(2014) 04 AHC CK 0099

In the Allahabad High Court

Case No : Special Appeal No. 415 of 2014

Sushila Steels APPELLANT

Vs

Union Bank of India RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

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

Citation : (2014) 5 ADJ 678 : (2014) 105 ALR 58 : (2014) 5 AWC 4659 : (2014) 4 BC 518 : (2014) 124 RD 423

Hon'ble Judges : Sheo Kumar Singh, J;Attau Rahman Masoodi, J

Bench : Division Bench

Advocate : Siddhartha Srivastava and S.K. Dubey, Advocate for the Appellant; Ashish Agrawal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sheo Kumar Singh and Attau Rahman Masoodi, JJ.—Heard Sri S.K. Dubey, learned Counsel for the appellant and Sri Ashish Agarwal, learned Counsel for respondent No. 1 i.e., the bank and perused the record. This special appeal has been filed challenging the order/judgment passed by the learned Single Judge in Writ Petition No. 1498 of 2013 on 21.1.2013 as well as judgment dated 21.2.2013 passed in Review Application No. 382 of 2013.

2. Relevant facts of the case in nut-shell are summarised below:

The respondent-bank issued a notice u/s 13(2) of S.A.R.F.A.E.S.I. Act, 2002 on 3.7.2012 which was modified by notice dated 9.7.2012. Against these notices, objections were filed by the appellant on 14.8.2012 and supplementary objections were also filed by the appellant on 23.8.2012. Objections raised by the appellant were rejected by order/letter dated 5.9.2012.

At the stage, when the objections were rejected, the appellant feeling aggrieved approached this Court by means of Writ Petition No. 51838 of 2012 which was dismissed by order dated 5.10.2012 on the ground of alternative remedy. The relevant part of the order dated 5.10.2012 is reproduced below:

Issues which are sought to be raised in the writ petition require adjudication of facts determining the liability of the petitioner and the respondents No. 2 & 3. We are of the view that it is not the state for this Court to enter into or adjudicate the issues raised in the writ petition. As and when any action is taken by the bank u/s 13(4) of the S.A.R.F.A.E.S.I. Act, 2002, it is open for the petitioner to avail the remedy as provided u/s 17 of the Act.

Learned Counsel for the bank has rightly pointed out that Rule 8 provides for detailed procedure including issue of notice by the bank to the borrower before any possession is taken or sale is effected. The detailed procedure is prescribed in S.A.R.F.A.E.S.I. Act, 2002. The rule clearly indicates that the petitioner shall have ample opportunity to raise the issue in appropriate statutory proceedings u/s 17 of the S.A.R.F.A.E.S.I. Act, 2002. As the petitioner has statutory remedy to redress his grievance the writ petition is not being entertained leaving the petitioner to avail the statutory remedy under S.A.R.F.A.E.S.I. Act, 2002. It shall be open for the petitioner to issue his all objections under the S.A.R.F.A.E.S.I. Act, 2002.

The writ petition is dismissed.

3. After dismissal of the writ petition on the ground of alternative remedy, the bank issued possession notice dated 22.10.2012 which according to the learned Counsel for the appellant was in the nature of taking a measure as contemplated u/s 13(4) of S.A.R.F.A.E.S.I. Act, 2002. On receiving the possession letter dated 22.10.2012 the appellant initiated proceedings before the Debt Recovery Tribunal by filing S.A. No. 469 of 2012. The respondent-bank raised preliminary objections as to the maintainability of S.A. on the ground that proceedings could not be maintained as the letter dated 22.10.2012 did not constitute a measure as contemplated u/s 13(4) of the S.A.R.F.A.E.S.I. Act, 2002. Supplementary objections in support of the preliminary objections were also raised. The appeal u/s 17 of the S.A.R.F.A.E.S.I. Act, 2002 filed by the appellant before the Debt Recovery Tribunal was dismissed by the Debt Recovery Tribunal on 17.12.2012 as non-maintainable. The Tribunal''s order dated 17.12.2012 gave rise to Writ Petition No. 148 of 2013. The writ petition was also dismissed by means of the impugned judgment dated 21.1.2013.

4. The relevant extract of the judgment passed by the Writ Court is reproduced below:

Rule 8 contemplates that the authorised officer shall take or cause to be taken possession by delivering a notice prepared in Appendix IV of the Rules. Therefore, when notice prepared under appendix IV of the Rules is possession notice of immovable property and it clearly records that the possession has been taken of the property then an appeal shall lie there against u/s 17 of the Act.

A joint perusal of the aforesaid provision and appendix indicates that the notice in Appendix IV has to be referable to section 13(4) of the Act and Rule 8 of the Rules, 2002.

The present notice does not indicate that possession has been taken. It is not even a notice in Appendix IV. The present notice indicates the intention of the Bank that it shall take or cause to be taken possession of the secured assets on the date and time mentioned thereunder in case the dues are not paid. Clearly it is not a notice u/s 13(4) of the Act read with Rule 8 of the Rules, 2002 and appendix IV of the Act.

5. Before the Writ Court, submission of the learned Counsel for the appellant was to the effect that the letter dated 22.10.2012 amounts to a measure as contemplated u/s 13(4) of the S.A.R.F.A.E.S.I. Act, 2002 and therefore, Debt Recovery Tribunal ought not to have rejected the proceedings on the ground of maintainability. In support of this contention, reliance is placed upon the judgment in Authorised Officer, Authorized Officer, Indian Overseas Bank and Another Vs. Ashok Saw Mill, On the strength of the judgment cited before us it is demonstrated that the Apex Court in the judgment (supra) has permitted the aggrieved person to agitate his grievance at a stage when all or any of the measures provided u/s 13(4) are/is resorted to and it is immaterial whether possession of the mortgaged property is actually taken over or not. Learned Counsel for the appellant has cited paragraph Nos. 26, 27, 28 and 29 of the aforesaid judgment before us in support of his contention.

6. On the other hand, learned Counsel for the respondent-bank while meeting the submissions advanced by the appellant''s Counsel has cited Standard Chartered Bank judgment of the Apex Court in (2013) 9 SCC 260 and has drawn our attention to paragraph Nos. 27, 28, 36 and 37 of the later judgment. We do notice a state of uncertainty as regards the remedy available to an aggrieved person in the light of judgments passed by the Apex Court which deal with the law on the subject but we may not loose sight of the aspect that the objections raised by the appellant were rejected prior to institution of proceedings u/s 17 of the S.A.R.F.A.E.S.I. Act, 2002 and possession notice was thereafter issued on 22.10.2012 pursuant to which Panchnama was drawn. We also notice that separate proceedings for realisation of dues were also taken up by the bank before the Recovery Tribunal independently under Recovery of Debts due to Banks and Financial Institutions Act, 1993 by filing O.A. No. 521 of 2012 which is posted for final hearing on 13th May, 2014 before the Debt Recovery Tribunal, Lucknow, wherein, the appellant has an opportunity to take up his objection with regard to his liability.

7. The real issue before us is as to whether the proceedings before the Debts Recovery Tribunal u/s 17 of the S.A.R.F.A.E.S.I. Act, 2002 would be maintainable or not before the actual possession is taken. If the answer is negative then the interpretation of mere issuance of possession notice in any format becomes immaterial till the actual possession is taken. In some cases, there is resistance

on the part of borrower to deliver possession and on that basis, proceedings u/s 14 are initiated by the bank or the Securitisation Agency. Yet in such situation, the proceedings u/s 17 of S.A.R.F.A.E.S.I. Act, 2002 would not lie till the possession of mortgaged property is delivered to the bank. In this connection we may refer to Para 36 of the Apex Court judgment rendered in the case of Standard Chartered Bank Vs. V. Noble Kumar and Others, which enumerates three situation in para 36.1, 36.2 and 36.3.

8. In the instant case the Bank after dismissal of the writ petition took up proceedings u/s 14 of the S.A.R.F.A.E.S.I. Act, 2002 which are pending. The said proceedings were taken up on the ground that the borrower-appellant had failed to deliver possession to the bank. The initiation of proceedings u/s 14 gave rise to Review Petition No. 382 of 2013 and the same was also dismissed in the light of observations made in sub para 2 of paragraph 80 in Standard Chartered Bank case referred to above.

9. Learned Counsel for the appellant has argued that the later judgment rendered in the case of Standard Chartered Bank does not refer to the earlier judgment passed by the Apex Court reported in (2009) 8 SCC 366, therefore, the Tribunal fell into error by rejecting the proceedings initiated u/s 17 on the ground of maintainability.

10. We are of the considered opinion that the law declared by the Apex Court is binding on this Court and the later judgment passed by the Apex Court in the instant case, would hold the field. In these circumstances, the rejection of S.A. by the Tribunal has rightly been upheld by the learned Single Judge and the impugned judgments dated 21.1.2013 passed in the writ petition and 4.4.2014 passed in the review application do not call for any interference.

11. Lastly, learned Counsel for the appellant has urged that O.A. No. 521 of 2012 being a proceeding for recovery of disputed liability is listed for final hearing before the Debt Recovery Tribunal, Lucknow therefore, the said proceedings may be directed to be decided expeditiously so that the proceedings under S.A.R.F.A.E.S.I. Act, 2002 may proceed on the basis of determination made as to the liability of the appellant. In this regard learned Counsel for the Bank has no objection if the Debt Recovery Tribunal, Lucknow is directed to decide the proceedings expeditiously.

12. In the interest of justice we feel that the proceedings in O.A. No. 521 of 2012 may be decided by the Debt Recovery Tribunal, Lucknow expeditiously and without granting any adjournment to either of the parties. The Tribunal may proceed on day-to-day basis so as to decide the said proceedings finally. In the result, the special appeal is dismissed. However, the Debt Recovery Tribunal, Lucknow is directed to conclude the proceedings in O.A. No. 521 of 2012 expeditiously by having regard to the observations made herein above.