NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 20.01.2017

Judgment delivered on 12.04.2017

WPC No. 152 of 2017

1. Deepak Kumar Saraf S/o Shri Motilal Saraf, Aged About 52 Years R/o Mahima Opposite CMD College, Link Road, Bilaspur, Civil & Revenue District Bilaspur (Chhattisgarh)

---- Petitioner

Versus

1. Chhattisgarh Rural Bank Having Its Head Office At 15, Recreation Road, Choubey Colony, Raipur And A Branch Office At Behind Deep Hotel, Bilaspur, Acting In The Premises Through The Chairman/ Branch Manager, Raipur/ Bilapsur.

2. Aambe Associates, Recovery Agent Having Mobile No. 9300339069, Through The Authorized Officer CG Rural Bank, Nehru Complex, Vyapar Vihar, Bilaspur.

---- Respondents

For Petitioner — Shri B. P. Sharma, Advocate with Shri Hari Agrawal, Advocate

---

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. The petitioner would call in question the proceedings initiated against him under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act, 2002')

(wrongly mentioned in the petition as ‘NPA Act’). The petitioner has also prayed for a direction to the respondent Bank to return back the original title documents of the petitioner in respect of the subject property, which is mortgaged with the respondent Bank.

2. The petitioner claims to be a guarantor in the loan transaction between Motilal Service Station, Link Road, Bilaspur and the respondent Bank having created security interest of his immovable property situated at Link Road, Bilaspur.

3. The Municipal Corporation published a public notice inviting objections on the application moved by one Motilal Saraf for entering his name in place of the petitioner’s name in the Municipal records. The Bank raised the objection before the Municipal Corporation with a copy to the petitioner.

4. On default committed by the borrower in repaying the loan amount, notice under Section 13 (2) of the Act, 2002 was served on the petitioner vide Annexure – P/5 and, thereafter, possession notice was issued under Rule 8 of the Security Interest (Enforcement) Rules, 2002 (for short 'the Rules, 2002') vide Annexure P/7 &

P/8. The Bank appears to have obtained possession of the property by affixing the possession notice on the front door of the property as is depicted in the photograph filed with the petition.

5. Placing reliance on the decision rendered by the Karnataka High Court in **Sri. N. B. Gurudeva vs. M/s State Bank of Mysore and others**[1]**,** it is argued by Shri B.P. Sharma, learned counsel appearing for the petitioner that there being renovation of contract, the petitioner is absolved of the guarantee. It is also argued that the Chhattisgarh Rajya Gramin Bank being a joint venture, it is not a banking company, therefore, the Act, 2002 has no application.

6. The question as to whether there is a renovation of contract can be examined by the jurisdictional Debts Recovery Tribunal where the petitioner can prefer an appeal under Section 17 of the Act, 2002.

7. Time and again, the Supreme Court has reiterated the law that when proceedings under the Act, 2002 is initiated the High Court should not entertain the writ petition under Article 226 of the Constitution of India (See : **United Bank of India vs. Satyawati Tondon**

1 ILR 2011 KAR 4121

and others[2] and **Devi Ispat Limited and another vs. State Bank of India and others**[3]).

8. The argument that the respondent Bank is a joint venture company and not a banking company is referred only to be rejected for the reason that the Regional Rural Banks have been established under the Regional Rural Banks Act, 1976 (for short 'the Act, 1976'), wherein Section 18 provides for the business which a Regional Rural Bank my transact. It says, every Regional Rural Bank shall carry on and transact the business of banking as defined in clause (b) of Section 5 of the Banking Regulation Act, 1949 and may engage in one or more forms of business specified in sub-section (1) of Section 6 of that Act. Sub-section (2) of Section 18 provides for the kinds of banking business which a regional rural bank may perform.

9. Under Section 2 (d) of the Recovery of Debts Due To Banks And Financial Institution Act, 1993, a Bank includes a Regional Rural Bank and a Banking Company has been defined under Section 2 (e) to carry the same meaning assigned to it in clause (c) of Section 5 of the Act, 1949. Similarly, Section 2 (1) (d) of the

2 (2010) 8 SCC 110
3 (2014) 5 SCC 762

Act, 2002 defines the 'Banking Company' to mean that the Banking Company shall have the same meaning assigned to it in clause (c) of Section 5 of the Banking Regulation Act, 1949. Thus, there is no dispute that the Chhattisgarh Rajya Gramin Bank being constituted under the Act, 1976 is a Banking Company.

10. For all the above-stated reasons, the writ petition is dismissed as not maintainable with liberty to the petitioner to avail the remedy available under the Act, 2002.

Sd/-

Judge

Prashant Kumar Mishra

Gowri