

S.B.CIVIL WRIT PETITION NO.4859/2007

M/s Suresh Departmental Stores (Electronics) Private Limited, Jodhpur
v.
The Bank of Rajasthan Ltd. & Ors.

Date of Order :: 28th September, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.C.Purohit, for the petitioner.
Mr. Vikas Balia, for the respondents.
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The petitioner, a company registered under the Companies Act, 1956, was granted cash credit hypothecation limit of Rs.7.5 lacs that was later on increased to Rs.9.5 lacs by the respondent bank. The borrower and guarantors while getting cash credit hypothecation limit presented various security documents and hypothecated stocks of all kinds of electrical goods, cosmetics, toys, gift articles, kitchenwares and appliances etc. lying at their premises at Jodhpur. An equitable mortgage of shops No.4 and 5 situated at 9th "C" Road, Sardarpura, Jodhpur was also made in favour of the bank while availing credit facilities by the petitioner.

The petitioner failed to make the payment of outstanding relating to aforesaid credit facility, thus, the account concerned was classified as non-performing asset by the respondent bank on 30.9.2006,

accordingly the authorised officer of the bank issued notices as per Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act of 2002") to call upon the borrower and guarantors to make payment of Rs.8,52,974/- alongwith interest @ 13% per annum and penal interest @ 4% per annum calculated at monthly rest due as on the date of notice in addition to other costs, expenses and charges etc. The amount as aforesaid was to be deposited within a period of sixty days from the date of said notice i.e 3.2.2007.

A reply to the notice dated 3.2.2007 was submitted on 12.4.2007, however, it is the position admitted that the borrower failed to discharge liability within the period prescribed, as such the borrower and guarantors were jointly and severally held liable to make payment of outstanding amount of Rs.9,34,696/- as on 30.6.2007.

The respondent bank to take appropriate measures to recover secure debt preferred an application under Section 14 of the Act of 2002 before the District Magistrate, Jodhpur seeking police aid and that was allowed under an order dated 21.7.2007. This petition for writ thereafter was preferred by the petitioner praying as follows:-

“(a)writ, order or direction in the nature of writ may kindly be issued in favour of the Petitioner and against the Respondents restraining the Respondent Bank from taking possession in pursuance of order passed by District Magistrate in case No.39/07 on 21.7.07 passed under Section 14 of the Securitisation Act, 2002.

(b)the Respondent Bank may kindly be restrained from taking possession of shop No.4 & 5 and it further be restrained to give it to Shri Mirchumal who has already filed eviction petition before the Rent Tribunal, Jodhpur.

(c)the Petitioner may be allowed to make operation in his CC Hypothecation Limit account.”

while claiming the reliefs as above, contention of counsel for the petitioner is that the bank is acting arbitrarily with collusion of guarantor Shri Mirchumal who has filed an application before the Rent Tribunal, Jodhpur to get the petitioner evicted from the premises rented. It is also urged that the respondent bank after serving notice as per Section 13 (2) of the Act of 2002 did not send any letter/notice to the petitioner for taking possession as per Section

13(4) of the Act of 2002 but choose to seek aid from the District Magistrate in accordance with Section 14 of the said Act and that is unjust and arbitrary.

A reply to the writ petition has been filed on behalf of the respondent bank explaining in detail that the petitioner failed to satisfy the credit facility allowed to him and, therefore, his account was declared non-performing asset, as such the notice under Section 13(2) of the Act of 2002 was rightly issued and the aid was sought from the District Magistrate as per the provisions of Section 14 only to ensure smooth and peaceful completion of measures sought to be taken under Section 13(4) of the Act of 2002.

Heard counsel for the parties.

It is not in dispute that because of outstanding over dues with credit facility the account of the petitioner was classified as non-performing asset by the respondent bank on 30.9.2006 and thereafter a demand was made by the bank on 15.11.2006. A notice as per the provisions of Section 13(2) of the Act of 2002 was issued to the petitioner as well as to the guarantors on 3.2.2007, however, the outstanding dues were not satisfied within the period prescribed, thus, the bank sought aid from the District Magistrate, Jodhpur as per provisions of

Section 14(1) of the Act of 2002. The contention of counsel for the petitioner that before seeking aid as per Section 14 of the Act of 2002 the respondent bank should have informed the petitioner for adopting the course as prescribed under Section 13(4) of the Act of 2002 is having no merit as the aid under Section 14 of the Act of 2002 is required just to smooth and peaceful execution of the measure sought to be taken under Section 13(4). In view of it no wrong was committed by the bank in seeking aid as per Section 14 (1) of the Act of 2002 and as allowed by the District Magistrate, Jodhpur under the order dated 21.7.2007.

I also do not find any force in the contention of counsel for the petitioner that the respondent bank in collusion with the respondent No.4 initiated proceedings under the Act of 2002. whatever action taken by the respondent bank is in accordance with the provisions of the Act of 2002 and there is no material on record to prove that the bank was having any collusion with the respondent No.4 who happens to be father of the Director of the petitioner company.

The petition for writ, therefore, is meritless and as such the same is dismissed with no order to costs.

(GOVIND MATHUR),J.

Kkm/ps.