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WPO 1197 of 2021
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S. DE-LIGHT PRINTING WORKS AND ANR.
VERSUS
UNION BANK OF INDIA AND ANR.

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 11th JANUARY, 2022

APPEARANCE:

Mr. Partha Chakraborty, Adv.

Ms. Sharmistha China, Adv.

Ms. Puja Mondal, Adv.

Mr. Pankaj Kr. Mukherjee, Adv.

The Court : This writ petition has been filed challenging a second notice under Section 13(2) issued by the Union Bank of India against the petitioners on 24th of September, 2021. An earlier notice under Section 13(2) dated 3rd of May, 2021 culminated in Section 13(4) where possession of the secured asset was taken under Rule 8(1) of the Security of Enforcement Rules on 18th August, 2021. The petitioner challenged the same in SA No. 118 of 2021 before the Debts Recovery Tribunal, Kolkata, which is pending.

Notwithstanding pendency of the aforesaid SA, the bank has issued a second notice under Section 13(2) of the SARFAESI Act, 2002 on 24th

September, 2021. Counsel for the petitioner would rely upon the judgments of M/s. Dauji Farms Limited & Ors. vs. Dena Bank & Anr. reported in AIR 2009 Chhatisgarh 22 and M/s. Sravan Dall Mill P. Ltd. vs. Central Bank of India & Anr. reported in AIR 2010 Andhra Pradesh 35. Further reliance is placed today on the decision of Chandra Sengar & Another vs. Union Bank of India & others reported in 2018 (2) D.R.T.C 903(Delhi), Vecons Energy Systems Pvt. Ltd. vs. State Bank of India & Anr. reported in 2017 (2) DRTC 812 (Madhra Pradesh) and Vijaya Lakshmi Agencies vs. Authorised Officer, Canara Bank, Chirala Town & Another reported in 2017 (1) DRTC page 100(Hyderabad). By reference to the aforesaid judgments, Counsel for the petitioner would argue that SARFAESI Act, 2002 accepts only one notice under Section 13(2) and subsequent notices thereunder are not maintainable.

This Court notes that the challenge to the earlier SARFAESI proceedings are pending adjudication before the learned Debts Recovery Tribunal in SA No. 118 of 2021. The second notice under Section 13(2) is superfluous and unnecessary. The existing notices under Sections 13(2) and 4 being the subject matter of SA No. 118 of 2021 are to enforce the bank's claims against the petitioner. The argument of the petitioner is, therefore, academic.

If one accepts that the second notice under Section 13(2) is not maintainable, the writ petition cannot be entertained as it is settled that a notice under Section 13(2) does not create any cause of action.

For the reasons stated hereinabove, this Court is of the view that no relief can be granted to the petitioner in the instant writ petition.

The writ petition shall stand disposed of with liberty to the petitioner to proceed with SA No. 118 of 2021 or institute fresh proceedings when the bank takes out proceedings under Section 13(4) in aid of the latest notice under Section 13(2) dated 24th September, 2021.

The writ petition is disposed of without any order as to costs.

(RAJASEKHAR MANTHA, J.)