OD-5

ORDER SHEET
WPO 74 OF 2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BALAJEE METALLIC AND ORS.
Versus
AXIS BANK LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 2^{ND} March, 2021

Appearance:
Mr. Nimish Mishra, Adv.
Mr. Ankit Chatterjee, Adv.
Mr. Pradeep Pandey, Adv.
...for the petitioner

Ms. Soni Ojha, Adv.
Ms. Sambita B. Chatterjee, Adv.
...for the respondent No. 1 & 2

Ms. S. Chatterjee, Adv.
Mr. Malay Kumar Seal, Adv.
...for the respondent No. 3

The Court : The petitioners have thrown a challenge in the present writ petition to a notice given to the petitioner under Section 13(2) of the SARFAESI Act, 2002 and subsequent action taken under Section 13(4) of the said Act.

Learned Counsel for the petitioners, relies on several guidelines of the Supreme Court, including those dated March 27, 2020 and May 23, 2020, which provided Regulatory Relief packages to businesses due to the pandemic situation.

Learned Counsel, by placing reliance on two judgements of the Supreme Court, being *M/s. Sardar Associates & Ors. Vs. Punjab & Sind Bank & Ors.*, reported at *AIR 2010 Supreme Court 218* and *ICICI Bank Limited Vs. Official Liquidator*, reported at *(2010) 10 Supreme Court Cases 1*, argues that such guidelines of the RBI have statutory force as the banks under the control of the RBI are concerned.

It is submitted that although normally the writ Court does not interfere into matters pending before the Debts Recovery Tribunal under the SARFAESI Act, the reliefs claimed in the present writ petition are in the nature of enforcement of the guidelines against the respondent No.1 Bank, which is beyond the jurisdiction of the Debts Recovery Tribunal to grant.

Learned Counsel of the petitioner further submits, by placing reliance on the language of Section 17(3) of the 2002 Act, that the scope of the examination by the Debts Recovery Tribunal is confined to whether the provisions of the Act itself and the rules made thereunder have been violated. The present challenge is much wider in its scope for consideration; as such, the writ petition is maintainable before this Court.

Learned Counsel for the RBI submits that the petitioners are not covered by the relevant RBI guidelines at all, since the reliefs sought for are in respect of the pandemic situation and for losses suffered by the petitioners on and from March 1, 2020. Since the petitioners' account was classified as NPA (Non Performing Asset) on February 28, 2020, the question of applicability of the RBI Circulars does not arise at all.

Learned Counsel appearing for respondent No.1, while adopting such submissions, also contends that the question as regards the classification of the petitioners' account as NPA, itself, cannot be challenged on facts before the writ Court. It is open to the petitioners to take all such grounds in its defence before the Debts Recovery Tribunal.

Upon hearing learned Counsel appearing for all the contending parties, it appears on the face of the materials on record that the petitioners' account was apparently classified as NPA on February 28, 2020, thereby precluding the petitioners from claiming benefits under the RBI circulars. Although the petitioners challenge such classification on 28th February, 2020 on several grounds, labelling such classification as an after-thought, it is beyond the scope of the Writ Court to enter into such question on factual merits.

As such, the writ petition cannot be held to be maintainable on the ground that the classification of NPA of the petitioners' account took place prior to the date of commencement of operation of the RBI circulars.

That apart, Section 17 of the 2002 Act leaves it open to the tribunal to enter into the question as to whether the measures taken by the secured creditor under Section 13(4) of the Act were not in accordance with the provisions of the

Act and the rules made thereunder. Such question also includes the issue of veracity of the action taken against the borrower on the ground of non-application of the RBI guidelines and wrongful classification of NPA of the petitioners' account as NPA, in order to adjudicate the primary issue as to whether the action under Section 13 of the 2002 Act was in accordance with the provisions of the Act and Rules. Interference by the writ Court at this stage has been deprecated by the Supreme Court and various High Courts time and again. Although there is no absolute bar in such interference, the Courts impose restrictions on themselves in exercising their writ jurisdiction in view of availability of equally efficacious alternative remedy before the Debts Recovery Tribunal. In fact, on the factual premise which is the pivot of the petitioners' case, that is erroneous classification of the account of the petitioners as NPA on February 28, 2020, it is the tribunal which has jurisdiction to enter into the said question on merits upon appraising the materials on record and to come to a conclusion in that regard.

In view of the above discussions, the writ petition cannot be entertained. Accordingly, WPO 74 of 2021 is dismissed as not maintainable, giving the petitioners liberty to take all points taken in the present writ petition in its before the Debts Recovery Tribunal.

It is made clear that the merits of the rival contentions of the parties have not been gone into by this Court and it will be open to the tribunal to consider all such issues as raised by the parties in the present writ petition on merits without being influenced in any manner by any of the observations made in this order.

No order as to costs.

Urgent certified copies, if applied for, by issued to the parties upon compliance of all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

Sbghosh