HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C) No. 2165 of 2017

M/s. Rishi Agency, Proprietor Chhotelal Sonkar, S/o. Ramkishan, Aged About 68 Years, R/o. Near Hanuman Mandir, Shardapara, Camp- 02, Bhilai, Tahsil & District Durg, Chhattisgarh.

---- Petitioner

Versus

1. UCO Bank, Through Branch Manager, Branch Kohka, Bhilai, Tahsil & District Durg, Chhattisgarh.
2. The District Magistrate, Durg, District Durg, Chhattisgarh.
3. The Additional Tahsildar, Bhilainagar, District Durg, Chhattisgarh.
4. Mohd. Ashif, Partner/ Owner In The Firm Of Munthana Foods Pvt. Ltd., Registered Address Of The Company 1 C, La Place, Opposite Sarvoar Portico Hotel, Shahnajaf Road, Hazaratganj, Lucknow-226001.
5. Mohd. Farid, Partner/ Owner In The Firm Of Munthana Foods Pvt. Ltd., Registered Address Of The Company 1 C, La Place, Opposite Sarvoar Portico Hotel, Shahnajaf Road, Hazaratganj, Lucknow-226001.
6. Mr. D Basu Manager Of The Firm Of Munthana Foods Pvt. Ltd., Registered Address Of The Company 1 C, La Place, Opposite Sarvoar Portico Hotel, Shahnajaf Road, Hazaratganj, Lucknow-226001.

---- Respondents

For Petitioner	:	Mr. Punit Ruparel, Advocate
For Respondent No.1.	:	Mr. Ravindra Sharma, Advocate
For State/Respondent No.2 & 3.	:	Mr. Aditya Bhardwaj, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

29.04.2019

Heard.

1. The present petition is against the measures taken under Section 13 of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 *(for short "SARFAESI Act").*

2. It is contended that the petitioner has though obtained the loan and in order to get the commodity of spice for which loan was obtained from the Bank and the amount was deposited in the account of respondent No.4 to 6. It is stated that they have supplied the spices with expiry date, which could not be sold in the market; thereby the criminal breach of trust was committed.

Consequently, the measures under Section 13 of the SARFAESI Act could not have been commenced.

3. Perusal of the record would show that it is not disputed that the loan was obtained by the petitioner from the Bank and mortgage was created in respect of the immovable property so as to secure the loan. Subsequently, for non-payment of the loan, the measures under Section 13 of the SARFACIE Act was commenced and the District Magistrate Durg on 29.04.2017 has passed the impugned order whereby the possession was directed to be taken over in respect of the immovable property in exercise of power under Section 14 of the SARFACIE Act.

4. The contents of the document would show that the entire measures for recovery have been commenced under the SARFACIE Act, therefore, as has been recently ruled by the Supreme Court in case of ***Authorized Officer, State Bank of Travancore & Another v. Mathew K.C.*** reported in ***AIR 2018 SC 676***, the writ petition cannot be entertained on this issue as there is an alternative remedy available under Section 17 of the SARFACIE Act to file an appeal.

5. In view of the above the petition is not tenable and is dismissed for the reason that the alternative remedy is available. The petitioner is so advised may seek appropriate remedy available to him under the law.

Sd/-
Goutam Bhaduri
Judge

ashok