HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1995 of 2021

1. Naresh Lalwani S/o Shri Thawardas Lalwani, Aged About 44 Years R/o Raipur Naka, Sindhi Colony, Durg Chhattisgarh
2. Vinod Lalwani, S/o Thawardas Lalwani, Aged About 40 Years R/o Raipur Naka, Sindhi Colony, Durg Chhattisgarh
3. Mukesh Lalwani, S/o Thawardas Lalwani, Aged About 42 Years R/o Raipur Naka, Sindhi Colony, Durg Chhattisgarh
4. Rajesh Kumar Lalwani S/o Thawardas Lalwani, Aged About 46 Years R/o Raipur Naka, Sindhi Colony, Durg Chhattisgarh

---- Petitioners

Versus

1. The Chairman, Union Bank Of India, Union Bank Bhavan, 239, Vidhan Bhavan Marg, Nariman Point, Mumbai- 400-021, Maharasashtra, India
2. Manager, Union Bank Of India, Durg Chhattisgarh,
3. Regional Manager, Union Bank Of India, Raipur Chhattisgarh

---Respondents

For petitioners – Shri K.A. Ansari, Sr. Advocate with Shri Aman Ansari, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

08/06/2021

Heard.

1. Learned counsel for the petitioners would submit that the Union Bank has proceeded under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') without service of notice to the legal heirs of the original borrower Ashok Kumar Lalwani. The fact that notice was not served would be evident from the letter of right to information received on 19/12/2019 (Annexure P-11). He would submit that subsequently the petitioners filed a proposal before the bank to consider their case, however the same was rejected on the same date. As such

when the notice has not been served to the petitioners, any action thereafter under Section 13(4) of the SARFAESI Act would be illegal.

2. Perusal of the documents filed along with the petition would show that the order of DRT dated 5/02/2019 wherein the similar contention was taken by the petitioners against the measures under Section 13 of the SARFAESI Act was proceeded by the bank. Before the DRT the submission was made that Ashok Kumar Lalwani who died was the original borrower and though he was served with a notice, subsequently after his death no notice was served to the heirs who inherited the property. The same contention was dismissed by the Presiding Officer, DRT specially holding that measures for sale is only against the mortgage property is taken, which was made by deceased borrower and not the applicant. The said order was passed in 2019. Thereafter, no appeal was preferred before the appellate tribunal under Section 18 of the SARFAESI Act. The issue once having been raised and has been adjudicated by the DRT, the petitioners could have approached to the appellate tribunal inasmuch as remedy of statutory appeal was provided. After long lapse of two years again this petition has been filed raising the same ground. The petitioners having not challenged the order of the DRT, this Court is not inclined to exercise the power under Article 226 of the Constitution of India to go into fact finding apart from the fact that appellate statutory remedy having not been availed, same cannot be surpassed by filing of this instant petition. Petition sans merit and accordingly it is dismissed.

Sd/-

(Goutam Bhaduri)

Judge

gouri