ORDER SHEET

WPO No.315 of 2020
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SHYAM FASHIONS & ANR.
Versus
STANDARD CHARTERED BANK & ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 5th October, 2020

[Through video conference]

Mr. Jishnu Chowdhury, Mr. Aritra Basu, Advocates
for the petitioners

The Court : Affidavit of service filed in Court today is taken on record. Despite service, none appears either on behalf of the Standard Chartered Bank or the Reserve Bank of India.

The petitioners are engaged in business of retail garments. For the purpose of diversifying their business, the petitioners had taken a loan from India Bulls Limited and subsequently the said loan account of the petitioners was transferred to the Standard Chartered Bank. The petitioners are aggrieved, inter alia, for the following reasons:

a) That the notice under Section 13(2) of the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act, 2002') declaring the loan account of the petitioners as 'non-performing asset' was issued during the period when the Reserve Bank of India had granted three months' moratorium with regard to repayment of loan;

b) That above notice to the petitioners had not considered the issues in its proper perspective and the authority came to an incorrect finding that the instalment for February, 2020 had not been paid;

c) That the observation of the bank that the overdue status of the petitioners' account was much prior to March 1, 2020 and, as such, the moratorium granted by the Reserve bank of India would not be applicable in the case of the petitioner was incorrect; and

d) That while without considering the statement of the petitioners and the bank statement of the petitioners with regard to payment, the notice of possession was issued during the moratorium, which has now been extended to August, 2020.

The petitioners have referred to the bank statement to show that the instalment for February, 2020 was paid. Circular of the Reserve Bank of India issued from time to time with regard to grant of moratorium was relied upon to show that the monthly instalment against the loan account may not be paid and the said grant of moratorium was extended upto August, 2020. Thus, according to the petitioners, the Standard Chartered bank could not have issued the notice of possession during such a period when the Reserve Bank of India had allowed the borrowers the privilege of not having to repay the loan compulsorily during the pandemic situation. The notice of possession was issued on September 21, 2020.

For the reasons discussed hereinabove and considering the circular of the Reserve Bank of India, the petitioners need protection at this stage restraining the authorities from taking further actions on the basis of the possession notice dated September 21, 2020. This Court is aware of the position of law that the remedy of the petitioners lies before the Tribunal under the provisions of the SARFAESI Act, 2002.

However, as none represents the bank and the Court finds that the possession notice had already been issued in respect of the immovable property of the petitioners, protection to the petitioners is necessary for a period of two weeks in order to enable the petitioners to approach the Tribunal against the actions of the bank which are complained of in this writ petition.

This order is being passed in view of the pandemic situation. The economic situation in the country is such that the petitioners may require some time to mobilize their resources to be able to approach the appropriate forum. Moreover loss of immovable property in this situation may cause irreparable loss and injury to the petitioners.

Thus, considering the prima facie case and the balance of convenience and inconvenience, it is ordered that the Standard Chartered Bank shall not take any further steps pursuant to the notice dated September 21, 2020 for a period of two weeks. The petitioners shall approach the appropriate forum in the meantime and shall be at liberty to pray before the learned Tribunal for further protection in accordance with law. The interim protection so passed shall stand vacated if the petitioners fail to approach the appropriate forum within the aforesaid period.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

(SHAMPA SARKAR, J.)

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