

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 951 of 2015**

1. Chhattisgarh Aviation Academy, A Society Duly Registered Under The Relevant Provisions Of Law Acting In The Premises Through Its President Captain Siddharth Shukla, Son Of Shri S.K. Shukla, Aged About 48 Years, Resident Of HIG-B5, Raipur Naka, Durg, District Durg Chhattisgarh
2. Captain Siddharth Shukla, S/o Shri S.K. Shukla Aged About 48 Years President- Chhattisgarh Aviation Academy, Resident Of HIG-B5, Raipur Naka, Durg, District Durg Chhattisgarh, Civil And Revenue Durg Chhattisgarh

---- Petitioners**Versus**

Punjab National Bank, A Banking Company Registered Under The Relevant Provisions Of Banking Law, Acting In The Premises Through Its Branch Manager, Branch Office Durg, District Durg Chhattisgarh

---- Respondents

For Petitioners	:	Mr. B.P. Sharma, Advocate along with Mr. Sameer Uraon, Advocate
For Respondent	:	Mr. Harshwardhan, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/02/2020**

1. The challenge in the present writ petition is to the notice dated 16.03.2015 (Annexure P/4). The said notice is a notice under Section 13(2) of **“The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002”** (in short **“Act of 2002”**). The challenge also is the subsequent notice dated 16.05.2015 (Annexure P/6) issued by the respondent-Bank seeking delivery of possession of the secured assets as detailed in the chart given in Annexure P/6.
2. The challenge to the said two notices is on two grounds, firstly in Annexure P/1 the petitioners were called upon to deliver the possession of two aircrafts apart from the other properties. So far as

the demand for delivery of possession of the two aircrafts is concerned, the counsel for the petitioners referred to the express bar provided under Section 31(C) of the Act of 2002, which clearly stipulates that the provisions of Act of 2002 shall not apply to creation of any security in any aircraft as defined under Clause 1 of Section 2 of **The Aircraft Act, 1934**. The Second ground of challenge to Annexure P/4 and P/6 is on the ground that there is a clear non-compliance of a statutory provision as is required under Section 13(3A) of the Act of 2002.

3. The counsel for the petitioners referring to Section 3A submits that to the notice Annexure P/4 dated 16.03.2015, the petitioners had submitted a detailed reply/objection (Annexure P/5) on 01.05.2015. According to the petitioners, the said objection/rejection of the petitioners was filed within the prescribed time as is provided under Section 13(2) of the Act of 2002 and thereby the respondents were duty bound to take a decision on the said representation/objection within the prescribed time as provided under Section 3A of the Act of 2002 and Rule 3A of the Security Interest (Enforcement) Rules, 2002. According to the counsel for the petitioners, in the absence of any decision taken by the respondent-Bank to the representation/objection filed by the petitioners, the entire proceedings would get vitiated. The counsel for the petitioners relied upon the judgment of this Court in the case of “**Anil Kumar Agarwal v. I.C.I.C.I. Bank and Another**” [AIR 2011 Chhattisgarh 1].
4. The counsel for the respondent-Bank however opposing the petition submits that now that the respondent-Bank has issued the notice

under Section 13(4), the only recourse now available for the petitioners would be to avail the remedy as provided under Section 17 of the Act of 2002 by preferring an appropriate proceeding before the concerned DRT (Debt Recovery Tribunal).

5. The counsel for the respondent-Bank refers to the judgment of the Hon'ble Supreme Court in the case of **“I.C.I.C.I. Bank Limited and Others v. Umakanta Mohapatra and Others” [2019 13 SCC 497]**, so also the judgment rendered by this Court in the case of **“Shwet Chemicals India Private Ltd. v. State Bank of India” [2011 LawSuit (Chh) 102]**. Thus, prayed for rejection of the present writ petition.
6. The counsel for the respondent-Bank further submits that so far as the notice under challenge Annexure P/4 dated 16.03.2015 is concerned, it does not reflect the mention of an aircraft, therefore the objection raised by the petitioners of the applicability of the Act of 2002 would not sustain. To this submission of the learned counsel for the Bank, the counsel for the petitioners referred to the document Annexure P/6 dated 16.05.2015, wherein the respondent-Bank has reflected in the chart of the properties, which have to be taken possession of, which includes two aircrafts.
7. Having heard the contentions put forth on either side and on perusal of record, for proper appreciating the fact it would be first relevant to reproduce the provision of Section 31(c), so far as the provisions not being applicable in certain cases, which for ready reference is reproduced hereinunder:-

“31. Provisions of this Act not to apply in certain cases.- The provisions of this Act shall not apply to -

- (a) xxxxxxxxxxxx
- (b) xxxxxxxxxxxx
- (c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934 (24 of 1934).”

8. If we see Annexure P/6, which is a document issued by the respondent-Bank and which calls upon the petitioners to deliver possession of the secured assets, the chart envisaged in the said document reflects two aircrafts also along with the other properties of the petitioners, which the respondent intended to take possession of. If we take into consideration the aforementioned provision of Section 31(c), it would clearly reflect that there is a specific bar of the provision of the Act of 2002 not to apply in respect of creation of security in any aircraft, as defined under the provisions of The Aircraft Act, 1934. Undisputedly, the two aircrafts purchased by the petitioners fall within the definition of an aircraft under Clause 1 of Section 2 of The Aircraft Act, 1934. Thus, even though Annexure P/2 may not have the reflection of the possession being sought of the aircraft, but the fact that the Annexure P/6 reflects aircraft also, this Court is therefore of the opinion that the provisions of the Act would not be applicable, so far as taking possession of the aircrafts are concerned in view of the specific bar under Section 31(c).
9. As regards the objection so far as the non-compliance of the provision of Section 3A is concerned, it would be relevant at this juncture to refer to the judgment passed by this Court in the case of **“Anil Kumar Agarwal”** (supra), which would clearly reflect that the said judgment was specifically dealing with the provisions of Section

13(3A) of the Act of 2002. For ready reference paragraphs No. 14 to 20 of the said judgment are reproduced hereinunder:-

“14. Subsequent to judgment in *Mardia Chemical Ltd.* (supra) handed down by the Supreme Court sub-section (3A) of Section 13 of the Act, 2002 was inserted by Act 30 of 2004 w.e.f. 11.11.2004. Provisions of Section 13 (3A) came into consideration before the Supreme Court in *Transcore* [AIR 2007 SC 712] (supra).

15. The Supreme Court considered the provisions of sub-section (3A) of Section 13 of the Act, 2002 and held that a notice under Section 13 (2) is not merely a show-cause notice, but a notice of demand. Section 13(3A) of the Act, 2002 provides for an opportunity to the borrower to make representation to the secured creditor. Section 13 (2) of the Act, 2002 is a condition precedent to the invocation of Section 13 (4) of the NPA Act by the Bank/ Financial Institution.

16. However, in the instant case the reply dated 5.5.2009 was submitted by the petitioner, pursuant to the notice dated 21.3.2009 issued under Section 13 (2) of the Act, 2002, receipt of the same was refused by the Bank. Thus, there was no occasion to consider the reply of the petitioner. Indisputably the reply to the notice under Section 13(2) of the Act, 2002 was filed by the petitioner within a period of 60 days, which was not received by the respondent Bank.

17. Thus, provisions of sub-section (3A) of Section 13 of the Act, 2002, is a mandatory statutory provision, which was not complied with before taking recourse to provisions of Section 14 of the Act, 2002. It is indisputable that no order under the provisions of Section 13 (4) of the Act, 2002 has been passed till date.

18. Section 13 (3A) of the Act, 2002 provides for a specific procedure, which cannot be permitted to be contravened. It is a trite law that if a statute requires to do a process in a particular way, the same must be done in that way only.

19. In this regard I am in respectful agreement with the view taken by the Division Bench of the Orissa High Court in *Krushna Chandra Sahoo v. Bank of India & Ors.* (AIR 2009 Ori 35).

20. For the reasons stated hereinabove, the notice dated 21.3.2009 and the proceedings initiated by the respondent No.2 i.e. District Magistrate, Raipur, are quashed.”

10. So far as the judgments relied upon by the counsel for the respondent is concerned, those judgments undoubtedly lay down the principles of law, but it is also a settled position of law that when there is an admitted position of non-compliance of the statutory provisions under the Act, it would not bar the High Court from exercising of its power of judicial review under Article 226 of the Constitution of India.

11. On a query being put to the learned counsel for the respondent-Bank, he fairly concedes that undoubtedly the Bank has not been able to take a decision on the representation/objection, which the petitioners had filed in response to the notice under Section 13(2) within the time stipulated under Section 13(3A) of the Act of 2002 and also Rule 3A(c) of the Rules of 2002.
12. In view of the undisputed fact that there is a clear non-compliance of the mandatory statutory provisions of Section 13(3A) and Rule 3A(c) of the Rules of 2002, the entire proceedings initiated by the respondent-Bank subsequent to 16.03.2015 stands vitiated leaving it open for the respondent-Bank to proceed further in accordance with law.
13. With the aforesaid observations, the present writ petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved