

Court No. - 40

Case :- WRIT - C No. - 263 of 2025

Petitioner :- M/S K.C. International Situate And 2 Others

Respondent :- Indian Bank Kanpur Main Branch

Counsel for Petitioner :- Prerna Surolia, Ravi Kant Surolia, Shashi Kant Shukla

Counsel for Respondent :- A.S.G.I., Anuj Srivastava

Hon'ble Shekhar B. Saraf, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

1. Counter affidavit and rejoinder affidavit to counter affidavit have been filed, which are taken on record.

2. Heard Ms. Prerna Surolia, learned counsel appearing on behalf of petitioners, Sri Vivek Kumar Singh, learned counsel appearing on behalf of respondent No.2 and Sri Kush Saxena, learned counsel assisted by Sri Anuj Srivastava, learned counsel appearing on behalf of Bank of India and perused the record.

3. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner has made the following prayer:-

*i)- to issue writ, order or direction in the nature of mandamus commanding the respondent bank to decide the representation/objection dt. 05.10.2024 of the petitioner (Annexure 1 to the writ petition) by a reasoned order, in terms of Section 13(3A) of the Act, in view of the settled judicial precedent by the Hon'ble Apex court in the case of **Madia Chemicals (supra)**;*

*ii)- to set aside proceedings initiated by the respondent bank under Section 13(4) of the Act in contravention to the non-compliance of the provisions of Section 13(3A) of the Act as well as in defiance of settled judicial precedent of the Hon'ble Apex Court in the case of **Madia Chemicals (supra)**;*

iii)- to issue writ, order or direction in the nature of prohibition restraining the respondent bank from initiating further

*proceedings in terms of provisions of Section 13(4) of the Act in view of the settled judicial precedent of the Hon'ble Apex Court in the case of **Madia Chemicals (supra)**;*

4. The main contention of the petitioners, as argued by Ms. Perna Surolia, counsel appearing on behalf of petitioners is that the representation/objection dated October 5, 2024 made by the petitioners under Section 13(3A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to 'the SARFAESI Act') was not decided by the bank before proceeding under Sections 13(4) and 13(8) of the SARFAESI Act. The ancillary prayer is also with regard to setting aside the proceedings initiated by the respondent-bank under Section 13(4) of the SARFAESI Act.

5. The facts that emerged from the perusal of the documents and after hearing learned counsel appearing on behalf of parties are as follows:-

a)- The representation/objection dated October 5, 2024 of the petitioners was decided by the bank authorities by an order dated October 17, 2024 and the said order was dispatched for delivery to the petitioner No.1 and to the other petitioners.

b)- Petitioners have submitted that this order was never received by any of the petitioners. Documents have been placed by both the parties to indicate that though service was attempted by the postal authorities, however, the attempt upon the petitioner nos. 2 and 3 was unsuccessful as the door of the residence of the petitioner nos. 2 and 3 were shut, and therefore, the said letter came back without service. With regard to the petitioner no.1, it appears that proper service may not have been made.

c)- Notice under Section 13(4) of the Act dated November 27, 2024 was issued upon the petitioners which was received by them.

d)- The petitioners approached the Debts Recovery Tribunal on December 13, 2024 and filed S.A. No.- 1087 of 2024.

e)- Subsequently, on January 02, 2025 the present writ petition was filed, and on January 08, 2025 the matter was taken up by this Court wherein a supplementary affidavit was filed by the petitioners in which for the first time the petitioners submitted that a S.A. application has been filed before the Debts Recovery Tribunal challenging the Section 13(4) notice. It is further noted that on that date a copy of the order dated October 17, 2024 passed under Section 13(3A) was handed over to counsel appearing on behalf of petitioners. Subsequent to January 08, 2025, the matter has been listed on several occasions wherein affidavits, in the nature of counter affidavit, short-counter affidavit and rejoinder affidavit have been filed by the parties.

6. The arguments of the petitioners are simple that without the petitioners having received the order dated October 17, 2024, the bank could not have proceeded under Section 13(4) of the SARFAESI Act. Counsel appearing on behalf of petitioners relied on the judgements in the cases of ***Malhotra Tractors Vs. State Bank of India*** reported in (2010) 1 BC 176, ***Krishna Chandra Sahoo Vs. Bank of India*** reported in 2009 (2) BC 635 and ***Mardia Chemicals Vs. Union of India*** reported in (2004) 3 SCC 311 passed by Allahabad High Court, Orissa High Court and Hon'ble Supreme Court, respectively, to buttress her argument that the provisions of Section 13(3A) are mandatory in nature and the bank is required to decide the objections/representations of the petitioners before proceeding further under Section 13(4) of the SARFAESI Act. From the judgements cited by the counsel appearing on behalf of petitioners, the following principles are culled out :-

(a)- Unless and until the exercise under Section 13(3A) is completed, the bank is not authorized to proceed further and take any measures under Section 13(4) of the Act.

(b)- It is obligatory on the part of the authority first to consider and dispose of the objection by speaking and reasoned order and thereafter communicate the order to the concerned. This is a condition precedent for issuance of notice under Section 13(4) of the Act.

(c)- The authority cannot ignore the statutory provisions treating them merely to be decoration pieces in the statutes rather they are required to adhere to the same strictly.

7. Counsel appearing on behalf of the petitioner further submits that since it is clear that the service of the order dated October 17, 2024 was not completed upon the petitioners, the actions taken under the 13(4) of the Act are to be treated as null and void.

8. Per contra, counsel appearing on behalf of respondent bank submits that the bank has followed the procedure in toto. They have passed a reasoned order in relation to objection filed by the petitioners vide order dated October 17, 2024. Subsequently, the documents clearly show that the service was attempted on all the three petitioners, and the consignment sent to the residential address of the petitioner no.2 and 3 were returned with the postal remark " दरियास किया लिखित पते पर गस्त के दौरान अनिश्चित काल के लिये ताला बन्द रहता है अतः Left Sd. 18.10.2024" With regard to the service on the petitioner no.1, it appears that a wrong postal pin code was given and therefore service could not be completed. However, it is surprising that notice under Section 13(4) of the SARFAESI Act was served and received by the petitioner nos. 2 and 3 at the same address to which notice was attempted to be

served for the order dated October 17, 2024. This fact of service is also controverted by learned counsel for the petitioners who submits that the notice under Section 13(4) of the SARFAESI Act was obtained by the petitioners after having personally gone to the bank. The above fact is not proved, in any manner, by learned counsel for the petitioners.

9. Firstly, we are not joining issue with the principles culled out by the High Court of Orrissa, High Court of Allahabad and Hon'ble Supreme Court in the judgements cited above. We are *consensus ad idem* with the views enunciated in those judgements. However, the facts of this particular case are slightly different. Firstly, the objection raised by the petitioners was undisputedly dealt with by the bank by the order dated October 17, 2024. Furthermore, undisputedly the said order was sent by post to the petitioners. This is not a case of an order being passed and simply being put in the drawer of the person passing the said order. This is a case where the bank duly tried to serve the order to the petitioners. Subsequently, we see that when the notice under Section 13(4) was issued on November 17, 2024, the same was received by the petitioners and the petitioners challenged the same by way of an S.A. before the Debts Recovery Tribunal on December 13, 2024. In the said challenge, at paragraph 19 of the S.A. application, the petitioners have stated that the provisions of Section 13(3)A of the SARFAESI Act were not complied with and in the grounds the petitioners have further challenged that the bank has not followed the mandatory provisions of law. We further find that when the writ petition was filed on January 02, 2025, there was no mention of the S.A. application having been filed by the petitioners. It is only on January 8, 2025, when the matter was taken up, that the said fact was brought on record by the petitioners. On that date a

copy of the order dated October 17, 2024 was also handed over to counsel appearing on behalf of petitioners. Subsequent to the same, the matter is continuing before the Debts Recovery Tribunal and the petitioners are challenging the actions of the bank authorities.

10. The challenge before this Court is only with regard to whether the bank acted correctly by proceeding with the Section 13(4) of the SARFAESI Act when proper service of the order under Section 13(3A) was not executed by the bank.

11. In our view, the factum of passing of the order under Section 13(3A) of the SARFAESI Act and the attempt to carry out service of the same on the petitioners coupled with the fact that the Section 13(4) notice was received by the petitioners leads us to the conclusion that the petitioners have missed the bus. Having now challenged the Section 13(4) notice before the Debts Recovery Tribunal, the petitioners cannot be allowed to sail on two boats at the same time by raising the earlier proceedings under Section 13(3A) of the SARFAESI Act before this Court. It is also to be noted that the petitioners have also taken the ground with regard to Section 13(3A) in the S.A. application before the Debts Recovery Tribunal.

12. Keeping in view the judgement of Hon'ble Supreme Court in the case of ***United Bank Of India vs Satyawati Tondon & Ors*** reported in ***2010 (8) SCC 110*** at paragraph nos. 45, 46 and 47, which are delineated below:-

"45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad* [AIR 1969 SC 556] , *Whirlpool Corpn. v. Registrar of Trade Marks* [(1998) 8 SCC 1] and *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* [(2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.

47. In *Thansingh Nathmal v. Supdt. of Taxes* [AIR 1964 SC 1419 : (1964) 6 SCR 654] the Constitution Bench considered the question whether the High Court of Assam should have entertained the writ petition filed by the appellant under Article 226 of the Constitution questioning the order passed by the Commissioner of Taxes under the Assam Sales Tax Act, 1947. While dismissing the appeal, the Court observed as under: (SCC p. 1423, para 7)

“7. ... The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”,

13. This Court is required not to interfere in matters with regard to the SARFAESI Act unless this Court finds patent illegality and/or *mala fide* actions being taken by the bank authorities. In the present case, the bank has acted in accordance with law as they

have passed an order under Section 13(3A) of the SARFAESI Act and also served (attempted to serve) the order, which came back in the case of two of the petitioners as "door is always locked".

14. In such a case, no *mala fide* intent can be imposed on the bank authorities. Furthermore, since Section 13(4) notice has been issued and subsequently 13(8) proceedings of sale has also taken place, we do not find it fit to interfere with the entire proceedings only for the reason that service of the order under Section 13(3A) of the SARFAESI Act was not properly done.

15. The entire proceedings under the SARFAESI Act was required to be challenged by the petitioners before the Debts Recovery Tribunal, which they have done prior to filing of this writ and the matter is pending before the Debts Recovery Tribunal. Furthermore, there is a provision for statutory appeal against the orders passed by Debts Recovery Tribunal before the Debts Recovery Appellate Tribunal.

16. In light of the same, we do not find any reason to interfere with the Section 13(4) proceedings and the subsequent proceedings undertaken by the bank.

17. Accordingly, with the above observations, the writ petition is ***dismissed***.

Order Date :- 15.4.2025

Virendra

(Dr. Y.K. Srivastava, J.) (Shekhar B. Saraf, J.)