(2014) 09 JH CK 0034

Jharkhand High Court

Case No: Writ Petition (Civil) No. 3567 of 2014

Anil Sharma		APPELLANT
	Vs	
Bank of India		RESPONDENT

Date of Decision: Sept. 12, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13(2), 13(4), 17

Citation: (2015) 2 BC 455

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: Rajeev Ranjan, M.K. Sinha, Mukesh Kumar Sinha, Vivek Kumar and Vivek Agrawal, Advocate for the Appellant; K.L. Ojha, Advocate for the Respondent

Judgement

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S. Chandrashekhar, J.
Initially, aggrieved by withholding of the contractual dues by the respondent Nos. 5 to 8 and inaction on the part of the respondent Nos. 1 to 5 in not taking a decision on proposal for "one time settlement" dated 23.06.2014, the petitioner approached this Court. Further prayers for directing the respondents to consider the "one time settlement" offer of the petitioner and in the meantime, a direction to the respondent-bank not to take any coercive measures against the petitioner have been made in the writ petition. The petitioner has also prayed for a direction to the respondent Nos. 6 to 8 to implement the award of the Arbitration Tribunal and to release the awarded amount.

2. The brief facts of the case are that, the petitioner was awarded different work orders in the State of Jharkhand and the State of Bihar and for executing the works, he availed various credit limits from the respondent-Bank of India. During the year,

2009 some of the projects were either stopped or could not commence and therefore, the petitioner raised a claim from the respective Principal/Contractee and finally initiated three separate arbitration proceedings. The petitioner duly communicated the developments to the respondent-Bank of India and sought its cooperation. The petitioner also requested waiver of interest due to the difficulty faced by him however, the petitioner''s account was classified as N.P.A. with effect from 30.10.2013 and the respondent-Bank of India issued notice dated 12.11.2013 under Section 13(2) of the SARFAESI Act, 2002 and demanded payment of Rs. 75,23,300/-. Subsequently, vide letter dated 25.11.2013 the demand was modified and the petitioner was directed to pay Rs. 1,68,00,000/-. The petitioner vide letter dated 13.12.2013 requested the respondent-Bank of India for enhancing the credit limit to Rs. 185 Lacs and to decrease the bank guarantee limit from Rs. 1.5 Crore to Rs. 1 Crore and also informed the respondent-bank about award of more than Rs. 71 Lacs vide award dated 08.12.2013. The petitioner again made representations on 03.04.2014 and 23.04.2014 however, the respondent-bank rejected the petitioner''s representations. The petitioner on 23.06.2014 submitted an offer of Rs. 61 Lacs for full and final settlement of the loan account however, the respondent-bank communicated to the petitioner vide letter dated 25.06.2014 that the offer amount of Rs. 61 Lacs was too low. Though the respondent-bank had informed the petitioner that after regularising the loan account, enhancement of loan/grant of loan, if possible, would be considered however, on 25.06.2014 notice under Section 13(4) of the SARFAESI Act, 2002 was issued and possession of the secured assets was taken by the respondent-bank. On 31.07.2014, the petitioner again submitted an offer of Rs. 82 Lacs as "one time settlement" and vide letter dated 04.08.2014 again it was communicated that the offer of Rs. 82 Lacs is far below the total dues.

3. An interlocutory application being I.A. No. 4484 of 2014 has been filed for amending the writ petition for incorporating challenge to orders dated 25.06.2014 and 04.08.2014.

4. A counter-affidavit to I.A. No. 4484 of 2014 has been filed by the respondent-Bank of India raising a preliminary objection to the maintainability of the writ petition on the ground that the petitioner has already filed S.A. No. 80 of 2014 under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Act, 2002. It is stated that the writ petition has been filed for obstructing the proceeding taken against the petitioner under the SARFAESI Act, 2002 in which the possession notice dated 19.06.2014 has been published in the daily newspaper namely, "Prabhat Khabar". The petitioner is a chronic defaulter. The petitioner has to pay an amount of Rs. 262.06 Lacs and therefore, the compromise offer of Rs. 82 Lacs was not accepted by the bank. The petitioner was advised by the respondent-bank vide letters dated 01.03.2014, 07.04.2014, 28.04.2014 and 31.05.2014 however, the petitioner did not take steps for regularising the account and intentionally he offered a lower amount of Rs. 61 Lacs as "one time settlement" proposal. It is stated that the market value of the securities given by the petitioner is about Rs. 208.87

Lacs and the petitioner is liable to pay the outstanding amount of Rs. 2,51,61,843.03/- with interest.

5. A rejoinder affidavit has been filed by the petitioner controverting the statement made in the counter-affidavit filed by the respondent-bank in I.A. No. 4484 of 2014. A calculation in terms of the revised policy guidelines issued by the Reserve Bank of India for "one time settlement" (O.T.S) for the loan account of the petitioner has also been detailed in the rejoinder affidavit.

6. Heard the learned counsel appearing for the parties and perused the documents on record.

7. The learned counsel appearing for the petitioner submitted that the letters dated 25.06.2014 and 04.08.2014 whereby the proposals for "one time settlement" have been rejected are cryptic orders and the orders do not disclose any reason for rejecting the offer made by the petitioner. It is further submitted that rejection of the "one time settlement" proposal merely by mentioning the offer too low or that it is far below the outstanding dues, is arbitrary and illegal. The respondent-bank should have at least disclosed the amount at which it is willing to settle the loan account of the petitioner. In terms of the Reserve Bank of India guidelines for "one time settlement" the petitioner has a right to ask the respondent-bank to accept the "one time settlement" proposal of the petitioner however, the respondent-bank has arbitrarily rejected the proposal of the petitioner and therefore, the petitioner was constrained to approach this Court. Reliance has been placed on the judgment in Sardar Associates and Others Vs. Punjab and Sind Bank and Others, and Central Bank of India Vs. Ravindra and Others, .

8. The learned counsel appearing for the respondent-Bank reiterated the stand taken in the counter-affidavit (in I.A. No. 4484 of 2014) and submitted that issue of rejection of "one time settlement" offer of the petitioner is also before the Debt Recovery Tribunal, Ranchi and therefore, the petitioner cannot be permitted to approach this Court raising the same issue. It is further submitted that besides seeking a direction for acceptance of "one time settlement" offer of the petitioner, the petitioner has also sought a mandamus upon the respondent Nos. 5 to 8 to release the amount awarded to the petitioner in the arbitration proceedings. The petitioner cannot be permitted to join two different issues and seek divergent directions upon two sets of respondents in the present writ petition.

9. Before examining the contentions raised on behalf of the petitioner, the objection of the respondent-Bank as to maintainability of the writ petition needs to be examined. In United Bank of India Vs. Satyawati Tondon and Others, , a case in which an action was initiated under the SARFAESI Act, 2002 and the High Court had granted an order of stay in favour of the borrower, the Hon''ble Supreme Court has observed that,

43. "..... the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues etc. the High Court must keep in mind that the legislations enacted by parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

10. The Hon''ble Supreme Court further observed thus;

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

11. The materials brought on record clearly indicate that in SARFAESI Appeal No. 80 of 2014 the respondent-bank has addressed the issue regarding rejection of offer made by the petitioner and the same is pending before the Debt Recovery Tribunal, Ranchi. It further appears that vide order dated 18.07.2014, the Presiding Officer, Debt Recovery Tribunal, Ranchi has observed that, "if in the meantime any danger for taking possession or sell of property, the appellant is free to move this Tribunal for an appropriate relief".

12. In so far as, the prayer made by the petitioner for restraining the respondents taking any coercive step against the petitioner is concerned, the observation of the Hon''ble Supreme Court in "Satyawati Tondon" case needs to kept in mind. In the present writ petition, the petitioner has made a prayer which is extracted below:

(iii) The Petitioner further pray to this Hon''ble Court to issue necessary direction to the Respondent bank not to take any coercive measures against the Petitioner till the issue relating to settlement/regularization of the loan account is settled by the bank and the legitimate dues of the petitioner lying with the Govt. of Bihar and Jharkhand are released, which the petitioner undertakes to use for liquidating legally payable outstanding dues of the Bank.

13. From the aforesaid, it is apparent that in the garb of challenge to the letters dated 25.06.2014 and 04.08.2014, the petitioner has sought an order for staying the proceeding in S.A. No. 80 of 2014. Such recourse is not permissible in law.

14. In Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , the Hon''ble Supreme Court has observed that Article 226 is not meant to short circuit or circumvent statutory procedures. The Hon''ble Supreme Court has observed as under:

3. "..... it is only where statutory remedies are entirely ill suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Art. 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Art. 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

15. The learned counsel for the petitioner submitted that the issue before the learned Debt Recovery Tribunal in S.A. No. 80 of 2014 is different inasmuch as, in S.A. No. 80 of 2014 the petitioner has challenged the notice issued under Section 13(4) of the SARFAESI Act, 2002 whereas, in the present writ petition the petitioner approached this Court on account of inaction on the part of the respondent Nos. 1 to 5 and the arbitrariness in rejecting the proposal for settlement vide orders dated 25.06.2014 and 04.08.2014. As noticed hereinabove from the affidavit filed by the respondent-bank before the Debt Recovery Tribunal, Ranchi in S.A. No. 80 of 2014 the bank has brought to the notice of the Debt Recovery Tribunal the rejection of proposals of the petitioner vide orders dated 25.06.2014 and 04.08.2014. Moreover, the alleged arbitrary action of the respondent-Bank can be an issue in SARFAESI Appeal No. 80 of 2014 and therefore, the petitioner can not be permitted to agitate the matter before this Court.

16. It has not been brought on record by the petitioner, whether both the proposals submitted by him seeking "one time settlement" allegedly in terms of R.B.I. guidelines were in tune with the parameters laid down in the R.B.I. guidelines. By

filing a rejoinder affidavit in the present proceeding the petitioner has tried to demonstrate, "as per his understanding", that the proposals submitted by the petitioner were in terms of the R.B.I. guidelines and therefore, those proposals may be accepted. Relying on decisions in "Sardar Associates and Others Vs. Punjab and Sind Bank and Others" (supra) and Kumar Hotels and Restaurants Vs. Indian Overseas Bank and others, , the learned counsel for the petitioner has submitted that for enforcing the guidelines issued by R.B.I. by the respondent-bank, writ petition can be maintained by the petitioner. The learned counsel for the petitioner has further submitted that the respondent-bank should have at least indicated the amount at which the petitioner account can be settled. This submission merits no acceptance. The creditor bank is not required to indicate the amount at which the "one time settlement" would be accepted by the bank. A proposal has to be submitted by the borrower and only if the proposal of the borrower is in terms of the R.B.I. guidelines, the creditor bank is under a duty to examine the same and take a decision thereon. In the present case, I do not find any such material brought on record which would indicate that the proposals submitted by the petitioner were in terms of the R.B.I. guidelines. I do not find any arbitrariness in orders rejecting settlement proposals of the petitioner. In "Satyawati Tondon" case after taking note of the judgment in Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes, and other judgments it has been observed thus;

55. "It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

17. In Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., , while upholding the constitutional validity of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Act, 2002, the Hon''ble Supreme Court observed as under;

81. "..... The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of the economy of the country and welfare of the people in general which would sub-serve the public interest."

18. I further find that there cannot be a doubt that the petitioner cannot agitate two different and divergent cause of actions in one writ petition. The prayers made by the petitioner in the writ petition in so far as, respondent Nos. 5 to 8 are concerned, are entirely different and unconnected with the proceeding initiated under the

SARFAESI Act, 2002. In view of the aforesaid facts, I am of the opinion that the petitioner has abused the process of law by filing the present writ petition.

19. In the aforesaid facts and circumstances, I find no merit in the writ petition and accordingly, it is dismissed.