IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3743 OF 2021

Janata Sahakari Bank Ltd., Amravati Head Office at Panchasheel Cinema Marg, Amravati, By its Branch Manager, Branch at Shirajgaon Kasba, Office at Shirajgaon Kasba, Tq. Chandur Bazar, Dist. Amravati.	**.. Petitioner**

Versus

1. Ranjit s/o Sukhadeorao Dabhade Prop. M/s. Jagdamba Dresses & Saree Centre, Aged about 43 years, Occ.: Business, R/o. At Post Brahmanwada Thadi, Tq. Chandur Bazar, Dist. Amravati. 2. Shri Sukhadeorao s/o Ramaji Dabhade Aged 75 years, Occ.: Agriculturist, R/o. At Post Brahmanwada Thadi, Tq. Chandur Bazar, Dist. Amravati.	**.. Respondents**

Mr. S.S. Shingane, Advocate for petitioner.

CORAM : VINAY JOSHI, J.

DATED : 05.12.2022.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel for petitioner. Despite service respondents chooses to remain absent.

(2) The petitioner namely Janata Sahakari Bank Ltd., Amrvati, is a secured creditor within the meaning of Section 2(xvi)(zd) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short 'Act of 2002'). The respondents have availed the cash credit facility from the petitioner – Bank. Since, the respondent defaulted in making regular payment, their account has been classified as non-performing asset. In turn the petitioner – Bank has issued notices under Section 13(2) of the Act of 2002. Since, the notices was not complied, the petitioner – Bank filed an application under Section 14 of the Act for possession of the secured assets, which was mortgaged with the petitioner. In accordance with that the District Magistrate has passed an order dated 21.12.2016 under Section 14(1) of the Act of 2002, for taking possession of secured assets.

(3) In the meantime, the respondent-borrower has filed a dispute to the Co-operative Court under Section 91 of the Act, raising a grievance about calculation of due amount and sought for release of mortgaged property i.e. a secured asset. The petitioner has applied to the Co-operative Court seeking for dismissal of dispute, as the same is not maintainable. According to the petitioner already they have invoked the remedy under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and therefore, the said action cannot be challenged in Civil Court as well as in the Co-operative Court. The said application was came to be rejected which is subject matter of challenge. Despite service of notice, both respondents remained absent.

(4) It reveals from the dispute filed by the respondents in the Co-operative Court that admittedly they have availed cash credit facility from petitioner – Bank. It also reveals that the respondents property was mortgaged to the Bank towards security. However, the respondents contented in the Co-operative Court that they have repaid the entire amount by sale of property. It is specifically contended that the respondents have paid excess amount of Rs.69,532/- (Rs.Sixty Nine Thousand Five Thirty Two Only) to the Bank and therefore, the dispute is filed for recovery of said amount as well as sought for release of mortgaged property.

(5) It reveals that the borrower has mortgaged his property and thus, created a secured asset in favour of Bank. The petitioner is a secured creditor, who has financed to respondents on creation of secured assets. It appears that the Bank has proceeded in terms of Section 13 & 14 of the Act of 2002, in relation to enforcement of secured interest. Though, the respondent has claimed for adjustment of amount, however, he has sought for release of secured assets. It is apparent that the secured interest has been created in favour of petitioner – Bank on which borrower has availed financial assistance. Already the secured creditor has taken measures in terms of Section 13 which was followed by action under Section 14 of the Act of 2002. Section 17 of the Act of 2002, provides a remedy to the aggrieved person against any of the measures taken by secured creditor. Thus, the respondents ought to have availed the said remedy instead of approaching to the Co-operative Court.

(6) Moreover, the respondents have not disclosed to the Co-operative Court about the steps taken by secured creditor under the Act of 2002. In the circumstance, the Co-operative Court ought not to have entertained the dispute filed by the borrower.

(7) In view of that, the petition is allowed.

(8) The impugned order dated 29.06.2021, passed by Co-operative Court, Amravati, is hereby quashed and set aside. Application for dismissal of dispute (Exhibit 12) is allowed and accordingly, the dispute stands disposed of.

[VINAY JOSHI, J.]

Prity

Signed By:PRITY S GABHANE
Reason:
Location:
Signing Date:08.12.2022 18:36