

(2017) 02 J&K CK 0020
In the Jammu And Kashmir High Court
Case No : OWP No. 1877 of 2015

Sunshine Hydro Power Ltd.	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Recovery of Debts Due To Banks And Financial Institutions Act, 1993 — Section 1(2)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13(2)

Citation : (2017) AIR(J&K) 77

Hon'ble Judges : B.S. Walia, J.

Bench : Single Bench

Final Decision : Disposed Of

Judgement

B.S. Walia, J.—Petitioner has sought the issuance of a writ of Certiorari for quashing of notice dated 7-9-2015 issued by respondent No. 2

under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter

referred to as the Act) as also a writ of Mandamus commanding the respondents not to act on the basis of notices issued for initiating proceedings

under the provisions of the Act on the ground that the same are contrary to the decision rendered by a Division Bench of this court in case titled as

Santosh Gupta v. Union of India decided on 16-7-2015 holding that the Securitisation and Reconstruction of Financial Assets Act, 2002 was

not enforceable in the State of Jammu and Kashmir.

2. No other point has been raised nor argued. After hearing arguments the case was reserved for orders.

3. Controversy in issue has been set to rest by the decision of the Hon'ble

Supreme Court in Civil Appeal Nos. 12237 - 12238 of 2016 : (AIR

2017 SC 25) in case titled as State Bank of India v. Santosh Gupta and another. Relevant extract of the same is reproduced hereunder:-

" 40..... As has been stated herein above, Entries 45 and 95 of List 1 clothe Parliament with exclusive power to make laws with respect to

banking, and the entirety of SARFAESI can be said to be referable to Entries 45 and 95 of List 1, 7th Schedule to the Constitution of India. This

being the case, Section 5 of the Jammu and Kashmir Constitution will only operate in areas in which Parliament has no power to make laws for the

State. Thus, it is clear that anything that comes in the way of SARFAESI by way of a Jammu and Kashmir law must necessarily give way to the

said law by virtue of Article 246 of the Constitution of India as extended to the State of Jammu and Kashmir, read with Section 5 of the

Constitution of Jammu and Kashmir. This being the case, it is clear that Section 13 (1) and (4) cannot be held to be beyond the legislative

competence of Parliament as is wrongly been held by the High Court...."

" 48..... We therefore set aside the judgment of the High Court. As a result, notices issued by banks in terms of Section 13 and other coercive

methods taken under the said Section are valid and can be proceeded with further. The appeals are accordingly allowed with no order as to

costs."

4. That in view of the decision of the Hon"ble Supreme Court (supra) the challenge in the writ petition to the initiation of proceedings under

SARFAESI on the basis of the Division Bench judgment in Santosh Gupta's case no longer survives as the very judgment on the basis of which

the challenge had been raised has been set aside by the Hon"ble Supreme Court.

5. That in view of the position as noted above, the writ petition is dismissed. Interim directions if any stand vacated. Respondents are at liberty to

take action in accordance with law in terms of the decision of the Hon"ble Supreme Court (supra). No order as to costs.

OWP No. 177/2016

6. Petitioner has sought the issuance of a writ of Certiorari for quashing recovery proceedings initiated by respondent No.2 before respondent

No.3 i.e. Debt Recovery Tribunal - II vide No. 293/2016 dated 5-1-2016 for recovery of a sum of Rs.24,50,36,213.40/- on the ground that

respondent No.2 had already invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 which had been stayed by this court in terms of orders passed in OWP No. 1877/2015 besides the Recovery of Debt Due to

Banks and Financial Institutions Act, 1993 had no applicability to the State of Jammu and Kashmir and its provisions could not be invoked to

enforce remedy in the nature of recovery of loans through Debt Recovery Tribunal-II Chandigarh.

7. That in the objections filed on behalf of the Punjab and Sind Bank it is stated that in terms of the decision of the Hon"ble Division Bench of this

Court, the Securitisation and Reconstruction of Financial Assets and Enforcement of the Security Interest Act, 2002 was not applicable to the

State of Jammu and Kashmir but since there were a number of properties mortgaged by the petitioner with the Bank at the time of securing loan

and except for 2 properties measuring 30 marlas each situated within the State of Jammu and Kashmir in District Kathua, most of the properties

were situated within the State of Punjab, therefore notice was required to be given in respect of the property situated in district Kathua. however

the answering respondent undertook not to attach the properties situated in District Kathua before the Debt Recovery Tribunal till decision was

taken by the Hon"ble Supreme Court of India and further that the answering respondent reserved the right to effect recovery against the property

of the respondent situated in the State of J. & K. under the State Laws and that the answering respondent had every right to proceed further with

regard to the property situated within the State of Punjab where the Act was applicable, besides loan had also been granted by the branch which

was situated within the jurisdiction of the State of Punjab and most of the properties mortgaged by the petitioner with the answering respondent for

securing the loan were situated within the State of Punjab.

8. Ld. counsel for the respondent bank has also referred to the decision of this Court dated 15-12-2015 in OWP No. 1834/2013 in case titled

as M/s. Surya Pharmaceuticals Ltd. and others v. Union of India and others where while taking note of similar position of stay of initiation

of proceedings against the petitioner therein under the SARFAESI and the initiation of proceedings thereafter against the petitioner therein under

the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, subsequent withdrawal of notices under SARFAESI and consequential disposal of the writ petitions as having been rendered infructuous, this Court while taking note of the inapplicability of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 to the State of Jammu and Kashmir as also of application having been filed by the Bank before the Debt Recovery Tribunal for withdrawing the claim in respect of the mortgaged property/unit situated within the State of Jammu and Kashmir along with the hypothecated assets lying therein without prejudice to other mortgaged properties of petitioners situated outside the State of J. & K., of the Debt Recovery Tribunal Chandigarh being handicapped in dealing with the said application because of the stay order granted by the High Court of Jammu and Kashmir, the said writ petition was disposed of by allowing the Debt Recovery Tribunal Chandigarh to proceed with the application filed by the respondent bank for withdrawing a part of the relief/claim sought in the OA while making it clear that if the application of the respondent bank was allowed by the Debt Recovery Tribunal Chandigarh, then the respondent banks would be at liberty to enforce the security situated in the State of Jammu and Kashmir by filing appropriate proceedings.

9. That in the instant case, proceedings were initiated by the Bank against the petitioner under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 on account of decision of this Court in Santosh Gupta's case holding that the provisions of SARFAESI were not enforceable in the State of Jammu and Kashmir. The decision of the Division Bench in Santosh Gupta's case has been reversed by the Hon'ble Supreme Court in civil appeal against the aforementioned decision of the Division Bench of this Court. In the circumstances it would be open to the Bank to take out proceedings against the petitioners in accordance with law under SARFAESI. Therefore the need for continuing with the proceedings against the petitioner under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 does not survive. However it is for the Bank to take a decision in respect thereto. However as evident from the (provisions of Section 1 (2) of the Act, the Act is applicable in the whole of India except the State of Jammu and Kashmir. In the circumstances it would not be open to the Bank to proceed against the petitioner

before the Debt Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in respect of property situated

within the territorial jurisdiction of the State of Jammu and Kashmir. However it would be open to the Bank to move an appropriate application

before the Debt Recovery tribunal Chandigarh to give up claim in respect of mortgaged property situated within the jurisdiction of the State of

Jammu and Kashmir if it chooses to continue with the proceedings before the Debt Recovery Tribunal Chandigarh. In that eventuality the

proceedings by the Bank would be maintainable only in respect of the property situated otherwise than in the State of Jammu and Kashmir and

further subject to the condition that the Debt Recovery Tribunal Chandigarh grants permission to the Bank to give up its claim before the Debt

Recovery Tribunal in respect of property situated within the State of Jammu and Kashmir. However even in that eventuality if the application is

allowed by the Debt Recovery Tribunal, the Bank would be at liberty to enforce securities situated in the State of Jammu and Kashmir before an

appropriate forum by filing appropriate proceedings. Accordingly OWP No. 1877/2015 is dismissed while OWP No. 177/2016 is disposed of in

aforementioned terms. No orders as to costs.