

(2011) 01 UK CK 0036

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2223 of 2010

Star Tape Industries and Another

APPELLANT

Vs

Chief Manager/Authorised Officer, Indian Bank and Another

RESPONDENT

Date of Decision : 05-01-2011

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 : (2011) 01 UK CK 0036

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—Heard learned Counsel for the parties and perused the record.

2. By means of this writ petition, the Petitioners have sought a writ in the nature of certiorari quashing the auction notice dated 22-11-2010 (contained as Annexure No. 2 to the writ petition).

3. A perusal of the record shows that the proceedings u/s 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the Act) have already been drawn against the Petitioners and the Respondent-Bank has already taken possession of the mortgaged property of the Petitioners.

4. Learned Counsel appearing on behalf of the Respondents-Bank has submitted that an alternate remedy of statutory appeal u/s 17 of the Act before the Debt Recovery Tribunal is available to the Petitioner.

5. A Division Bench judgment of this Court in the case of Smt. Alpana Shankar v. Union Bank of India and Anr. reported in 2005(1) U.D. 692, has observed in paragraph No. 6 as under:

6. Admittedly, the Petitioner was given notice u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002. If the Petitioner failed to discharge the liabilities within sixty days, the Respondent Bank is entitled to take recourse to one or more of the measures mentioned u/s 13(4) of the said Act to recover the secured debt. If the Petitioner is aggrieved by any such action taken by the Bank u/s 13(4) of the Act, the Petitioner has a right of appeal to the Debt Recovery Tribunal u/s 17 of the said Act. From the averments made in the writ petition, it is not clear whether the Respondents have taken any action u/s 13(4) of the Act. If any such action has already been taken or as and when such action is taken, the Petitioner can approach the Debt Recovery Tribunal u/s 17 of the Act for redressal of her grievance. For this reason also, this Court cannot interfere in the matter in exercise of the power under Article 226 of the Constitution of India. Unless there are extreme and compelling circumstances, the High Court cannot exercise jurisdiction under Article 226 of the Constitution of India when the party has got an effective alternate remedy available under the Statute. The Petitioner has not made out any such extreme and compelling circumstance to persuade this Court to exercise the jurisdiction under Article 226 of the Constitution of India.

6. An effective alternate remedy of filing statutory appeal u/s 17 of the Act before the Debt Recovery Tribunal is available to the Petitioners. Hence I am not inclined to entertain the writ petition.

7. The writ petition is dismissed in limine. No order as to costs. However, the Petitioners may approach appropriate Forum for redressal of their grievance.