ML 221
20.01.2025
Court No. 14
DP/AGM

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A 21925 of 2024

Sabyasachi Bagchi
-versus
Union of India & Ors.

Mr. Dilip Kumar Samanta.
Mr. Biswapriya Samanta.
Mr. Suhotro Palit.
...For the Petitioner.

Mr. Sailesh Mishra.
... For the respondent nos. 3 and 4.

Mr. Amrit Sinha.
... for the Union of India.

1. The loan account of the petitioner was declared as non-performing asset by the bank and proceeding initiated under the SARFAESI Act for recovery of the due.

2. Notice under Section 13(2) of the Act was issued to the petitioner in September 2021. The petitioner replied to the same in February 2024. In response to the same the bank vide communication dated 2nd March, 2024 intimated the petitioner that his prayer cannot be accepted. The petitioner is aggrieved by the same.

3. It has been submitted that as per the proviso to Section 13(3-A) of the Act there is a bar on the borrower to approach the Debts Recovery Tribunal challenging the reason so communicated in response to the representation made by the petitioner in connection to the notice served under Section 13 (2) of the Act.

4. Petitioner also prays for direction upon the bank for a one-time settlement.

5. The prayer of the petitioner is opposed by the learned advocate representing the Bank.

6. Section 13(2) of the Act mentions that where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt and the debt is classified as non-performing asset, then the secured creditor may require the borrower by notice in writing to discharge in full his liabilities within 60 days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under the Act.

7. In the instant case, admittedly, the petitioner did not repay the loan amount within the statutory period of 60 days from the date of the notice. The petitioner replied to the notice under Section 13(2) after two years and five months of the issuance thereof.

8. The bank in the meantime proceeded to take steps to recover the loan amount in accordance with the provisions of the Act.

9. The bank, however, by the communication dated 2nd March, 2024 rejected the proposal of the petitioner made in response to the notice under Section 13(2).

10. The impugned communication of the bank cannot be treated as communication of reasons in response to a notice under Section 13(2) as the representation allegedly in response to the said notice under Section 13(2) was made long after the statutory time period. The bank, in the meantime, took steps under the provision of Section 14 of the Act. Under such facts and circumstances, the impugned

communication will not attract the bar under Section 13(3-A) of the Act.

11. It will be open for the parties to take steps in the matter in accordance with law, if so advised.

12. It will also be open for the petitioner to pray for one-time settlement before the bank.

13. The observations made hereinabove are only restricted to the reply made by the bank to the representation made by the petitioner allegedly in response to the notice under Section 13(2) of the Act and the observations are restricted to the instant proceeding only. The observation will not influence any other proceeding either initiated or to be initiated by any of the parties before any forum whatsoever.

14. The writ petition stands disposed of.

15. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)