Eight Hundred EightyThree and Paisa Eighty only) to Applicant Bank along with costs and expenses.

(ii) Applicant Bank is entitled to recover aforesaid amount by sale of mortgaged property (if not sold earlier under the provisions of the

S.A.R.F.A.E.S.I. Act, 2002). If the dues of Applicant Bank still remain unsatisfied, the same shall be recovered by attachment and sale of the

personal movable and immovable assets of the Defendant No. 2 to 5 jointly and severally. Applicant Bank is at liberty to enforce the claim through

due process of law.

(iii) Any other application pending stands disposed of.

(iv) Recovery Certificate be issued forthwith in above terms U/s 19 (22) of the Recovery of Debts and Bankruptcy Act, 1993 (as amended from time

to time) and be sent to the Recovery Officer-II, DRT, Dehradun.â??

5. Learned Senior Counsel for the respondentbank Mr. Arvind Vashishta has pointed out that against the order of the Debts Recovery Tribunal, there

is a statutory appeal provided before the Appellate Tribunal under Section 20 of the Recovery of Debts due to Banks and Financial Institutions Act,

1993.

6. The case of the petitioner, however, is that she is a housewife and what is at stake is her residential house, which is now to be auctioned by the

respondentbank. The respondent-bank admits the position that the orders will sooner be passed for the auction for the said property.Â

7. Inspite of the petitionerâ??s hardship, this writ petition cannot be entertained by this Court as there is a statutory remedy available to the petitioner

to file an appeal before the Appellate Tribunal.Â

8. Since the petitioner has a remedy to file an appeal before the Appellate Tribunal, no interference is being called for by this Court. The writ petition

stands dismissed on ground of alternative remedy.

9. However, in order to effectively enable the petitioner to file an appeal before the Appellate Tribunal, it is directed that for a period of four weeks

from today, no coercive measures shall be taken by the respondentbank against the petitioner. This is so as Mr. Arvind Vashishta, Senior Advocate

has very fairly submitted before this Court that in any case it will take at least two weeks for the paper work to be done by the respondentbank in

order to auction the property of the petitioner.Â

10. Learned counsel for the petitioner has apprised this Court that there is a limitation of one month. However, this aspect has to be considered by the

learned Appellate Tribunal. On this nothing can be said by this Court.Â

11. It is made clear that for a period of four weeks from today, no coercive measures shall be taken against the petitioner. It is further made clear that

the surplus amount shall not be disbursed by the respondent-bank for a period of one month.

12. Let a certified copy of this order be issued within a period of twenty-four hours on payment of usual charges.

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