HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER

<u>WRIT PETITION NO.10848 OF 2017</u>

<u>ORDER</u>: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

The relief sought for in this Writ Petition is to declare the intimation of confirmation of sale dated 29.12.2016 issued to the petitioner, by the 1st respondent-Authorised Officer/Chief Manager, SBI, as illegal, unsustainable and arbitrary. The petitioner is the wife of the Managing Director of the 2nd respondent, as also a guarantor for the loan extended to the 2nd respondent by the 1st respondent-bank. The 2nd respondent availed a cash credit facility from the 1st respondent-bank, and was sanctioned a loan of Rs.1,50,00,000/. A notice was issued by the 1st respondent to the petitioner, under Section 13(2) of the SARFAESI Act, on 18.01.2016 calling upon them to discharge the entire liability. The petitioner claims to have raised objections by their letter dated 18.03.2016, and it is their case that the objections raised by them were neither considered nor was any order, passed under Section 13(3-A) of the SARFAESI Act, communicated to them. A notice, under Section 13(4), was issued on 04.03.2016 whereby the petitioner was informed that a sum of Rs.1,57,10,101/- with interest and expenses thereupon was due. Thereafter a possession notice was issued by the 1st respondent-bank on 03.05.2016, under Rule 8(1) of the SARFAESI Rules read with Section 13(12) of the SARFAESI Act, informing the petitioner that the bank had taken possession of the subject properties, including the residential building. A notice dated 13.05.2016 was issued for sale of the schedule property, including the house owned by the petitioner, calling upon the 2nd respondent to pay the outstanding dues within a period of thirty days. An E-auction sale notice dated 25.06.2016 was published in the newspapers wherein the residential house of the petitioner was sought to be put to sale. The petitioner filed the application, in S.A. No.482 of 2016 under Section 17 of the SARFAESI Act, which is still pending on the file of the DRT, and no orders have been passed therein. After the petitioner had invoked the jurisdiction of the DRT, the respondent-bank issued a sale confirmation notice which is subjected to challenge in this Writ Petition.

The only contention urged before us which, according to Sri P.S. Rajasekhar, Learned Counsel for the petitioner, has not been raised before the DRT, is regarding non-compliance by the 1st respondent-bank of passing an order under Section 13(3-A) of the SARFAESI Act. Section 13(3-A) stipulates that if, on receipt of a notice under Section 13(3), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and, if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate, within fifteen days of receipt of such representation or objection, the reasons, for non-acceptance of the representation or objection, to the borrower. Under the proviso thereto the reasons communicated, or the likely action of the secured creditor at the stage of communication of the reasons, shall not confer any right upon the borrower to prefer an appeal to the Debt Recovery Tribunal under Section 17 or under Section 17-A of the SARFAESI Act.

The submission of Sri P.S. Rajasekhar, Learned Counsel for the petitioner, is that Section 2(f) defines borrower to include a guarantor; and since the petitioner, as a guarantor, had made a representation raising objections, the respondent-bank was obligated to consider those objections, pass an order under Section 13(3-A), and communicate the same to the petitioner. Learned Counsel places reliance on the judgment of the Supreme Court in **Mardia Chemicals Ltd. v. Union of India**[1], and **Standard Chartered Bank v. Noble Kumar**[2], and on the Division bench judgment of the Bombay High Court, in **Blue Coast Hotels Ltd. v. IFCI Ltd**[3], to submit that Section 13(3-A) is a mandatory provision which the bank is obligated to comply; and, while the reasons assigned in the order passed under Section 13(3-A) cannot be questioned by way of an application under Section 17, that does not discharge the respondent-bank of their obligation to pass an order under Section 13(3-A) of the Act.

While this submission of Sri P.S. Rajasekhar, Learned Counsel for the petitioner, is no doubt attractive, and the law does obligate the bank to consider the objections of the borrower, (which would include a guarantor such as the petitioner herein), raised in reply to the notice issued under Section 13(2), and to pass orders under Section 13(3-A), the letter submitted by the petitioner dated 18.03.2016 discloses that the petitioner has not raised any objections to the notice issued under Section 13(2), except to complain that intimation to them in the last minute was unjustified, the bank was under an obligation to inform them if something was happening in the wrong direction; they would have discharged the liability and took back their properties; it was unfortunate that they have received the notice under reply; and the same was unwarranted, primarily because they were not a willful defaulter. The respondent-bank was called upon to furnish copies of all

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[1] (2004) 4 SCC 311
[2] (2013) 9 SCC 620
[3] 2016 SCC Online Bom 2663

the documents, including an upto date statement of the account, and the petitioner reserved her right to reply thereafter. Copies of all the documents, sought for by the petitioner, was furnished by the respondent-bank to her husband (who incidentally is also the Managing Director of the 2nd respondent) by letter dated 24.03.2016. The objection raised by the petitioner is primarily regarding non-furnishing of the documents, and the documents sought for by the petitioner was furnished to her husband on 24.03.2016. No other objection was raised by the petitioner, which necessitated consideration by the respondent-bank under Section 13(3-A) of the SARFAESI Act. As the obligation cast on the bank is only to consider the objections, and then pass an order under Section 13(3-A), absence of any objection being raised by the petitioner would not still require the respondent-bank to consider non-existent objections, and pass an order under Section 13(3-A) of the Act. The complaint of non-compliance under Section 13(3-A) must therefore fail.

As the application filed by the petitioner, under Section 17, is still before the DRT, suffice it to make it clear that the DRT shall examine the application filed in S.A. No.482 of 2016 on its merits uninfluenced by the dismissal of the present Writ Petition.

The Writ Petition is dismissed. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 20.04.2017.
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