

M/s Sah Traders Vs Authorised Officer and another

Court: Uttarakhand High Court

Date of Decision: July 23, 2018

Acts Referred: Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
â€” Section 13(2), 13(4), 13(12)

Hon'ble Judges: K.M. JOSEPH, C.J.; SHARAD KUMAR SHARMA, J

Bench: Division Bench

Advocate: T.P.S. Takuli, Ashishi Joshi

Final Decision: Dismissed

Judgement

K.M. Joseph, C.J. (Oral)

1. Appellant is the writ petitioner. Having availed a cash credit facility of Rs. 18,00,000/- from the respondent Bank on 21.10.2014 and committed

default, thus, account was declared NPA on 30.06.2016, proceedings were taken under Section 13(2) of the Securitisation and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Act). Appellant was earlier before this Court in Writ

Petition No. 291 of 2017 (MS) and it culminated in Annexure-2 judgment of this Court. By the said judgment, appellant was given the facility of paying

the amount in six equal quarterly installments. Paragraph 6 of the judgment dated 21.02.2017 passed in Writ Petition No. 291 of 2017 (MS) reads as

follows:

“6. In view of the submission made by learned counsel for the parties and in the interest of justice, it is directed that the respondent Bank will

inform the petitioners, in writing, within a period of fifteen days from today about the amount to be paid by the petitioners in six equal quarterly

installments. Thereafter, the petitioners will deposit the first quarterly installment with the respondent bank on or before 31.03.2017. Thereafter, the

remaining five equal quarterly installments, to be informed by the Bank, shall be paid by them on or before last working day of every quarter

respectively. In case the loan amount along with interest and other charges is paid within the stipulated period, the impugned citation dated 19.09.2016

shall stand quashed.”

2. It will not be out of context to notice that the appellant / petitioner, had earlier approached Debt Recovery Tribunal by filing Second Appeal No. 39

of 2017, against E-auction Notice dated 5.05.2017. Later, the petitioner seems to have filed Writ Petition No. 1140 of 2018 (MS) challenging notice

under Section 13(2) dated 17.04.2018. This writ petition was disposed of by this Court directing the petitioner to deposit the amount due against it in

installments. After passing of order / judgment dated 18.06.2018 in Writ Petition No. 1140 of 2018 (MS), the appellant got the Second Appeal No. 39

of 2017 dismissed as having rendered infructuous. Then, he defaulted in complying with the conditions of the judgment dated 18.06.2018, hence, the

present action under Section 13(12) of the Act read with Rule 3 of the Rules.

3. Apparently, having defaulted in payment of the same, Annexure-1 order was passed exercising power under Section 13(4) read with Rules 8 & 9

of the Rules for sealing the residential premises. It is, accordingly, that the appellant was again before this Court by filing Writ Petition No. 1140 of

2018 (MS) seeking to quash the notice dated 17.04.2018; and seeking a mandamus to de-seal the residential house and also to recover the amount in

easy installments. By the impugned judgment, the learned Single Judge has dismissed the writ petition on 18.06.2018. In doing so, the learned Single

Judge has noted the fact that the appellant at interim stage had undertaken on 14.05.2018 to deposit the amount of Rs. 3 lacs in order to show his bona

fide, but the deposit was not made. The learned Single Judge noted non-compliance of order dated 14.05.2018 and the existence of alternative remedy

and dismissed the writ petition on the ground of alternative remedy.

4. We heard Mr. T.P.S. Takuli, learned counsel appearing on behalf of the appellant and also Mr. Ashish Joshi, learned counsel for the respondent

Bank.

5. Mr. T.P.S. Takuli, learned counsel for the appellant would plead financial difficulty and seeks further indulgence from the Court to make the

payment in installments.

6. In regard to this request, Mr. Ashish Joshi, learned counsel for the respondent Bank would point out that the appellant is already a recipient of such

indulgence from this Court in the earlier round when the writ petition was disposed of by giving benefit of six equal quarterly installments, and even

before this Court in the present writ petition, an opportunity was given to the appellant to show his bona fide by making payment of Rs. 3 lacs, and that

opportunity was not availed of by the appellant.

7. In the circumstances of this case, we would think that no useful purpose is likely to be served by again giving the benefit of making payment in

installments that too who by now has established himself to be a habitual defaulter and we think that the learned Single Judge was right in the decision.

Accordingly, the Special Appeal fails and the same is dismissed. No order as to costs.