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12.04.2023
Ct. No. 32
rrc

FMA 1374 of 2017

(Adya Projects Private Limited Vs. Union of India & Ors.)

Mr. Dilip Kumar Samanta
Mr. Biswapriya Samanta
Ms. Tithi Paul
..... For the appellant

Affidavit-of-service, as filed by the appellant, be kept on record. No one appears on behalf of the respondents.

The present appeal has been preferred challenging an order dated 7th February, 2017 passed in a writ petition being WP 1692 (W) of 2017.

Mr. Samanta, learned advocate appearing for the writ petitioner/appellant submits that a notice dated 1st July, 2015 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, SARFAESI Act) was issued by the authorised officer of United Bank of India, which has presently merged with the Punjab National Bank (hereinafter referred to as the said Bank). The appellant submitted a reply to the said notice on 22nd August, 2016. By a letter dated 24th August, 2016, the said notice dated 1st July, 2015 was withdrawn and a fresh notice dated 25th August, 2016 under Section 13(2) of the SARFAESI Act was issued. The appellant replied to the same by a representation dated 14th October, 2016 received by the Bank on 17th October, 2016. A further letter was issued on 12th September, 2016 withdrawing the notice dated 25th August, 2016 and on the self-same date, i.e., 12th September, 2016 a fresh notice under Section 13(2) of the SARFAESI Act was issued. The withdrawal letter as well as the Section 13(2) notice both dated 12th September, 2016 was sent to the appellant by a registered post on 13th December, 2016. Such communication was thus beyond the statutory time limit of 15 days from the date of receipt of the appellant's representation on 17th October, 2016 and accordingly the notice dated 12th September, 2016 was not sustainable in law. Challenging such action of the said Bank the writ petition was filed.

Mr. Samanta argues that even though the appellant annexed postal documents which clearly revealed that the letter dated 12th September, 2016 and the notice dated 12th September, 2016 were sent to the appellant on 13th December, 2016, the learned Court disbelieved such fact and dismissed the writ petition with costs of Rs.1 lakh.

Heard Mr. Samanta and considered the materials on record.

No reason is forthcoming as to why the fact that the notice dated 12th September, 2016 was sent to the appellant on 13th December, 2016 was disbelieved by the learned Court moreso when none appeared on behalf of the said Bank to dispute such service. The finding in the order impugned that the writ petition was an attempt to delay and stall the recovery proceedings initiated by the said Bank also does not stand supported with appropriate reason.

Costs are at the discretion of the Court and such power to impose costs is an extraordinary power and is to be used in extraordinary circumstances. The conduct of the appellant does not on the whole warrant to castigate him as an unscrupulous litigant and no want of *bona fide* is imputable to the appellant.

In view thereof, the direction towards payment of costs of Rs.1 lakh contained in the order dated 7th February, 2017 is set aside.

The appeal and all connected applications are, accordingly, disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) **(Tapabrata Chakraborty, J.)**