

24-12-2021
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WPA 20908 of 2021

M/s. Glamour World Ayurvedic Company Private
Limited & Ors.

-Versus-

Reserve Bank of India & Ors.
(Via Video Conference)

Mr. Haradhan Banerjee,
Mr. Amitava Pyne,
Mr. Subhadip Biswas,
Ms. Priyanka Anand Sharma
...for the petitioners

Mrs. Soni Ojha,
Mr. S. Banerjee
...for the respondent nos. 2 to 7

A notice dated September 9, 2021 under
Section 13(2) of the Securitization and
Reconstruction of Financial Assets and
Enforcement of Security Interest Act, 2002
issued by the respondent bank is challenged
before this Court.

It is submitted that the bank has
calculated interest on interest during the period,
which the Hon'ble Supreme Court in W.P. (S)
Civil No. 825 of 2020 (Gajendra Sharma vs.
Union of India & Ors.) and W.P. (C) No. 476 of
2021 (Small Scale Industries Manufacturing
Association (Regd.) vs. Union of India.

The petitioners submit that the notice under Section 13(2) of the SARFAESI Act has clearly indicated interest that was charged by the bank, during the said period which has been expressly prohibited by the Hon'ble Supreme Court. Reliance is placed on a decision of a Co-ordinate bench of this Court dated September 27, 2021 in WPO 841 of 2021 (The Fabworth Promoters Private Limited & Ors. vs. Reserve Bank of India & Ors.).

On the question of maintainability, portions of the aforesaid Fabworth Promoters Private Limited judgment are placed by the counsel for the petitioners to indicate that the writ Court, with limited disputed questions of facts, could entertain a writ petition where question of jurisdiction is involved or natural justice is violated or any statutory procedure is not complied with.

The relevant decisions of the Hon'ble Supreme Court, in this regard have been set out by the Co-ordinate bench in the Fabworth Promoters Private Limited (supra). It is also submitted that in view of the recent dicta of the Hon'ble Supreme Court, the High Courts under Article 226 of the Constitution of India have

been mandated to entertain such proceedings, inter alia, under the SARFAESI Act, since the Presiding Officer had not been appointed by the Central Government. The said case arose out of a proceeding from the Debt Recovery Tribunals Act, Bombay.

Having carefully considered the arguments of the respondent/bank, this Court notices that there is a marked difference, in facts, between the Fabworth decision (supra) and in the instant case. In the Fabworth decision (supra), the bank had not taken steps after issuance of notice under Section 13(2) of the said Act and has only contemplated for taking further steps. The jurisdiction of the writ Court was invoked then.

In the instant case, the bank has already issued notice under Section 13(4) of the SARFAESI Act, 2002, where possession appears to have been taken on November 23, 2021. However, let us assume for the sake of argument that the writ Court's jurisdiction would still not be ousted for serious impropriety committed by the respondent/bank in binding dicta of the Hon'ble Supreme Court as regards

the declaration of accounts as non-performing assets.

This Court is of the view that even entering into such question would involve getting into the disputed questions of facts. Mathematically calculation of interest would have to be examined and scrutinized, which cannot be otherwise looked into, without the help of experts on the subject or otherwise by trial on evidence.

In that view of the matter, this Court is of the view that the writ Court should not entertain the instant writ application.

The last argument of the learned counsel for the petitioner is that the dicta of the Hon'ble Supreme Court recently is that the High Courts should entertain the writ petition challenging the order under the SARFAESI Act.

It is however submitted by the counsel for the bank that the Debt Recovery Tribunal at Kolkata are functional. The DRT no. 2 is not only functional but also in-charge of the determination of the DRT no.1. It is also submitted that all urgent matters are being taken up.

In view of the above and the given fact that relief under Article 226 of the Constitution of India is discretionary, the writ petition shall stand dismissed with liberty, however, with liberty reserved to the petitioners to approach the DRT at Kolkata on the self-same cause of action.

It is made absolutely made clear that if approached, the DRT shall decide the petitioners' grievances, inter alia, under Section 17 of the SARFAESI Act uninfluenced by any observation made by this Court hereinabove.

Since no affidavits have been used by the respondents, the allegations made in the writ application shall not be deemed to have been admitted by this Court.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)