

(2010) 07 CAL CK 0036
In the Calcutta High Court
Case No : Writ Petition No. 2882 of 2010

Smt. Suchanda Chowdhury	Vs	APPELLANT
UCO Bank and Others		RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17

Citation : AIR 2011 Cal 3

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Moni Bhusan Sirkar and Suniti Sen Gupta, for the Appellant;
Suchishmita Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—The Petitioner in this Article 226 petition dated February 8, 2010 is questioning a notice dated November 27, 2009 issued by the Authorized Officer of the UCO Bank's zonal office in Suri u/s 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. Alleging that the Petitioner was in default on the loan, the Bank, the secured creditor, initiated proceedings by issuing the Section 13(2) notice giving the Petitioner an opportunity to explain her position. The Petitioner sent a representation dated January 13, 2010.

3. In reply the Authorized Officer wrote a letter dated January 18, 2010 saying that the explanations were not acceptable, and that it was necessary for the Petitioner to pay the outstanding debt so that she might avoid action u/s 13(4) of the Act.

4. Mr. Sirkar, counsel for the Petitioner, submits that the Bank ought to have

given the Petitioner a hearing. According to him, the Petitioner's representation sent through her lawyer did not receive due consideration. Ms. Ghosh, counsel for the Bank, submits that the Bank is yet to take steps u/s 13(4).

5. In her representation dated January 13, 2010 the Petitioner did not ask the Bank to give her a hearing. After receiving the letter dated January 18, 2010 she did not submit any representation requesting the Bank to consider her representation dated January 13, 2010 afresh after hearing her.

6. Mr. Sirkar has reminded me of the law laid down by the Supreme Court that representation submitted in response to a notice u/s 13(2) of the Act is not to be turned down in a ritualistic manner, and that such a representation is to be closely examined and considered by the secured creditor before taking steps u/s 13(4).

7. There cannot be any doubt that every-one in the country is bound by the law laid down by the Supreme Court. But here the question is whether the High Court should judicially review under Article 226 the justifiability of a conclusion reached by a secured creditor that the borrower's representation to its Section 13(2) notice is not acceptable or tenable.

8. In my considered opinion, the High Court in exercise of power under Article 226 should not judicially review the justifiability of the conclusion. It is to be examined, if at all, by the Debts Recovery Tribunal in an appeal u/s 17. In such an appeal the person aggrieved by the Section 13(4) actions and steps can always take the point that the representation to the Section 13(2) notice was rejected without considering it properly.

9. Needless to say that if the Tribunal finds that the representation was rejected without due consideration, then, if necessary, it can set aside the steps taken u/s 13(4) and give the Appellant necessary relief. The proceedings initiated by the secured creditor under the special statute are not supposed to be filtered from the Section 13(2) stage to the Section 17 stage through the process of Writ Court.

For these reasons, the petition is dismissed. No costs. Certified Xerox.