

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.2258 OF 2007**

% **Date of Decision: 24.09.2009**

Rajeev Mohan Aggarwal Petitioner
Through Mr.Pankaj Gupta, Advocate.

Versus

State Bank of Patiala & Another Respondents
Through Mr.Shiv K. Tyagi and Mr.Nazim
Hussain, Advocates along with Mr.S.K.
Bhalla, A.G.M., State Bank of Patiala

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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CM No.11872/2009

This is an application by the petitioner for preponing the hearing of CM No.4200 of 2007 which is an application by the petitioner under Section 151 of Code of Civil Procedure seeking restrain against the respondents, State Bank of Patiala and its Authorized Officer from initiating proceedings/action under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002 (SRFAESI Act) in respect of his undivided share in the property No.1595-1600, Main Bazar, Pahar Ganj, New Delhi, during the pendency of the writ petition.

Learned counsel for the respondents has no objection to the preponing the date of hearing of the interim application and the writ petition.

Consequently, the application is allowed and date of hearing is preponed from 14th October, 2009 to 24th September, 2009 for hearing of writ petition and application for interim order.

W.P. (C.) No.2258/2007 and CM No.4200/2007

The petitioner has challenged the proceedings initiated by the respondents under Section 13 of the Act against the petitioner, legal heir of late Shri G.C. Aggarwal.

The notice of the petition was issued on 23rd March, 2007 and thereafter, the matter has been adjourned on one pretext or other. On 16th March, 2009, it was noticed that the petitioner had not approached the respondents for settlement of disputes.

The petitioner filed the present writ petition contending inter alia that the respondent Bank had sanctioned banking facilities to M/s.Richie Rich Overseas Pvt. Ltd. which was promoted and owned by Shri Sanjay Mohan Aggarwal, who had been holding 98% shareholding. He had offered a collateral security of property No.1595-1600, Main Bazar, Pahar Ganj, New Delhi. The account in respect of which banking facility was granted by the respondent bank became inoperative and an amount of Rs.29,96,164/- was outstanding. It was contended by the petitioner that recovery proceedings to recover Rs.37,38,700/- was initiated by filing OA No.682 of 2002 under the provisions of Recovery of Debts due to Banks and Financial Institutions Act, 1993.

The petitioner contended that a notice under Section 13(2) of SRFAESI Act was sent to enforce the provisions of the said Act in respect of undivided share of the petitioner in the immovable property which was given as collateral security. The grievance of the petitioner is that in the notice the amount was not specified nor the respondent had intimated that the account has been classified as non-performing assets, one of the essential terms for invocation of Section 13(2) of the Act as the notice only referred to the claim of the Bank against M/s. Richie Rich Overseas Pvt. Ltd. for Rs.63,24,202/- as on 31st August,

2004. According to the petitioner, such a claim is barred under Section 36 of SRFAESI Act. It is further asserted that the petitioner objected to the recourse initiated by respondents and sent a representation, the copy of which is, however, not available with the petitioner. The respondents instead of considering the representation have contemplated further proceeding under Section 13(4) of the Act. The petition challenges the action of the respondents primarily that the notice was not sent in compliance with Section 13(2) of SRFAESI Act as the amount allegedly due after the declaration of the account of M/s.Richie Rich Overseas Pvt. Ltd. as an NPA (Non Performing Asset) is to be adjudicated and cannot be recovered by invoking the provisions of the said Act. The petitioner has also contended that since the dispute regarding OTS (one time settlement) in compliance with the Reserve Bank of India guidelines is pending, during the interregnum proceedings under the SRFAESI Act, 2002 cannot be initiated.

Learned counsel for the petitioner has relied on (2008) 1 SCC 125, Transcore v. Union of India and another and (2004) 4 SCC 311, Mardia Chemicals Ltd. and others v. Union of India and others in support of his contentions and it is further contended that there is non-compliance of Section 13(3A) of SRFAESI Act in as much as the

representation made by the petitioner pursuant to notice under Section 13(2) of SRFAESI Act had not been considered.

The petition is contested by the respondents contending inter alia that under Section 17 of the SRFAESI Act the petitioner is entitled to invoke the jurisdiction of Debt Recovery Tribunal against the proceedings initiated by the respondents under Section 13 of the said Act and consequently the petitioner does not have any ground to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. It is further contended that since the remedy of the petitioner under Section 17 of SRFAESI Act, 2002 has become barred by limitation as petitioner did not file the appropriate proceedings within 45 days of the measures taken by the respondent under Section 13(4) of the Act, as the notice dated 2nd December, 2005 under Section 13(4) of the Act had been issued and duly served on the petitioner, therefore, the petitioner is not entitled to file the present petition under Article 226 of the Constitution of India. It is also contended that the representation dated 9th October, 2004 under Section 13(3A) was considered and was found to be untenable as the notice dated 8th September, 2004 under Section 13(2) of the Act was in accordance with the provisions of law, therefore, there are no grounds to interfere with the process for recovery of amount initiated by the respondents.

Referring to the recovery petition pending before Debt Recovery Tribunal, it is stated that in OA No.682 of 2000 titled State Bank of Patiala v. M/s.Richie Rich Overseas Pvt. Ltd., a certified copy of statement of account with interest accrued as well as the date of NPA, i.e., 31st March, 2000 have been filed. According to the respondents in compliance with the Reserve Bank of India guidelines, the interests on the amounts due after 31st March, 2000 is not reflected in the statement of account but it has been calculated separately. Regarding interest for quarter ending September 1999 and December 1999 it is stated that same was not paid and was reversed in March 2000 and therefore, there is no recovery of interest after 30th June, 1999.

The respondents have also disclosed that a writ petition being W.P.C. NO.8266 of 2006 titled Neelam Aggarwal v. State Bank of Patiala and others is also pending where proceedings before the Debt Recovery Tribunal were stayed. It is asserted that it has been categorically disclosed that account was categorized as a non-performing asset. Smt.Neelam Aggarwal had also filed a complaint dated 28th June, 2007 under Section 47 A (2) of Banking Regulation Act, 1949. Regarding the representation/objection dated 9th October, 2004, it is contended that the representation was not made by the petitioner under Section 13(3A)

of the Act since the same was non-existent on the date of making the representation, and there was no obligation upon respondent No.2 to even reply the same, however, the representation was duly considered and rejected.

Relying on Section 37 of the SRFAESI Act, it is contended that the proceedings under the said Act are not in derogation of the proceedings initiated by the bank under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and relied on the judgment of the Supreme Court in Transcore (supra). The respondents contended that the present petition has been filed with a view to delay the recovery proceedings initiated under the SRFAESI Act, 2002 and it is in furtherance of multiplicity of litigation initiated by the petitioner. It is also contended that the objection about non-disclosure of debt as an NPA should have been taken before the Debt Recovery Tribunal I, Delhi, where the OA No.682 of 2000 is pending.

This Court has heard the contention of the counsel of the parties. From the contentions and pleas raised on behalf of the parties, it is apparent that in the account of M/s. Richie Rich Overseas Pvt. Ltd. no interest was paid after 30th July, 1999. The account was declared as NPA on 31st March, 2000. The petitioner has challenged the notice

given to him under Section 13(2) of SRFAESI Act. From Section 13(2), it is clear that it proceeds on the basis that **the borrower is already under a liability and the action of the Bank is classified as sub standard, doubtful or a loss.** In the present case, there cannot be any dispute about the liability of the petitioner. The Supreme Court in Transcore (supra) had held that there is a difference between accrual of liability, determination of liability and liquidation of liability. Section 13(2) deals with liquidation of liability as the said section deals with enforcement of secured interest. It was held that the remedies of enforcement of security interest under NPA Act and the DRT are complementary to each other and there are no inherent or implied inconsistencies between these two remedies under two different Acts. It was further held that the notice under Section 13(2) has to give the details of amounts payable by the borrower as also the details of the secured assets intended to be enforced by the Bank. After classification of an account as NPA, a last opportunity is given to the borrower to repay the debt within 60 days.

Under Section 13(3A) which was inserted by amending Act 13 of 2004, borrower has been permitted to make representation/objection to secured creditor against classification of his account as NPA and objections can also be raised to the amount due. If the Bank comes to the conclusion that objections are not acceptable, the reasons for non

acceptance have to be communicated under Section 13(3A) within one week. Perusal of the notice given under Section 13(2) of the Act dated 18th September, 2004 reveals that the outstanding liability has been clearly stated as on 31st August, 2004. The respondent/Bank has also put the petitioners to the notice that if the petitioner failed to pay the amount, the Bank will exercise all or any of the rights under sub-section 4 of Section 13.

In reply to the notice dated 8th September, 2004, it appears that a letter dated 9th October, 2004 was sent by the petitioner to the Bank's Grievance Redressal Committee contending that the notice dated 8th September, 2004 was not as per the provisions of SRFAESI Act. The copy of the notice given by the petitioner has not been produced on the ground that the copy of the representation is not traceable with the petitioner. However, no steps had been taken by the petitioner to obtain a copy of the same from the Bank before the institution of this petition and even thereafter. The respondent Bank rejected the representation by letter dated 13th April, 2005, a copy of which is produced by the petitioner as Annexure B.

Learned counsel for the petitioner has contended that after the declaration of the account of M/s.Richie Rich Pvt. Ltd. as non-

performing on 31st March, 2000, the interest claimed by the respondent has not crystallized and is to be determined and could not be claimed under Section 13 of the SRFAESI Act. The learned counsel, Mr. Gupta, relied on Mardia Chemicals Limited and Others (supra) in support of his contentions. In the said judgment in paragraph 37 the Supreme Court had rather held that to classify the assets as non-performing, the policy of the Reserve Bank of India provides appropriate guidelines. Para 37 on page 341 of the said judgment is as under:-

“ 37. Next we come to the question as to whether it is on the whims and fancies of the financial institutions to classify the assets as non-performing assets, as canvassed before us. We find it not to be so. As a matter of fact a policy has been laid down by Reserve Bank of India providing guidelines in the matter for declaring an asset to be a non-performing asset known as “RBI’s prudential norms on income recognition, asset classification and provisioning — pertaining to advances” through a circular dated 30-8-2001. It is mentioned in the said circular as follows:

“1.1. In line with the international practices and as per the recommendations made by the Committee on the Financial System (Chairman Shri M. Narasimham), Reserve Bank of India has introduced, in a phased manner, prudential norms for income recognition, asset classification and provisioning for the advances portfolio of the banks so as to move towards greater consistency and transparency in the published accounts.

2.1. Non-performing assets

2.1.1. An asset, including a leased asset, becomes non-performing when it ceases to generate income for the bank. A ‘non-performing asset’ (NPA) was defined as a credit facility in respect of which the interest and/or installment of principal has remained ‘past due’ for a specified period of time. The specified period was reduced in a phased manner as under:

Year ending March 31	Specified period
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1993	four quarters
1994	three quarters
1995 onwards	two quarters

2.1.2. An amount due under any credit facility is treated as 'past due' when it has not been paid within 30 days from the due date. Due to the improvements in the payment and settlement systems, recovery climate, upgradation of technology in the banking system, etc. it was decided to dispense with 'past due' concept, with effect from 31-3-2001. Accordingly, as from that date, a non-performing asset (NPA) shall be an advance where

- (i) Interest and/or installment of principal remain overdue for a period of more than 180 days in respect of a term loan,
- (ii) the account remains 'out of order' for a period of more than 180 days, in respect of an overdraft/cash credit (OD/CC),
- (iii) the bill remains overdue for a period of more than 180 days in the case of bills purchased and discounted,
- (iv) interest and/or installment of principal remains overdue for two harvest seasons but for a period not exceeding two half years in the case of an advance granted for agricultural purposes, and
- (v) any amount to be received remains overdue for a period of more than 180 days in respect of other accounts.

4.2.2. Banks should establish appropriate internal systems to eliminate the tendency to delay or postpone the identification of NPAs, especially in respect of high-value accounts. The banks may fix a minimum cut-off point to decide what would constitute a high-value account depending upon their respective business levels. The cut-off point should be valid for the entire accounting year. Responsibility and validation levels for ensuring proper asset classification may be fixed by the banks. The system should ensure that doubts in asset classification due to any reason are settled through specified internal channels within one month from the date on which the account would have been classified as NPA as per extant guidelines."

From what is quoted above, it is quite evident that guidelines as laid down by Reserve Bank of India which are in more details but not necessary to be reproduced here, lay down the terms and conditions and circumstances in which the debt is to be classified as non-performing asset as early as possible. Therefore, we find no substance in the submission made on behalf of the petitioners that there are no guidelines for treating the debt as a non-performing asset.”

The Supreme Court had rather held that if the borrower is a defaulter in repayment of the secured debt or in installment of repayment before initiating the action under the SRFAESI Act, a notice in writing requiring the debtor to discharge the liability within a period of 60 days is to be given failing which the secured creditor is entitled to take any of the measures as provided in sub-section 4 of Section 13. The requirement, as held by the Supreme Court, is that the notice given to the borrower must contain the details of the amounts payable and the secured assets against which the secured creditor proposes to proceed in the event of non-compliance with the notice given under sub-section 2 of Section 13.

The plea of the learned counsel for the petitioner that the interest after declaration of an account as non performing assets (NPA) cannot be recovered under Section 13 of the SRFAESI Act, is, therefore not borne out from the judgment relied on and from the provisions of the Act. What is contemplated is a notice specifying the amounts claimed

and the assets against which the secured creditor proposes to proceed in the event of non compliance. The notice dated 8th September, 2004, therefore, is in compliance of the requirement of Section 13 of the SRFAESI Act and cannot be faulted on the ground as has been raised by the petitioner.

It has also been contended that there is denial of principle of natural justice. The petitioner had been given notice and his reply to the notice/objections had been considered and decided. What were the objections taken by the petitioner have not been spelt out even in the writ petition. Even if the petitioner could not locate the copy of the alleged representation, the petitioner could summarize his objections. It was for the petitioner to make out the case as to how the objections/representation raised by the petitioner has been declined without application of mind by the respondent. In the circumstances, it cannot be held that the respondents have not decided the objections in compliance with the provisions of the SRFAESI Act in the facts and circumstances of the present case.

The next contention of the learned counsel for the petitioner is that substantial amount has been paid by the petitioner towards the alleged liability and the plea of the petitioner for one-time settlement in

accordance with the guidelines of the Reserve Bank of India has not been considered by the respondents. In respect of these pleas of the petitioners, it has been pointed out that another writ petition being WP(C) No.6896 of 2007 titled Richie Rich Pvt. Ltd. v. State Bank of Patiala and others is already pending adjudication in this Court. In view of the pendency of a separate writ petition, the plea regarding non-acceptance of one-time settlement is not to be considered and adjudicated in the present petition.

In the circumstances, the pleas of the petitioner that the account had not been declared as non performing assets is not correct nor it can be held that the account was declared as NPA in contravention of the directions of the Reserve Bank of India. For the foregoing reasons, it also cannot be held that the representation of the petitioner has been decided mechanically without application of mind and the pleas and contentions raised by the petitioner have not been considered. The petitioner was liable to contend in the writ petition as to what were the objections raised in the representation which have not been considered. In these circumstances, this also cannot be held that the remedy available to the petitioner under Section 17 of the Recovery of Debts due to Bank and Financial Institutions Act, 1993 was not an efficacious

remedy against the proposed actions of the respondents initiated under Section 13(4) of SRFAESI Act.

For the foregoing reasons, there are no grounds to invoke the jurisdiction of this Court under Article 226 of the Constitution of India in the facts and circumstances. The writ petition is, therefore, dismissed. The petitioner, however, shall be entitled to invoke remedy, if any, available to him according to law under the provisions of Recovery of Debts Due to the Banks and Financial Institutions Act, 1993. All the pending applications are also disposed of and the parties are left to bear their own costs

September 24, 2009
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ANIL KUMAR, J.