(2011) 11 AHC CK 0313

Allahabad High Court

Case No: Writ - C No. - 61387 of 2011

Nityanand Pandey		APPELLANT
	Vs	
State Bank of India and Others		RESPONDENT

Date of Decision: Nov. 11, 2011

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: Surendra Kumar, J; R.K. Agrawal, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

1. The petitioner was granted a term loan of Rs. 3.40 lakhs 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.

2. We have heard learned counsel for the petitioner and Sri. A.C. Tiwari, learned counsel for the respondent-Bank and have perused the averments made in the writ petition.

3. 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.

4. 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 installments as the bank is interested in realization of its dues.

5. 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 Vs. Satyawati Tondon and others, 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. 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.

6. 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 installments and has undertaken to pay the regular installments 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 installments. 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.

7. 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 installments. The first installment shall be paid within a month from today and thereafter; the three remaining installments shall be paid quarterly.

3.Initially the recovery proceeding is stayed for a month. On depositing the first installment, impugned proceeding shall remain stayed up to the date of next installment and the process shall continue until the last installment 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 installment within the stipulated period, the bank shall be at liberty to proceed in accordance with law.

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

7.This order shall be inoperative, in case third party rights have been created in the property.

8. 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.

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