(2019) 11 UK CK 0148

In the Uttarakhand High Court

Case No : Special Appeal No. 953 Of 2019

Ucchap Singh And Another APPELLANT

Vs

Uttarakhand Gramin Bank And Others RESPONDENT

Date of Decision : 20-11-2019

Acts Referred:

Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 17, 37

Citation : (2019) 11 UK CK 0148

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Sumit Bajaj, D.S. Patni, M.S. Bisht, B.S. Parihar

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri Sumit Bajaj, learned counsel for the appellants-writ petitioners, Sri D.S. Patni, learned Senior Counsel appearing on behalf of respondent nos. 1 and 2, and Sri B.S. Parihar, learned Standing Counsel appearing on behalf of the third-respondent.

2. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 535 of 2017 dated 11.09.2019. While the first-appellant herein is the borrower, the second-appellant is the guarantor. They invoked the jurisdiction of this Court seeking a writ of certiorari to quash the notice issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the 'SARFAESI Act') dated 03.03.2014, and the possession notice dated 4/5.07.2015 issued by the respondent-Bank; and a writ of mandamus directing the respondents to permit the appellants-writ petitioners to pay the entire loan amount in easy installments after clarifying the actual balance amount.

3. The first appellant-writ petitioner had availed a term loan / CC limit of Rs.

2,50,000/- from the respondent-Bank in the year 2003, and had mortgaged the land of the second-appellant as security. The first appellant-writ petitioner's account was declared a non-performing asset, and a demand notice was issued, under Section 13(2) of the SARFAESI Act on 03.03.2014, demanding payment of a sum of Rs. 2,81,361 with interest. A possession notice, with respect to the mortgaged land of the second-appellant, was also published in the newspapers on 05.07.2015.

4. Aggrieved thereby, the second-appellant approached the Debt Recovery Tribunal, Lucknow. While an interim order of stay was passed initially on 06.08.2015, the main appeal was itself dismissed for non-prosecution thereafter on 07.09.2016. Instead of seeking restoration of the petition before the Debt Recovery Tribunal, the jurisdiction of this Court was invoked by the appellants-writ petitioners questioning the notice issued under Section 13(2) of the SARFAESI Act on 03.03.2014 and the possession notice issued thereafter on 04/05.07.2015.

5. In the order under appeal, the learned Single Judge observed that, instead of filing a restoration application, the appellants-writ petitioners have straightaway filed the present writ petition before this Court; the respondent-Bank had sold the mortgaged property, and had executed a registered sale-deed in favour of the auction-purchaser; and, in such circumstances, no interference was called for.

6. Before us Sri Sumit Bajaj, learned counsel for the appellants-writ petitioners, would question the order passed by the learned Single Judge on grounds that the respondent-Bank, having elected to file a suit before the Debt Recovery Tribunal for recovery of the amount and having obtained a decree, has chosen not to execute the decree and has instead resorted to the provisions of the SARFAESI Act; having elected to avail the remedy under the Recovery Of Debts Due To Banks And Financial Institutions Act, 1993, it is not open to the respondent-Bank, thereafter, to invoke the provisions of the SARFAESI Act for recovery of the very same amount; and since the second appellant i.e. the guarantor of the loan is a member of the Scheduled Castes, his lands cannot be subjected to sale without prior approval of the District Magistrate under the provisions of the U.P. Z.A. and L.R. Act. We must express our inability to agree.

7. Section 37 of the SARFAESI Act stipulates that the provisions of the said Act, or the rules made thereunder, shall be in addition to, and not in derogation of, among others, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.

8. The respondent-Bank was, therefore, entitled to invoke the provisions of the SARFAESI Act, besides availing its remedy, for recovery of the amounts due, under the provisions of the Recovery Of Debts Due To Banks And Financial Institutions Act, 1993.

9. In Transcore vs. Union of India and another : (2008) 1 SCC 125, the Supreme Court examined the very same contention regarding the doctrine of election, and

held that it was always open to the respondent-Bank to avail the remedy under the SARFAESI Act without withdrawing the proceedings instituted by them under the Recovery Of Debts Due To Banks And Financial Institutions Act, 1993.

10. As noted hereinabove, the second appellant-writ petitioner had approached the Debt Recovery Tribunal; and the petition filed by him was dismissed for non-prosecution. The second appellant-writ petitioner has chosen not to question the said order. The justification put forth by the first appellant, for directly invoking the jurisdiction of the High Court is that the jurisdiction of the Debt Recovery Tribunal was invoked by the second appellant and not by him. Since the second appellant could have raised all these grounds in the petition filed before the Debt Recovery Tribunal, the petition filed by him under Section 17 of the SARFAESI Act has been dismissed, and the said order has attained finality, we see no reason to examine this contention urged, for the first time before this Court, on behalf of the second-appellant.

11. Even otherwise 35 of the SARFAESI Act gives the provisions of the SARFAESI Act an overriding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Consequently the respondent-Bank was justified in invoking the provisions of the SARFAESI Act for recovery of its dues by sale of the mortgaged property.

12. Viewed from any angle, we see no reason to interfere with the order under appeal. The Special Appeal fails and is, accordingly, dismissed. No costs.

