

(2012) 07 JH CK 0131

Jharkhand High Court

Case No: W. P. (C) No. 528 of 2012

M/S Tetulia Coke Plant
Pvt. Ltd. and Others

APPELLANT

Vs

Bank of India, Hirapur
(SME) Branch and
Another

RESPONDENT

Date of Decision: July 10, 2012

Acts Referred:

- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13, 13(2), 13(4)

Citation: (2012) 07 JH CK 0131

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: Anil Choudhary, for the Appellant; Gyanendra Kumar, for the Respondent

Judgement

Narendra Nath Tiwari

1. The grievance of the petitioners is that the representation filed by them u/s 13(2) of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as "the said Act"] has not been decided by the authorized officer or the secured creditor and the reply given by the Advocate, namely, Binay Mohan Ambastha by his letter dated 23.11.2011 is wholly illegal and non-est. Consequently, the notice of possession issued u/s 13(4) of the said Act is also wholly illegal and without jurisdiction. Learned counsel for the petitioner submitted that this case is squarely covered by a decision of this Court rendered in a case between the same parties in W.P.(C) No. 6284/2011. In the said case, after considering the relevant legal provisions and several decisions, this Court has held that almost similar orders and letters issued by the Bank are wholly illegal and without jurisdiction. The decision of the Advocate as well as the notice of possession were held to be illegal and were quashed. The matter

was remitted to the Bank for consideration of the petitioner's representation filed under the provisions of Section 13(3-A) of the said Act.

2. Learned counsel appearing on behalf of the respondents-Bank has not disputed the said contentions and the legal provisions as well as the decision of this Court rendered between the same parties to that effect in W.P.(C) No. 6284/2011.

3. Having heard learned counsel and considered that this case is squarely covered by the decision of this Court rendered in M/S Tetulia Coke Plant Pvt. Ltd. Vs. Bank of India [W.P.(C) No. 6284/2011] and for the reasons mentioned in the said decision in detail, the decision of the Advocate dated 23.11.2011 [Annexure-11] as also the possession notice published in the newspaper "Prabhat Khabar", Dhanbad dated 15.12.2011 (Annexure-10) to the extent the petitioners are concerned, are quashed. This writ petition is disposed of remitting the matter to the respondents-Bank for consideration of the petitioners' representation afresh in accordance with law. It is made clear that any consequent order / step in the matter after the stage of issuance of notice by the Bank u/s 13(2) of the said Act stand abrogated.