

**(2014) 11 SIK CK 0006**

**Sikkim High Court**

**Case No:** Writ Petition (Civil) No. 36 of 2014

Rama Shankar Gupta

APPELLANT

Vs

The State Bank of India

RESPONDENT

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**Date of Decision:** Nov. 24, 2014

**Acts Referred:**

- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13, 13(3A), 13(4), 14, 17

**Citation:** (2015) 3 BC 238

**Hon'ble Judges:** S.P. Wangdi, J

**Bench:** Single Bench

**Advocate:** Dewen Sharma Luitel, Advocate for the Appellant; Karma Thinlay, Senior Government Advocate, Pollin Rai, Assistant Government Advocate and Sudesh Joshi, Advocate for the Respondent

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**Judgement**

S.P. Wangdi, J.

The Writ Petition is directed against the notice dated nil issued by the authorized officer of the Respondent-Bank for taking possession of the secured RCC Building against home loan bearing account No. 30362207046 granted to the borrower-petitioner.

2. The Writ Petition also seeks to assail the notice dated 26.07.2014 (Annexure P-3) said to have been issued under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short the "SARFAESI Act, 2002") issued by the District Magistrate, East Sikkim at Gangtok for taking possession of the secured assets on 29.08.2014.

3. When the matter was taken up for hearing on 18.09.2014, question as regards the maintainability of the Writ Petition in view of the remedy of appeals provided under Sections 17 and 18 of the SARFAESI Act, 2002, came up for consideration and it was decided that this issue should be taken up at the threshold.

4. On 30.10.2014, this Court took note of the petitioner having submitted a representation to the Chief Manager (Rural), State Bank of India, Regional Office, Gangtok in pursuance of order dated 03.09.2014. Mr. Sudesh Joshi, Advocate for Respondents No. 1 and 2, took up a technical objection that since no representation as required under Section 13(3-A) of the SARFAESI Act, 2002 had been submitted by the petitioner the respondent were compelled to take resort to Section 13(4) which is the subject matter of the present Writ Petition.

5. On the next date, i.e., 06.11.2014, it was informed by the Learned Counsel for the parties that the representation submitted by the petitioner was under active consideration of the Chief Manager (Rural) State Bank of India, Regional office, Gangtok, and that the matter was likely to be settled. Mr. Sudesh Joshi, Advocate for Respondent No. 1 and 2, sought for 15 days more time for the purpose. The prayer was allowed and the case was listed today for submission of report by the Respondents.

6. However, instead of a report, it was orally submitted by Mr. Sudesh Joshi, Advocate, that the offer of settlement made by the petitioner had been rejected by the Respondent-Bank and that they would insist for payment of the full dues.

7. The petitioner then placed before this Court a letter written by the Chief Manager (Rural) dated 21.11.2014. A copy of the letter is taken on record and marked as Exhibit "X" for identification. On a perusal of the letter, this Court is not convinced that the approach of the Respondent-Bank has been fair but from its tone and tenor, it rather smacks of arrogance and indifference contrary to the spirit and object of the loan extended to the petitioner.

8. Be that as it may, upon hearing the matter and on going through the pleadings, prima facie there appears to be non-compliance of Sections 13 and 14 of the SARFAESI Act, 2002 by the Respondents No. 1, 2 and 3. However this Court is of the view that the Writ Petition would not be maintainable in view of the statutory provision under Section 17 of the SARFAESI Act, 2002 which provides for right to appeal in respect of the grievances expressed in the Writ Petition. In view of this it would not be appropriate for this Court to entertain the Writ Petition.

9. The Writ Petition is accordingly dismissed as not maintainable.

10. However, it may be observed that the order of dismissal shall not impede the petitioner from taking appropriate steps under Section 17 before the Debts Recovery Tribunal having jurisdiction in the matter, making it clear that the time taken by the petitioner in proceedings before different authorities including the Respondents as well as this Court, shall stand excluded while computing the period of forty-five days provided under Section 17 of the SARFAESI Act, 2002.

11. It is also made clear that the remarks and the observations including one contained in the order dated 30.10.2014 shall not be construed as expressions of

this Court on the merits of case.

12. The Writ Petition is accordingly disposed of.

13. No order as to costs.