

21.09.2022

MAT 1407 of 2022
With
CAN 1 of 2022

Sri Subhas Dutta
Vs.
UCO Bank & Ors.

Mr. Jit Ray

... .. for the appellant

Mr. Arjun Mookherjee

... .. for the respondents

Aggrieved with the order of the learned Single Judge dated 26th August, 2022 dismissing the WPA 19004 of 2022, appellant has filed this intra-court appeal.

The record reflects that the appellant was a defaulting borrower to whom the notice under Section 13(2) of the SARFAESI Act was issued on 25th January, 2022 and thereafter notice under Section 12(4) of the Act was issued on 20th April, 2022. The respondent bank has initiated the auction sale proceedings and the sale notice was issued on 23rd July, 2022.

Being aggrieved with the notices under Section 13(2) and 13(4) of the Act and the sale notice appellant had approached the Writ Court by filing WPA 19004 of 2022.

Learned Single Judge after examining the matter has found that the appellant had approached the Writ Court after the expiry of period of limitation which is prescribed for approaching the competent tribunal under Section 17 of the SARFAESI Act and therefore the learned

Single Judge has reached to the conclusion that the appellant cannot be permitted to raise the same issue which is time barred in the garb of a writ petition.

Learned Single Judge has also reached to the conclusion that the appellant has remedy before the tribunal under Section 17 of the Act and the same has not been availed therefore the writ cannot be entertained.

Submission of learned counsel for the appellant is that subsequently the appellant has filed an application under Section 17 of the Act before the DRT, Guwahati which has now been temporarily conferred with the jurisdiction of DRT-II which is the competent bench to hear the petition. He submits that the observation made by the learned Single Judge in respect of the limitation may come in the way of the appellant and that every step taken under Section 13(4) of the Act gives a fresh cause of action and therefore the limitation is to be counted from the date of issuance of sale notice for availing the remedy under Section 17 of the Act.

Learned counsel for the respondent bank has opposed the petition by raising the plea that the challenge to the sale notice is solely based upon the alleged defect in the notice under Section 13(2) of the Act and there is no independent ground to challenge the sale notice and the learned Single Judge has rightly dismissed the writ petition.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that statutory remedy provided under Section 17 of the Act has already been availed by the appellant by approaching DRT, Guwahati.

In the facts of the case, we feel that the application preferred by the appellant under Section 17 of the Act should now be examined by the concerned DRT expeditiously. Since, the learned Single Judge has made certain observations in respect of the issue of limitation, therefore we clarify that if such an issue of limitation arises in the pending application, the tribunal will decide the same independently without being influenced by any observation made by the learned Single Judge in this regard in the order under challenge.

Since the alternative remedy has already been availed by the appellant, therefore we do not find any reason to interfere in the order of the learned Single Judge.

The appeal is accordingly disposed of.

Connected application is also disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)