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

Misc. Civil Application No.795 of 2022 (For Review)
In
Writ Petition No.6952 of 2022 (D)

Harshit S/o Dnesh Mishra and others
Versus
Aditya Birla Housing Finance Limited and others

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's order	Court's or Judge's orders

Shri A.P.J.P. Dubey, Advocate for Applicants/Original Petitioners.
Ms Mitisha Kotecha, Advocate for Non-Applicants/ Original Respondents.

CORAM : SUNIL B. SHUKRE & ANIL L. PANSARE, JJ.
DATE : 5th DECEMBER, 2022

1. Heard Shri Dubey, learned counsel for the applicants/original petitioners; and Ms Kotecha, learned counsel for the non-applicants/ original respondents. Perused the documents filed along with the application, which were also the documents forming the part of the original writ petition.

2. The learned counsel for the non-applicants has stated before us that the non-applicants are not desirous of filing any reply to this application and that she would be only making her arguments on behalf of the non-applicants.

3. Considering the fact that the non-applicant- Financial Institution does not wish to file any reply to this application, it would necessarily imply that all the statements of facts made in this application are not contested, rather they are accepted. Such being the factual position of this application, we have heard the learned counsel for the applicants on facts and law and the learned counsel for the non-applicants on law only.

4. It is the contention of the learned counsel for the applicants that the applicants had filed a representation under Section 13(3-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act"), which representation was never decided by the non-applicant- Financial Institution. On the contrary, a false statement was made on oath before the concerned Magistrate, who was seized of the application filed by the non-applicants under Section 14 of the SARFAESI Act to the effect that the non-applicant- Financial Institution has duly complied with all the provisions of the SARFAESI Act.

5. The learned counsel for the applicants submits that since the representation filed by the applicants under Section 13(3-A) of the SARFAESI Act was not decided or atleast the applicants were not informed of the same by the non-applicant- Financial Institution and this fact was not candidly disclosed before the concerned Magistrate, the non-applicant- Financial Institution committed a fraud upon the Magistrate, who passed an order under Section 14 of the SARFAESI Act.

6. The learned counsel for the applicants further submits that unless and until the representation made or the objection taken by the borrower under Section 13(3-A) of the SARFAESI Act is decided, the Bank or the Financial Institution cannot initiate any measure under Section 13(4) of the SARFAESI Act and that would mean that the borrowers, like the applicants, would not be entitled to take recourse to the remedy provided under Section 17 of the SARFAESI Act.

7. The learned counsel for the applicants relies upon the case of **Malhotra Tractors and another** Vs. **Chief Manager, State Bank of India**,

reported in **2009 AIR (All) 150**, wherein a view has been taken by the Division Bench of Allahabad High Court that the provisions of Section 13(3-A) of the SARFAESI Act are mandatory in nature and unless and until the procedure prescribed thereunder is followed, the Bank cannot proceed further in taking measures, as contemplated under Section 13(4) of the SARFAESI Act.

8. The learned counsel for the non-applicants submits that the order sought to be reviewed takes a correct view inasmuch as there is alternate remedy available to the borrowers under Section 17 of the SARFAESI Act. She also submits that if it is the contention of the borrowers that the order passed under Section 14 of the SARFAESI Act was obtained by playing a fraud upon the Magistrate, even this ground would be available to the borrowers when they take recourse to the remedy under Section 17 of the SARFAESI Act.

9. The learned counsel for the non-applicants further submits that the borrowers cannot challenge the order passed under Section 14 of the SARFAESI Act inasmuch as the borrowers do not have any right of hearing before the authority invested with the power under Section 14 of the SARFAESI Act. She places reliance upon the cases of **Kanaiyalal Lalchand Sachdev and others** Vs. **State of Maharashtra and others**, reported in **2011 LawSuit (SC) 76**, and **Hari Trading Corporation** Vs. **Bank of Baroda**, reported in **2015(3) DCR 233**.

10. On considering the rival arguments and the documents placed on record, we find no substance in the submission of the learned counsel for the applicants that the representation/objection made by the applicants under Section 13(3-A) of the SARFAESI Act was not decided by the non-applicants. The requirement of Section 13(3-A) of

the SARFAESI Act is that whenever such a representation taking objection to the demand notice issued under Section 13(2) of the SARFAESI Act is made, it is mandatory for the Bank or the Financial Institution to decide the same, one way or the other, in accordance with law. The requirement does not say that it must be accepted. In the instant case, the representation dated 17-12-2021 made by the applicants was decided by the non-applicants and the applicants were duly informed of the decision, which was rejection of the representation, by it's communication, a copy of which has been filed by the applicants on Page No.50 of the writ petition. If this is so, we find that the procedure, as contemplated under Section 13(3-A) of the SARFAESI Act has been duly followed by the non-applicants. It would then mean that all the provisions contained in Section 13 of the SARFAESI Act have been complied with by the non-applicants and, therefore, the applicants would have a right to approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. For these reasons, we do not think that any support could be drawn by the applicants from the view expressed by the Division Bench of Allahabad High Court in the case of **Malhotra Tractors and another**, cited supra. On the contrary, we find that the view taken by this Court in the case of **Hari Trading Corporation**, cited supra, and also the view taken by the Apex Court in the case of **Kanaiyalal Lalchand Sachdev**, cited supra, would govern the factual situation of the present application, and accordingly we find that there is no merit in the application.

11. The Misc. Civil Application for review stands dismissed.

(ANIL L. PANSARE, J.) **(SUNIL B. SHUKRE, J.)**

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