

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1125 OF 2018

RAM S/O BABURAO HARAL

VERSUS

**THE MANAGER SHRI CHHATRAPATI RAJARSHI SHAHU
URBAN CO-OPERATIVE BANK LTD., BEED AND OTHERS**

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**Advocate for Petitioner : Mr. J.M. Murkute
Advocate for Respondent Nos.1 and 2 : Mr.K.J.
Suryawanshi**

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CORAM : S.S. SHINDE & S.M. GAVHANE, JJ.

Dated: January 29, 2018

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PER COURT :-

Heard learned counsel appearing for the petitioner. He submits that, instead of proceeding against the borrower, the notice is issued to the petitioner, who is guarantor. In the first place, the financial institution should proceed against the borrower for recovery and thereafter only the financial institution is entitled to proceed against the guarantor. He further submits that, the law mandates that the property of the borrowers should be mentioned in Demand

Notice under sub-section (2) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Hereinafter referred to as "the Act of 2002") and since there is no mention of the said property of the borrower in the demand notice, the petitioner should not be asked to face the further proceeding. He submits that, the status of the petitioner, whether he is guarantor or otherwise is a subject matter of the Writ Petition No.1410/2017 (Arjun S/o Dagdu Bhagat V/s The Manager, Shri Chhatrapati Rajarshi Shahu Urban Co-operative Bank Ltd., Beed and others. He further submits that, the said Petition is pending before this Court. Learned counsel submits that, the representation filed by the petitioner taking recourse to the provisions of sub-section (3) of Section 13 of the Act of 2002 is not yet decided by Respondent Nos.1 and 2. He further submits that, the property of the petitioner will be auctioned on 30th January, 2018, as indicated in the letter dated 17th January, 2018 (Exhibit B/Page 14), therefore, the Petition deserves to be allowed.

2. On the other hand, learned counsel

appearing for Respondent Nos.1 and 2, relying upon the judgment of the Supreme Court in the case of **Kanaiyalal Lalchand Sachdev and others V/s State of Maharashtra and others**)¹, and in particular, para 20 thereof, submits that, if there is any action initiated under Section 13(4) of Act of 2002 by issuing notice, the borrower or any person affected can approach the Debts Recovery Tribunal. Learned counsel submits that, the notice issued under section 13(2) of the Act of 2002 has been served upon the petitioner by Registered Post A.D. and the acknowledgement receipt to that effect is with Respondent Nos.1 and 2.

3. We have heard learned counsel appearing for the petitioner and learned counsel appearing for Respondent Nos.1 and 2. The fact that the copy of the notice is annexed to the Petition shows that, the petitioner is aware about such notice, and therefore, the contention of the petitioner that the copy of such notice is not served upon the petitioner needs no consideration. The contention of learned counsel appearing for the petitioner that, the Divisional Joint

1 2011(2) SCC (S.C.) 782

Registrar, Co-operative Societies, Latur has ordered that, first financial institution should proceed against the borrower, and in case there is no recovery, then proceed against the guarantor. In our opinion, the said direction of the said authority could not bind financial institution. It is settled law that, it is the choice of the financial institution, whether to proceed against the borrower or guarantor. Though it is argued that, Writ Petition No. 1410 of 2017 is pending before this Court and the status of the petitioner i.e. whether he is guarantor or otherwise is not yet decided is concerned, the petitioner is free to move before the concerned Court for early decision in the said Writ Petition. In our opinion, since the notice issued to the petitioner taking recourse to sub-section (2) of Section 13 of the Act of 2002, an appropriate remedy as rightly held by the Supreme Court in the case of **Kanaiyalal (supra)**, lies before the Debts Recovery Tribunal.

4. In that view of the matter, without expressing any opinion on merits of the contentions raised about the said notice, we are not inclined to invoke our extra ordinary

jurisdiction. Hence the Writ Petition stands rejected summarily.

(S.M. GAVHANE, J.)

(S.S. SHINDE, J.)

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