

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/21/2022
WPO/1197/2021
IA NO: GA/1/2022
M/S. DE-LIGHT PRINTING WORKS & ANR.
VERSUS
UNION OF INDIA AND ANR.

BEFORE:

THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
DATE : 11TH MARCH, 2022

APPEARANCE:

Mr. Partha Chakraborty, Advocate
Ms. Sharmistha China, Advocate
.....for the appellants

Mr. Pankaj Kumar Mukherjee, Advocate
...for the respondents

The Court:- This appeal is at the instance of the writ petitioners challenging the order of the learned Single Judge dated 11th January, 2022 whereby the writ petition has been disposed of by observing that the argument about issuance of second notice under Section 13(2) of the SARFAESI Act was academic and that the issuance of notice under Section 13(2) did not give any cause of action.

We have examined the record and noticed that the appellants were sanctioned credit limit and there was some overdue. Accordingly, the respondent bank had initially sent the notice under Section 13(2) of the Act on 3.5.2021, a reply of which was submitted by the appellants. Thereafter, the action under Section 13(4) of the Act was taken on 18.8.2021 in respect of constructive possession of the secured asset. The appellants had approached the DRT by filing SA No. 118 of 2021 questioning the action of the respondent bank. During the pendency of the appeal before the DRT, fresh notice under Section 13(2) of the Act was issued on 24.9.2021 which became the subject

matter of challenge in the present writ petition. The writ petition has been disposed of by the learned Single Judge. Hence, this appeal.

Submission of the learned counsel for the appellants is that once the further action in pursuance to Section 13(2) notice was taken and constructive possession under Section 13(4) was taken, it was not open to the bank to withdraw the Section 13(2) notice, hence the subsequent notice issued under Section 13(2) cannot be sustained and in support of his submission he has placed reliance upon the Division Bench judgement of the Hyderabad High Court in *Vijaya Lakshmi Agencies vs. Authorised Officer, Canara Bank, Chirala Town & Anr.*, reported in 2017(1) DRTC 100 as also the judgment of the Delhi High Court in *R.R. Kable Limited vs. INCAB Industries Ltd. & Ors.*, reported in 2016 (2) DRTC 243.

As against this, learned counsel for the bank has raised the contention that since there was some technical defect in the earlier Section 13(2) notice, therefore, it has been withdrawn and a fresh notice was issued and there is no bar in issuing the fresh notice.

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that in the second notice under Section 13(2) dated 24.9.2021 itself, it is mentioned that there was some technical defect in the earlier notice dated 3.5.2021, therefore, the same was withdrawn and fresh notice was issued. It is undisputed before this Court that after the earlier notice under Section 13(2) of the Act, only constructive possession in terms of Section 13(4) was taken and no physical possession of the secured asset was taken.

In the aforesaid background, we are of the opinion that there is no bar to withdraw a technically defective notice under Section 13(2) and to issue a fresh and proper notice. So far as the judgement in the case of *Vijaya Lakshmi (Supra)* relied upon by the counsel for the appellants is concerned, that was not a case of issuance of any earlier defective notice and correction of

error by issuing fresh notice. Hence, the said judgement is of no help to the appellants. So far as the judgment of Delhi High Court in *R. R. Kable Ltd. (Supra)* is concerned, in that case, no such issuance of the second notice under Section 13(2) on the ground of earlier defective notice was involved.

Having regard to the aforesaid, we are of the opinion that the learned Single Judge has not committed any error in refusing to interfere in the writ petition. Therefore, we affirm the order of the learned Single Judge though on different reasons which are mentioned above.

The appeal is, accordingly, dismissed.

(PRAKASH SHRIVASTAVA, C.J.)

(RAJARSHI BHARADWAJ, J.)