

(2010) 12 CAL CK 0037

Calcutta High Court

Case No: Writ Petition No. 9327 (W) of 2010

Prabir Chakraborty

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Dec. 2, 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(2), 13(3A), 13(4)

Citation: AIR 2011 Cal 118 : (2012) 1 BC 45

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Hiranmay Bhattacharya and Mrinal Kanti Ghosh, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Jayanta Kumar Biswas, J.

The petitioner in this Art. 226 petition is questioning a notice dated November 28, 2008 (at p. 28) issued by the authorised officer of LIC Housing Finance Ltd. under S. 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. Counsel submits that the petitioner's representation dated March 19, 2010 (at p. 31) has not been considered.

3. The petitioner was to pay the demanded amount within sixty days from the date of the S. 13(2) notice. It means that if he wanted to submit any representation, then he was required to submit it within sixty days from the date of the notice. But while the notice is dated November 28, 2008, his representation through lawyer is dated March 19, 2010.

4. I do not find any reason to accept the argument that since on the basis of the demand notice dated November 28, 2008 the authorised officer of the secured creditor did not take any measure under S. 13(4) till March 19, 2010, the petitioner was entitled to create the officer's obligation under S. 13(3A) by making a representation even after expiration of sixty days from the date of the S. 13(2) notice.

5. The petitioner's failure to respond within sixty days from the date of the notice entitled the secured creditor to exercise all or any of the rights under S. 13(4). It is another matter whether the secured creditor decided to waive its any right under S. 13(4). But its silence, if any, could not keep the petitioner's right to submit a representation under S. 13(3A) alive until measure was taken under S. 13(4).

6. For these reasons, I dismiss the petition. No costs.