July 9, 2024
Sl. No.4
Court No.9
s.biswas

WPA 17831 of 2022

*Ashok Singha*
*vs.*
*Union of India and others*

Mr. Pradip Pal
Ms. Roshni Ghosh
Mr. Tamojit Ghosh
... for the petitioner
Mr. Ranajit Chowdhury
Mr. Sudipto Chowdhury
Mr. Purnendu Modak
... for the respondent no.3

1. The writ petition has been filed challenging the issuance of second notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the said Act). It is submitted that during the pendency of the writ petition, a notice under Section 13(4) of the said act has been issued.

2. The petitioner contends that on December 24, 2021, the first notice under Section 13(2) was issued. The bank did not reply and the bank did not discharge its obligations as per Section 13(3A) of the Act. Again, the bank issued notice under Section 13(2) of the said act on April 26, 2021. The petitioner replied to the same. After expiry of 15 days, the bank replied to the said notice. In the meantime, notice under Section 13(4) has also been issued. The petitioner alleges

that multiple notices under Sections 13(2) could not have been issued. As the bank did not respond to the answer of the petitioner to the first notice under Section 13(2), the bank could not have proceeded thereafter.

3. It appears that by letter dated June 4, 2022, the authorized officer of the Union Bank of India replied to the petitioner's representation made in reply to the notice under Section 13(2) of the Act.

4. The reply is quoted below:

"We are in receipt of your representation against the demand notice of the bank under Section 13(2) of the SARFAESI Act 2002 in the multiple NPA accounts of Sri Ashok Singha. We inform you that all the accounts associated with your PAN has been declared Non-Performing on 25/05/2021 in terms of the RBI guidelines as you had not paid the regular EMI's in one or more of loan accounts.

Thereafter, the Authorized Officer invoked the SARFAESI Act 2002 by issuing you a demand notice on 26.04.2022 for all the dues in all the accounts put together under your PAN. You are given sixty days of time to repay the total dues as on the date of the notice. This was not honored so far by you.

You mentioned that your account has a regular re-payment history and the declaration of the NPA is bad in law. Here, we mention you that you failed to regularly pay the required amount in your accounts on time hence the same was declared **as Non-Performing Assets in terms of the Reserve Bank of India guidelines vide its**

**Cr Ref No.RBI/2021-22/117, dt. 01.11.2021**. The same can be verified with the account statements.

This is for your kind information."

5. Law does not bar issuance of a second notice under Section 13(2) of the said Act. If the bank finds any mistake in the earlier notice, the same can be withdrawn and a subsequent notice may be issued. In this case, the petitioner had two loan accounts and both had become NPA. In the first notice, the second loan account was not mentioned. Thus, second notice under Section 13(2) was issued and the petitioner replied to the same. The bank also replied to the representation.
6. The petitioner is at liberty to approach the learned Debts Recovery Tribunal under Section 17 of the said act with all his grievances by challenging the entire SARFAESI proceedings, in accordance with law. If the petitioner approaches the learned tribunal, the tribunal will dispose of the matter strictly in accordance with law.
7. This order shall not be construed as an observation of the court on the merits of the petitioner's case.
8. The first notice under Section 13(2) of the Act was deemed to be cancelled upon issuance of the second notice.

9. In view of the special statute and the alternative remedy available to the petitioner, this court is not inclined to pass any order in this writ petition.
10. Accordingly, the writ petition stands disposed of.
11. All the parties are directed to act on the basis of the server copy of the order.

**(Shampa Sarkar, J.)**