09.09.2020
D/L No. 01
Court No.27
s.biswas

WPA 6024 of 2020
With
CAN 1/2020 (Old No. CAN 4214 of 2020)

Coastal Seaways (Island) Pvt. Ltd. & Anr.
Vs.
Andaman & Nicobar State Cooperative Bank & Anr.

(Through Video Conference)

Mr. Gopala Binnu Kumar
… … for the petitioners

Mr. K. V. Viswanathan
Mr. U. S. Menon
Mr. A. Chakraborty
… … for the respondents

Petitioners undertake to affirm and stamp the petition/application as per Rules within a month of resumption of normal functioning of the Court. Subject to such undertaking, the application is taken up for hearing through video conference.

In this writ petition notice dated 29th May, 2020 issued by the Authorised Officer, Andaman and Nicobar State Co-operative Bank Ltd., Port Blair, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereafter referred to as "SARFAESI Act, 2002") is under challenge.

In course of hearing learned advocate appearing for the writ petitioners has made the submissions in support of their case that since the bank which has issued the impugned 13(2) notice is a cooperative bank, therefore it is not open to the said bank to initiate proceedings under the SARFAESI Act, 2002. In this regard, learned advocate appearing for the petitioner has relied upon the recent Five Judge Bench judgment of the Hon'ble Supreme Court reported in *2020 SCC Online SC 431 [Pandurang Ganpati Chaugule vs. Vishwasrao Patil Murgud Sahakari Bank Limited]*.

The next point which has been agitated on behalf of the writ petitioner is that in the year 2018, the respondent bank has initiated arbitration proceedings in respects of the issued involved in the present writ petition for recovery of the debt. Therefore, subsequently initiation of proceedings under the SARFAESI Act, 2002 is not maintainable.

Another point has also been urged by the writ petitioner that the notice was served not upon the Director of the petitioner company, but upon one of the sureties of the company and there was delay in issuing notice for initiation of proceedings under the SARFAESI Act, 2002. It is further contended that the judgment reported in *2020 SCC Online SC 431* is prospectively applicable but in this writ petition issue cropped up much before the delivery of the said judgment.

Per contra, Mr. Menon led by Mr. Viswanathan, learned advocates appearing on behalf of the respondent bank, in answering the first point of the writ petitioner -

whether it is open to the co-operative bank to initiate proceedings under SARFAESI Act, 2002, has also relied upon the said Five Judge Bench judgment of the Supreme Court reported in *2020 SCC Online SC 431* and relying upon paragraph 103, it has been submitted that co-operative bank authorities are also entitled to initiate proceedings by issuing notice under Section 13(2) of the SARFAESI Act, 2002. While giving answer to the point taken by the writ petitioners that the recent five Judge Bench judgment has prospective effect, it has been argued on behalf of the respondent bank that after delivery of the said judgment, decided on 5th May, 2020 by the Five Judge Bench, the 13(2) notice was issued on 29th May, 2020, so there is not difficulty in initiating proceedings by issuing impugned notice under Section 13(2) dated 29th May, 2020.

With regard to contention of the writ petitioner that during pendency of the arbitration proceedings, recovery proceedings under SARFAESI Act, 2002 cannot be initiated has been answered by the learned advocate appearing for respondent bank upon placing reliance on the judgment reported in *2017 (16) SCC 741[M. D. Frozen Foods Exports Private Limited and Ors. vs. Hero Fincorp Limited]* wherein, as submitted by the learned advocate appearing for the respondent bank, it is decided that there is no bar in initiating proceedings under the SARFAESI Act, 2002 during pendency of the arbitration proceedings.

After considering the rival submissions made on behalf of the respective parties, I have asked Mr. Kumar, learned counsel appearing for the petitioner, that why the writ petitioners have not made representation against the impugned notice dated 29th May, 2020 under Section 13(3A) raising points which he has agitated before this Court today. No satisfactory answer is offered by Mr. Kumar on this issue.

Considering the scheme of the SARFAESI Act, 2002 it has been amply made clear that it is open to the borrower to resort to Section 13(3A) on receipt of Section 13(2) notice and make representation to the secured creditor, which has not been done in the present case, rather the writ petitioners have chosen to directly approach this Hon'ble Court upon invoking writ jurisdiction under Article 226 of the Constitution of India.

Considering the scheme of SARFAESI Act, 2002 and also placing reliance upon the judgment of *Standard Chartered Bank vs. V. Noble Kumar & Ors.* reported in *(2013) 9 SCC 620* the writ petitioner is not permitted under the law to challenge notice issued under Section 13(2) instead of making representation under Section 13(3A). With regard to applicability of the recent Five Judge Bench judgment of the Supreme Court, it is recorded that the said matter/issue was decided on 5th May, 2020 and the notice under Section 13(2) was issued on 29th May, 2020. Therefore, the said judgment of the

Supreme Court is applicable in the present case. There is no conflict to that extent.

Considering the above facts and observation made by this Court, I do not find any merit to interfere with the notice issued under Section 13(2) of the SARFAESI Act, 2002 dated 29th May, 2020 and accordingly, the present writ petition being WPA 6024 of 2020 along with connected application being CAN 4214 of 2020 are dismissed. However, I make it clear that dismissal of this writ petition will not preclude the writ petitioners to take steps in accordance with law for redressal of their grievance, if so advised.

(Saugata Bhattacharyya, J.)