(2015) 04 AHC CK 0193

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 49867 of 2014

Umesh Kumar Singh APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(11)

Citation : (2015) 5 ADJ 221 : (2015) 5 ALJ 545 : (2015) 112 ALR 176 : (2015) 3 AWC 2983 : (2015) 4 BC 472 : (2015) 128 RD 185

Hon'ble Judges : Tarun Agarwala, J;Amar Singh Chauhan, J

Bench : Division Bench

Advocate : P.C. Srivastava and Ajeet Kumar Singh, for the Appellant; Satish Chaturvedi and T. Verma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Sri P.C. Srivastava, learned counsel for the petitioner and Sri Satish Chaturvedi for the State Bank of India. The respondent No. 6 took a loan from the respondent Bank in which the petitioner stood as a guarantor. The borrower failed to repay the loan and consequently recovery proceedings were initiated against the borrower as well as against the guarantor that is, the petitioner. An original application was filed before the Debt Recovery Tribunal which was decreed by an order dated 30.8.2011 directing the borrower and the petitioner to pay the amount of Rs. 16,28,126.60 paise alongwith inter-est and cost within a period of two months failing which it was open to the Bank to sell the mortgaged properties. The Tribunal also held that the petitioner and the borrower were liable to pay the amount jointly and severally.

2. On 26.8.2014 a notice was issued to auction the property of the petitioner which was mortgaged in favour of the respondent Bank. The petitioner, being aggrieved by this auction notice has filed the present writ petition.

3. The basic contention of the petitioner is, that the mortgaged property of the

borrower should first be sold to clear the liability and thereafter the residue, if any, may be recovered from the guarantor.

4. Having heard the learned counsel for the petitioner and the submission made by Sri Satish Chaturvedi for the respondent, we find that the Debt Recovery Tribunal has clearly held that the borrower and the petitioner are liable to pay the amount jointly and severally. Further Section 13(11) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 permits the secured creditor to proceed against the guarantor or sell the pledged assets without taking any of the measures specified in clauses (a) to (d) of sub-section (4) of Section 13 of the Act which provides a secured creditor to pursue against the borrowers.

5. In State Bank of India Vs. Messrs. Indexport Registered and others, AIR 1992 SC 1740 : (1992) 75 CompCas 1 : (1992) 4 JT 273 : (1992) 1 SCALE 1109 : (1992) 3 SCC 159 : (1992) 2 SCR 1031 : (1992) 2 UJ 223 , the Supreme Court held that the decree holder bank could execute the decree against the guarantor without proceeding against the principal borrower. The Supreme Court held that the guarantor''s liability was coextensive with that of the principal debtor. Similar view was reiterated by the Supreme Court in Industrial Investment Bank of India Ltd. Vs. Biswanath Jhunjhunwala, (2010) 1 CompLJ 96 : (2009) 10 JT 533 : (2009) 11 SCALE 520 : (2009) 9 SCC 478 : (2009) 13 SCR 391 : (2009) 8 UJ 3941 : (2009) AIRSCW 5359 : (2009) 6 Supreme 171 .

6. In light of the aforesaid decisions of the Supreme Court coupled with the provisions of Section 13(11) of the Securitisation Act and the order of the Debt Recovery Tribunal which has not been challenged till date, we do not find any justification to interfere in the impugned auction notice. The writ petition is devoid of merit and is dismissed.