(2010) 09 AHC CK 0490

Allahabad High Court

Case No: None

Aqueel Ahmad	APPELLANT
Vs	
Authorized Officer, Kotak Mahindra Bank and Others	RESPONDENT

Date of Decision: Sept. 6, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13, 13(2), 17

Hon'ble Judges: Rajesh Chandra, J; R.K. Agrawal, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

1. Sri D.K. Pathak, advocate assisted by Sri P.K. Bajpai, advocate has appeared for Kotak Mahindra Bank and has produced the original loan agreement executed by the I.C.I.C.I. Bank and the deed of assignment executed by the I.C.I.C.I. Bank transferring the loan amount to Kotak Mahindra Bank. In the two documents the lender Bank includes assigns, and therefore, the I.C.I.C.I. Bank had full right to assign the present loan to Kotak Mahindra Bank Ltd.

2. In view of the above, we are of the considered opinion that the Kotak Mahindra Bank was well within its right to take proceedings under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. The petitioner was granted loan of Rupees 5,45,000/- by the respondent Bank. According to the petitioner, due to unforeseen circumstances and reasons beyond his control, he could not repay the amount due in time. According to him, prior to default he had regularly deposited the amount with the Bank. Now the Bank is proceeding against the petitioner under the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act") for the realisation of loan amount etc.

4. We have heard Sri Dileep Kumar Mishra, learned Counsel for the petitioner and Shri Maneesh Trivedi and Sri P.K. Bajpai, learned Counsel for the respondent-Banks and have perused the averments made in the writ petition.

5. Learned Counsel appearing for the petitioner states that the petitioner is prepared to repay the entire outstanding dues along with interest and expenses on pro-rata basis in instalments.

6. The learned Counsel appearing for the respondent-Bank submitted that although the petition is not maintainable since sufficient opportunity has already been given to the borrower for clearing up the outstanding dues but the Bank has no objection if some indulgence is given by this Court regarding payment of dues in instalments as the bank is interested in realisation of its dues.

7. We are aware that Hon''ble the Apex Court in Civil Appeal No. Nil of 2010 arising out of SLP (c) No. 10145 of 2010 United Bank of India v. Satyawati Tondon and Ors., decided on 26.07.2010 has held that the High Courts should restrain themselves from staying the recovery proceedings started under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, by exercising their powers under Article 226 of the Constitution. If the High Courts stay the recovery proceedings under the aforesaid Act then the very purpose of enacting the said Act will be frustrated. It has further been held that Section 13 of the SARFAESI Act contains detailed mechanism for enforcement of security interest, in which not only the right to file objections against the notice u/s 13(2) has been provided but at the same time an effective remedy has further been provided u/s 17 of the said Act.

8. We have given our thoughtful consideration to the said judgment of the Apex Court and various submissions made by the learned Counsel for the parties. The object of the Act is to provide speedy recovery of the loans advanced by the financial institutions and the Banks by selling of the security which has been offered. This provision even though has been enacted for the benefit of the Bank and financial institutions but appears to be a time consuming process and further in the auction the property is sold at a throw away price and after the amount is realized from such an auction, it may not be sufficient to clear the entire outstanding dues and in that event the Bank/Financial Institution would again have to take recourse to filing a claim petition before the Debt Recovery Tribunal or a regular suit in the Civil Court, as the case may be, which will again be a time consuming process. In the case at hand we are not staying the recovery proceeding or deciding the dispute but giving an opportunity to the defaulter/guarantor to pay the entire outstanding dues on the basis of consent given by the petitioner and the Bank.

9. As the petitioner himself has volunteered to clear off the entire outstanding dues along with interest, penal interest and expenses on pro-rata basis in instalments and has undertaken to pay the regular instalments as and when they become due, taking into consideration the solemn undertaking given by the petitioner as well as the consent given by the counsel for Bank, we consider it appropriate and in the interest of justice that a last opportunity be afforded to the petitioner to clear the entire outstanding dues in instalments. The Bank is only interested in recovering its money and if the petitioner is ready and willing to clear off the outstanding dues, we see no reason as to why the petitioner''s property should be put to auction.

10. We, therefore, disposed of the writ petition with the following directions:

1. The petitioner will clear off the entire outstanding dues along with interest, penal interest and expenses on pro-rata basis.

2. The entire outstanding dues shall be paid in four equal instalments. The first instalment shall be paid within a month from today and thereafter, the three remaining instalments shall be paid quarterly.

3. Initially the recovery proceeding is stayed for a month. On depositing the first instalment, impugned proceeding shall remain stayed up to the date of next instalment and the process shall continue until the last instalment has been paid.

4. If the petitioner deposits the entire amount as undertaken by him in the manner indicated above, the proceedings shall stand withdrawn.

5. If the petitioner fails to deposit the amount of any one instalment within the stipulated period the bank shall at liberty to proceed in accordance with law.

6. The cost and recovery charges, if any, shall be paid along with the last instalment.

11. It is made clear that this order has been passed on the statement made by the learned Counsel for the petitioner as well as learned Counsel for the bank and we have not adjudicated the claim on merits.

12. The writ petition is disposed of with the aforesaid direction and observation.