2024:BHC-AUG:12517

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5495 OF 2024

1. Rajendra S/o. Eknath Nalkar
Age 43 years, Oc. Agriculture,
R/o. Tambhere Road,
Kangar Khurd, Taluka Rahuri
Dist. Ahmednagar.

2. Pushpa w/o. Eknath Nalkar
Age 61 years, Occ. Agriculture
R/o. Tambhere Road,
Kangar Khurd, Tal. Rahuri,
Dist. Ahmednagar. .. Petitioners

versus

1. Aspire Home Finance Company Limited
registered office at
Motilal Oswal Tower,
Rahimtullah Sayani Road,
Opposite Parel S.T. Depot,
Prabhadevi, Mumbai 400 025.

2. The Authorized Officer,
Aspire Home Finance Corporation Limited
Office No.4, First Floor,
Zopadi Canteen,
Ahmednagar 414 003. .. Respondents.

Mr. Nilkanth D. Batule, Advocate for petitioners.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 18th JUNE, 2024.

ORDER :-

1. The present petition, filed under Article 227 of the Constitution of India, takes exception to the order dated 4.7.2022 passed by the District Collector, Ahmednagar under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as " the SARFAESI Act" for sake of brevity) and consequential proceeding under Rule 8 and 9 of the Security Interest Investment Rules of 2002. The petitioner also raises challenge to the order dated 10.8.2023 passed by the Presiding Officer, Debt Recovery Tribunal at Aurangabad in Securitization Application No. 400 of 2022 and further order dated 14.3.2024 passed by the Debt Recovery Appellate Tribunal, Mumbai in I.A. No. 737 of 2023 (waiver deposit) in Appeal on diary No. 1797 of 2023.

2. The petitioners contend that the respondent no. 1 is a Non-banking financial company (N.B.F.C.). The petitioners approached respondent for grant of home loan. Accordingly, loan amount of Rs. 8,45,254/- had been sanctioned under letter dated 30th October, 2017. The repayment @ Rs. 10,511/-p.m. was fixed in 240 equal installments (EMIs). The loan agreement incorporates an arbitration clause, as a mode for settlement of dispute in terms of Arbitration and Conciliation Act, 1996.

3. The petitioner had also executed a mortgage deed dated 8.11.2017 creating security interest on agricultural land Gat No. 11 with the cow-shed and godown situated thereon. The description of the property under mortgage is as under :-

> “ *The property bearing gat No. 111 admeasuring 00 H. 12 R. agricultural land thereon 33 x 25 Sq.ft. R.C.C. constructed from cowshed – godown by Kangar gram panchayat milkat number 269/3 at Kangar, Tq. Rahuri, Dist. Ahmednagar.”*

4. According to the petitioners till 16.4.2022, they made repayment of 42 installments worth Rs. 4,80,899/-. However, respondent classified their account as Non Performing (NPA) on 11.1.2021. The respondents issued notice dated 18.1.2021 under Section 13(2) of the SARFAESI Act and took symbolic possession of the secured asset. The notice depicts balance of Rs. 9,74,111 in the loan account of the petitioners. Consequently, notice dated 11.3.2022 was issued under Section 13(4) of the Act, depicting outstanding dues to the tune of Rs. 9,74,111/-. On 26.4.2022, respondent moved application under Section 14 of SARFAESI Act, before the District Magistrate Ahmednagar, which has been allowed vide order dated 4.7.2022. According to the petitioners, such order is passed without extending opportunity of hearing to them and sans particulars of the recoverable amount. In pursuance of the order passed under Section 14 of the SARFAESI Act, Tahsildar Rahuri was authorized to take possession. However, he delegated powers to the Circle Officer vide communication dated 19.3.2022. Consequently, the Circle Officer, Taharabad addressed the communication to petitioners asking them to hand over physical possession of secured asset.

5. The petitioners assailed aforesaid orders before Presiding Officer Debt Recovery Tribunal at Aurangabad in Securitization

Application No. 400 of 2022 with the prayer for interim stay to the impugned notice dated 11.10.2022 issued by the Circle Officer. However, on 10.8.2023, the Presiding Officer DRT, Aurangabad rejected the Application ignoring the substantial grounds of challenge. The petitioner exhausted remedy of Appeal Diary No. 1797 of 2023 however, suffered rejection of I.A. No. 537 of 2023 (waiver deposit). The petitioners, therefore, seek to invoke the jurisdiction of this Court under Article 227 of the Constitution of India.

6. Mr. Batule, learned Advocate for the petitioner makes two fold submissions. Firstly, he contends that action under Section 13 of the SARFAESI Act could not have been invoked by the respondent since the principal loan amount was less than Rs. 10 Lakhs. Secondly, respondent, N.B.F.C. is not covered under notifications issued by Ministry of Finance, Department of Financial Services, for extending application of SARFAESI Act, 2002.

7. He would further submit that Section 31 (I) of the SARFAESI Act, excludes applicability of its provisions to security interest in agricultural land. To buttress his submissions, he relies upon the Division Bench judgment of the High Court of Delhi in the case of ***"IDFC First Bank Ltd. vs. Bank of India" dated 1.11.2023 (writ petition (C) 2550 of 2020*** and Division Bench judgment of the High Court of ***Madhya Pradesh in the case of Virendra Rathod Vs. Tahsildar of Mandsore and others dated 22.5.2024 reported in (2024) IBC law.in 457 (HC).***

8. Perusal of the record depicts that the petitioner had initially resorted to remedy of filing Securitization Application No. 400 of 2022

before the D.R.T. at Aurangabad. However, when the notice of the proceeding was served to respondent, petitioners advocate he could not proceed further with his arguments. Consequently, the application suffered dismissal without touching to merits. Although, the petitioners exhausted further remedy of appeal, accompanied with application for waiver of deposit, it suffered dismissal.

9. The petitioner relied upon the notifications issued by the Government of India in its Ministry of Finance to contend that N.B.F.C.s covered under clause (f) of Section 45 (I) of the R.B.I. Act, 1934, having assets of Rs. 500 Crores are recognized as financial institutions and would be governed by the provisions of Sections 13 and 19 of the SARFAESI Act, only in respect of security interests of principal amount of Rs. 1 Crore, which has been latter on reduced to Rs. 20 Lakhs under notification dated 12.2.2021. The aforesaid notification depicts that its applicability is restricted to N.B.F.C.s covered under clause (f) of Section 45(I) of the RBI Act. List of such financial institutions is made part of notifications of 2016 as well as 2018, pertinently, the name of respondent institution does not figure therein.

10. The petitioners relied upon the judgment of the High Court of Madhya Pradesh in the case of Virendra Rathod (supra), wherein the court observed in para. 28 as under :-

> *"28. What does issuance of two different set of notifications separately for HFCs/HFIs and NBFCs entail? How the Court must interpret their correlations with each other. On a specific query being put to counsel for both the parties, it was informed that* ***amongst the large number of NBFCs mentioned in the table constituting the***

> ***notification, issued from time to time, the name of Respondent HFC doesn't find mention anywhere*** *in the notifications pertaining to NBFCs. No such notification was brought on record either on behalf of the petitioner, that would evince the respondent having been classified especially as NBFC as under Chapter III-B r/w Section 45(I) (f) of the RBI Act. Thus it is luminescent that amongst the list of NBFCs to be treated as FI's, the petitioner has never been notified in such category specifically. By necessary implication, therefore the pecuniary threshold prescribed in the notification will not apply to HFCs/ HFIs. However, to the contrary, the name of the Respondent SRG Finance finds mention in the* ***notification pertaining to HFCs dated 18.15.2015 , vide Serial No. 34."***

11. In present matter also, nothing is placed before this Court to show that respondent is classified as N.B.F.C. under Chapter III-B r/w. Section 45(I)(f) of the RBI Act. Consequently, it cannot be presumed that the minimum pecuniary threshold will not apply to the respondent. The documents on record and information in general available on the website of the respondent, clearly depicts that it has been registered as National Housing Bank (N.H.B.) under section 29 of the National Housing Bank Act, vide certificate of registration N0.05.11.2014 dated 19th May, 2014.

12. In the conclusive paragraphs Nos. 35 and 36 of the judgment in case of ***Virendra Rathod (Supra)***, M.P. High Court, observed as under :-

> *" 35. In view of our above exposition of the principal of* ***'generalia specialibus non derogant'****, clearly the provisions contained under Chapter III – B of the RBI Act, specifically*

Section 45 (1)(f) cannot be treated to be applicable in the context of HFI's/HFC's established under Section 29A of the NHB, for the purposes of interpretation of notifications issued under 2 (1)(m)(iv) of the SARFAESI Act. HFIs/HFCs will be categorised as FI's not by virtue of their being NBFC's, but because of their falling under the phrase 'any other institution' as mentioned under Section 2 (1)(m)(iv). The notifications resultantly issued pertaining to NBFC would therefore on the strength of above reasoning will also not apply to to HFC's/HFI's.

36. In view of the above reasoning, we reach an irresistible conclusion that all the contentions of the petitioners are liable to be rejected, holding in turn as follows:

(a) The present writ petition is maintainable and petitioner may not be relegated to the alternative remedy available under SARFAESI Act for the reasons stated supra.

(b) Respondent HFC is entitled under law to resort to SARFAESI Act towards recovery of their loans and borrowings, irrespective of the loan borrowings infavour of the petitioner falling below the threshold of Rs. 20 Lakhs.

(c)The notifications relied upon by the petitioner as issued by the Central Government (Ministry of Finance) on applicability of SARFAESI Act on NBFCs shall not be applicable in the context of HFCs / HFIs, but only in the context of NBFCs so defined under Chapter III-B of

the RBI Act, 1934, specially Section 45(I)(f).

13. At this stage reference can be given to communication dated 25.8.2021 issued by the R.B.I which is addressed to all Housing Finance Companies which reads as under :-

> *1. Please refer to Para 105 of Master Direction - Non-Banking Financial Company - Housing Finance Company (Reserve Bank) Directions, 2021 wherein certain criteria have been prescribed for notification of HFCs as 'Financial Institution' under Section 2(1)(m)(iv) of the SARFAESI Act.*
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> *2. In this connection, Government of India (GOI) has, vide its Gazette Notification No. S.O. 2405(E) dated June 17, 2021 notified the HFCs registered under Section 29A(5) of National Housing Bank Act, 1987 and having assets worth 100 crore & above, as 'Financial Institution' under Section 2(1)(m)(iv) of SARFAESI Act, 2002. In view of revision of the criteria for notification as 'Financial Institution' as per the abovementioned Gazette notification of GOI, the criteria prescribed under Para 105 of the aforesaid Master Direction are withdrawn with immediate effect.*
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> *3. The Master Diretion – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021 is being modified accordingly.*

14. This communication clarify that the Housing Finance Companies registered under Section 29(A)(5) of the National Housing Bank Act, 1987 are eligible to be referred as “Financial Institutions” under Section 2(1)(m)(iv) of the SARFAESI Act, 2002. Hence, provision of said act are applicable to respondent and rightly invoked against petitioner for recovery of dues.

15. So far as the contention of the petitioners that action under the provisions of the SARFAESI Act is barred in view of Section 31(i) of the said Act, as against security of agricultural land is concerned, the

documents tendered into service, particularly, mortgage deed, depict that secured property is a constructed godown on certain part of the agricultural land and not exclusive agricultural land as sought to be contended before this Court. In the light of aforesaid factual position, the objection raised by the petitioner cannot be sustained.

16. The action has been initiated by the respondent against the petitioners in the year 2022 under SARFAESI Act. Hence, no fault can be found in exercise of jurisdiction by the District Magistrate. In that view of the matter, no jurisdictional error is brought to the notice of this Court requiring interference under Article 227 of the Constitution of India. Hence, writ petition sans merit, same is dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-