

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2755 OF 2016

M/s. Chhindwara Infrastructure Private Ltd.	..Petitioner.
vs.	
The State Bank of India.	..Respondent.

Mr. Dakshesh Vyas with Durgaprasad Sabnis i/by Lex Firmus for the Petitioner.

Mr. Lalitkumar Jain for the Respondent Bank.

CORAM : ANOOP V. MOHTA &
A.S. GADKARI, JJ.

DATE : 28th November, 2016

ORAL JUDGMENT: (Per Anoop V. Mohta, J.)

Heard the learned counsel appearing for the parties.

2) The petitioner who is a borrower has challenged a notice dated 21.9.2016 issued by the respondent under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the Act") by this petition on 25.10.2016.

3) The basic facts are as under:-

The petitioner is a private company registered under the provisions of the Indian Companies Act, 1956. The respondent is a Nationalized Bank having one of its branch at Worli, Mumbai. The petitioner was granted credit facility by the respondent to the extent of Rs.17.50 crores.

The petitioner received a notice under Section 13(2) of the Act demanding a sum of Rs.15,90,66,781/-

The petitioner made a representation to the respondent Bank in the form of reply to the said notice dated 13.7.2016 and called upon the respondent Bank to withdraw the notice dated 13.7.2016.

The respondent vide their letter dated 19.9.2016 received by the petitioner on 21.9.2016 sent a notice under Section 13(4) of the Act.

The petitioner and the Respondent bank had engaged in negotiations to decide the actual amount that was due and payable to the respondent bank which was recorded vide its letter dated 30.9.2016.

The petitioner apprehends that the respondent bank will attempt to take forcible possession of the property of the petitioner without following the due process of law.

4) The main submission is referring to Section 13(2) (4) that though the objection/reply filed to the notice under Section 13(2) of the Act so also another notice dated 19.9.2016 and second notice dated 27.9.2016 yet section 13(4) of the Act was invoked by the bank.

5) The learned counsel appearing for the petitioner has pointed out that they have replied to the said notice by a communication dated 5.10.2016. There was no denial to the same. The submission is also that the objections were duly communicated after the issuance of notice under Section 13(4) of the Act. To this submission, answer was given by the learned counsel appearing for the bank that from the date of the notice under Section 13(2) no payment was made by the petitioner who is borrower and the debt amount is to the extent of

Rs.15,90,66,781.00.

6) The disputed issue and the fact of deciding reply after 60 days and on/or before issuance of Section 13(4) notice may not be gone into in writ jurisdiction on the basis of the averments referring to the postal department's communication. The main aspect of non taking of action within 60 days even if any from the date of notice therefore in the facts and circumstances of the case is not sufficient to accept the case of the petitioner at this premature stage for the prayers so made.

7) Considering the scope and the purpose of the act so laid down and noted by this court in W.P .No.3072/2014 in *Mridula P. Sharma vs. State Bank of India and ors.* dated 10.3.2015. It is specifically mentioned in Para 11 as under.

“As held by us in paragraph No.8 above, we dismiss the present petition on the sole ground that the present petition is not maintainable under Article 226 of the Constitution of India in view of the law laid down by the Apex Court in the case of *United Bank of India v. Satyawati Tondon* (supra) and dismiss the present petition”.

8) Another Division Bench of this Court has also considered the scheme and object of the Act in *Blue Coast Hotels Limited vs. IFCI Limited* and anr. 2016(3) ABR 679.

9) On plain reading of Section 17 and as pointed out by the learned counsel for the respondent, the position is clear that the petitioner has remedy available under the statute. The various questions of fact even, if any, and the issues so agitated in the present writ petition can be gone into by the statutory

authority.

10) Therefore taking over all view of the matter and considering the stage and the challenge so raised by violating the statutory procedure so prescribed to challenge such measures and there is not extra ordinary circumstances or the case as made out by the petitioner to consider the case and the challenge so raised at this stage of the proceedings, therefore we are inclined to dismiss the writ petition as the petitioner has an alternate remedy available.

11) Keeping all points open, petition is dismissed for want of alternate remedy. All rights and contentions of the parties are kept open. No costs.

(A.S.GADKARI, J.)

(ANOOP V. MOHTA, J.)