Ct. No. 652

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C.O. 234 of 2019

Dipa Ghosh
–Versus-
The Development Bank of Singapore & Anr.

Mr. Ranjan Kali
Ms. Mitul Chakraborty
Ms. Mili Saha
Ms. Payel Nath ...For the Petitioner

Being aggrieved by the impugned order dated 15th November, 2018 passed by the learned Judge, Debts Recovery Appellate Tribunal, Kolkata in Appeal No. 82 of 2018 the present application under Article 227 of the Constitution of India has been preferred.

Petitioner contended that the petitioner herein availed of cash credit facility to the tune of Rs. 11 lakhs which was subsequently enhanced to Rs. 15 lakhs against the mortgage of a shop room, being room no. 1 on the ground floor of Bijoy Apartment. It is submitted that subsequently the loan account of the petitioner have been classified as Non-performing Assets (NPA), without specifying date. As a sequel to such event, a notice has been issued by the opposite party/Bank under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, claiming therein a sum of Rs. 14,99,553.27 as on 15th December, 2014.

It is further submitted that in response to the said notice the petitioner herein made a representation under Section 13(3) of the SARFAESI Act on 7th January, 2015 and the opposite party Bank has given a reply. Thereafter the Bank has taken symbolic possession of the immovable property by taking recourse to Section 13(4) of the SARFAESI Act by putting a possession notice in the daily newspaper.

Being aggrieved by the notice dated 16th December, 2014 the applicant preferred an application under the SARFAESI Act which has been registered as S.A. No. 229 of 2015 under Section 17 of the SARFAESI Act challenging the validity and propriety of the notice under Section 13(2) and 13(4) of the SARFAESI Act. The Debt Recovery Tribunal – III Kolkata by an order dated 13th September, 2017 directed to pay over-due amount to the Bank within two weeks from the date of such order.

Being aggrieved by that order the petitioner preferred an appeal on 13th September, 2017 which was registered as Appeal No. 82 of 2018 before the Debt Recovery Appellate Tribunal (DRAT). By the impugned order dated 15th November, 2018, the Tribunal below directed the applicant to furnish undertaking before the Bank within two days to the effect that the applicant is ready to pay the overdue amount within 10 days.

Mr. Kali learned Counsel on behalf of the petitioner states that both the Tribunal committed a material error by directing the petitioner to regularise the amount within 10 days after the same being furnished by the opposite party/Bank within two days from the date of order and the Tribunal below failed to appreciate the fact that the applicant / petitioner has challenged the validity of the purported notice dated 16th December, 2014 issued under Section 13(2) of the SARFAESI Act. The Tribunal below while passing the order has not made any reference about the fact that due to non-disclosure of the date of the loan account as NPA, the entire SARFAESI action is bad and not sustainable in the eye of law. The DRAT has also erred in directing the applicant to pay the overdue within 10 days from the date of furnishing the overdue amount by the Bank to the applicant.

It is further submitted that the Tribunal below has not considered the fact that the petitioner has challenged the validity and propriety of the impugned notice issued under Section 13(2) and 13(4) of the Act. Accordingly, the petitioner has prayed for setting aside the order impugned.

It appears that in spite of service the opposite parties are not represented.

I have considered the submissions made on behalf of the petitioner. On perusal of the order impugned it appears that the Tribunal below has observed that the overdue amount was not conveyed to the borrower and simultaneously record does not suggest that the borrower had ever approached before the Bank for payment. It further appears that the petitioner has given an undertaking before the DRAT to regularize the account within 10 days.

In such circumstances the appeal was disposed of in the manner that the borrower shall furnish undertaking formally before the Bank within two days to the effect that she is ready and willing to pay the overdue amount within 10 days and further direction was made upon the Bank to convey the overdue amount including interests and expenses, if any within five days and the borrower shall deposit the overdue amount as demanded by the Bank, within 10 days.

Since, the petitioner borrower herein has given undertaking before the Tribunal below to regularize the account within 10 days, I find nothing perverse in the order impugned nor the tribunal while passed the order has overstepped his jurisdiction. Where order was passed in presence of parties and on the basis of undertaking to regularize the account by the borrower and Appellate Tribunal passed order on consideration of materials placed before it, this court would not be justified in interfering said order which is neither illegal nor irrational nor suffering from procedural impropriety. While exercising supervisor jurisdiction, this court is not supposed to re-appreciate documentary evidence like an Appellate Court and as such I find nothing illegality in the order impugned.

In such view of the matter, C.O. 234 of 2019 is dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)