6th September, 2023
(AK)
04

W.P.A 19071 of 2023

Ruma Chakraborty
Vs.
Regional Manager and others

Mr. Kaushik Chandra Gupta
...for the petitioner.

Mr. Manas Dasgupta
Mr. Gourav Das
...for the respondent-Bank.

Mr. Tilak Mitra
...for the Union of India.

1. Affidavit-of-service filed in court today be kept on record.

2. The petitioner's challenge is against non-return of the secured gold assets lying with the respondent-Bank, despite the petitioner wanting to repay the entire debts of the Bank.

3. It is submitted that the Bank has so refused on the ground that the petitioner has other loan accounts which have been marked as NPA.

4. It is submitted that proceedings under Section 13 of the SARFAESI Act, 2002 have already been taken out with regard to the said other accounts and the petitioner is contemplating the filing of an application under Section 17 of the said Act in that regard.

5. Moreover, it is argued that under Section 176 of the Contract Act, read with Section 177, if time is stipulated for the payment of the debt, or performance of the promise and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them.

6. In the present case, it is argued, the petitioner is seeking to repay the amount but the Bank is not taking it on the one hand and, on the other, vide letter dated August 10, 2023, the Bank has written to the petitioner that the petitioner is required to pay all dues including interest.

7. With regard to the last submission, learned counsel relies on a document annexed to the supplementary affidavit which is filed in court today with the leave of court.

8. Learned counsel appearing for the respondent-Bank cites the Gold Loan Policy of 2023-2024 of the respondent-Bank.

9. It is submitted that the said policy was a part of the agreement to which the petitioner consented at the time of pawning the gold-in-question.

10. As per Clause 8, sub-Clauses (s) and (w) of the said policy, the balance amount if any, after adjustment of all dues of the Bank, should be credited to the SB/current account of the borrower under advice to him.

11. More importantly, it is argued that in case the borrower is having overdues/NPA (Non-performing Asset) in any of his direct liabilities and indirect liabilities, the excess amount has to be appropriated towards the same after giving due notices.

12. Learned counsel also places reliance on paragraph 6 of a communication of the Bank to the petitioner in reply to a legal notice of the petitioner, dated July 21, 2023, where the Bank reiterates that due to non-payment of dues, all loan accounts held by the petitioner have been classified as a Non-performing Asset.

13. It was thereby informed that since the NPA is classified borrower-wise, no single account can be settled against repayment of dues.

14. Thus, the Bank insists that unless the petitioner repays all the dues from the petitioner to the respondent-Bank, the secured gold in the current account cannot be released.

15. In fact, the Bank is contemplating holding an auction sale with regard to the gold to satisfy the dues, to the extent possible, regarding all the loans between the Bank and the petitioner.

16. The policy cited by the respondent-Bank, it is not disputed, was in full knowledge of the petitioner.

17. However, Clause 8, relied on by the Bank, pertains, even as per the caption thereof, to auctioning of gold jewellery.

18. The question of auctioning, again, is subservient to the previous clause, that is, Clause 7 of the policy.

19. Clause 7 provides for steps to be followed for recovery in gold loans when the interests/installments become overdue.

20. Thus, the scope of holding an auction of the gold jewellery deposited with the Bank as security of a gold loan arises only when the borrower fails to repay the amount and steps for recovery are initiated.

21. However, in the present case, the borrower has specifically sought to repay the amount along with all interest.

22. Therefore, the Bank is seeking to step-jump by attempting to hold an auction of the gold jewellery, despite the petitioner's specific intention to repay all the dues along with interest to the Bank, in terms of the Bank's claim.

23. Clauses (s) and (w) only come as sub-Clauses under the broad heading 'Auctioning of Gold Jewellery', which is only a corollary to the process of recovery of gold loans.

24. Since the petitioner seeks to repay the entire amount of loan along with interest, there does not arise any question of the said stage having come as yet.

25. The provisions relied on by the Bank, being that the balance amount, if any, after adjustment of all other dues should be credited to the account of the borrower under advice to him and that in case of the borrower having

overdues, the excess amount being appropriated towards the same after giving due notices, only refers to auctioning of the gold jewellery in the event the petitioner does not repay the entire amount.

26. The “excess amount” referred to in sub-Clause (w) of Clause 8 of the Policy of the Bank refers to the excess amount upon the gold jewellery being auctioned, which stage, as indicated above, has not yet arrived in the present case in view of the petitioner having expressed willingness to repay the entire dues.

27. Insofar as the reliance of the bank on paragraph 6 of its communication dated July 21, 2023 is concerned, the same is misplaced.

28. The Bank, in paragraph 6, has sought to advance a proposition that there is blanket classification of Non-Performing Asset in all accounts.

29. The exact statement of the Bank is that due to non-payment of dues, all loan accounts held by the borrower has been classified as a Non-Performing Asset and that the NPA is classified “borrower-wise”.

30. However, such concept is alien to the RBI circulars regarding classification of accounts as NPA.

31. Such classification has to be on an account-basis and cannot be blanket and borrower-wise.

32. In the present case, the question of invocation of NPA regarding the gold has not yet arrived, since the

basic pre-requisites for such classification have not been satisfied.

34. There is nothing on record to show that the borrower failed to repay the gold loan-in-question for 90 days after it became overdue, to attract the RBI Circular regarding declaration of the account as NPA.

35. In particular, since the petitioner is fully agreeable to pay the entire amount, the respondent-Bank cannot withhold the return of the same on the pretext of other accounts of the petitioner being classified as NPA.

36. In any event, certain secured assets have been mentioned by the Bank itself in its proceedings under Section 13 of the 2002 Act pertaining to the other loan of the petitioner, which is allegedly overdue. The gold deposited in connection with the present loan was never shown as secured asset in such recovery proceeding even by the Bank. Hence, there is no lien of the Bank on the gold for non-payment of a different loan, regarding which recovery proceedings are underway.

38. In fact, the concept of 'general lien' is not available to the banker, since the clauses of the Policy relied on by the Bank are not applicable to the petitioner for the reasons as enumerated above.

39. In such circumstances, the respondents are duty-bound to return the entire secured gold to the petitioner.

40. Hence, WPA 19071 of 2023 is disposed of by directing the petitioner to repay the entire claim of the

Bank in connection with the three gold loans-in-question within a fortnight from date.

41. Upon such payment being made, the respondent no.2 shall return the secured gold lying with the Bank in connection with the said three gold loans to the petitioner at the earliest, positively within a week thereafter.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)