

B.P.DAS, J & B.K.MISRA, J.

W.P.(C) NO.9096 OF 2011 (Decided on 25.04.2011)

HINDUSTAN PETROLEUM CORPN. LTD.Petitioner.

. Vrs.

DEBTS RECOVERY TRIBUNAL & ORS.Opp.Parties.

**SECURITISATION & RECONSTRUCTION OF FINANCIAL ASSETS &
ENFORCEMENT OF SECURITY INTEREST ACT, 2002 (ACT NO.54 OF 2002) – S.17.**

For Petitioner - M/s. G.Mukherji, P.Mukherji, A.C.Panda, S.Patra &
S.Mishra.

For Opp.Party.3- Mr. S.K.Padhi, Mr. T.Sahu,
Mr. F.Ahmed & Mr. C.N.Murty

For Opp.Party 4- Mr. A.Pattnaik

B.P.DAS, J. The petitioner-Hindustan Petroleum Corporation Ltd. (in short, H.P.C.L.), which is a public limited company, is before this Court against the order dated 19.5.2010 passed under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for sale of the property so also issuance of sale certificate dated 4.6.2010. Peculiarly, the said order has not been annexed to this writ petition.

2. On 13.1.2011 the petitioner filed an appeal under Section 17 of the SARFAESI Act, 2002 before the D.R.T., Cuttack, which was initially registered as Diary No.05/2011. After scrutiny, the Registrar of the Tribunal issued notice dated 17.1.2011 vide Annexure-2 calling upon the petitioner to remove the following defects :-

“1) The application fees, i.e., Rs.49,800/- (deficit) is not deposited.

2) The original application and the attestation of the Annexure is not as per Rule 9, Sub-rule (2).

Annexure not certified as per D.R.T. Circular

dtd.6.1.2011.

3) Some of the pages of the application are not legible, i.e., Page Nos.22-28, 32, 34, 36 & 42.

4) The cloth lined envelopes with acknowledgement cards, duly filled up with required postal stamps is not provided.

5) The application is beyond limitation.”

3. The petitioner removed all the defects except the one relating to deficit application fee and filed a memo in Annexure-3 stating that he is not liable to pay the said fee as he is neither a loanee nor a guarantor. The Registrar by order dated 22.3.2011 (Annexure-4) declined to register the application under Rule-5(4) of the D.R.T.(Procedures) Rules, 1993. The order declining to register an application owing to defect under Sub-Rule (4) of Rule 5 of the 1993 Rules is an appealable order under Sub-Rule (5) of Rule 5 of Rules, 1993 and the appeal against such order of the Registrar under Sub-Rule (4) shall be made within 15 days of the making of such order to the Presiding Officer concerned in chamber whose decision thereon shall be final. The petitioner has not availed the forum of appeal and has come to this Court directly. Though the question of maintainability and availability of alternative remedy was raised by the learned counsel for the O.Ps., looking at the grievance made by the petitioner, we are inclined to look into the merits of the application and dispose of the same.

4. The crux of the matter is that as per Rule 13 of the Security Interest (Enforcement) Rules, 2002, which provides for fees for applications and appeals under Sections 17 and 18 of the SARFAESI Act, every application under Sub-Section (1) of Section 17 or an appeal to the Appellate Tribunal under Sub-Section (1) of Section 18 shall be accompanied by a fee as provided in the Sub-Rule (2). We are only concerned with Serial Nos.D & E, which are extracted herein below :-

“Nature of application	Amount of fee payable
(d) Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is Rs.10 lakhs and above	Rs.1250+Rs.125 for every Rs.1 lakh or part thereof in excess of Rs.10 lakh subject to a maximum of Rs.50.000
(e) Any other application by any person	Rs.200”

Under this premises, it is profitable to have a close look at the provision of Section 17 of the SARFAESI Act, which is extracted hereunder :-

“17.Right to appeal-Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, (may make an application along with such fee, as may be prescribed,) to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.”

So any person including the borrower aggrieved by any of the measures referred to in Sub-Section (4) of Section 13 of the SARFAESI Act taken by the secured creditor is at liberty to make an application along with fees to the D.R.T. within a period of forty-five days. Relevant parts of Sub-Section (4) of Section 13 of the SARFAESI Act provides as follows :-

“13(4) - In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely :-

- (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;
- (b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset :

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.”

Hence, the right to appeal arises only when the action as provided under Sub-Section (4) of Section 13 of the SARFAESI Act is taken by the secured creditor and by a person, who is aggrieved by such. Certainly an aggrieved person is a borrower or the guarantor as the case may be. But Section 17 of the said Act allows an appeal to be filed by any person (including the borrower), aggrieved by any of the measures. So the person aggrieved by any action of the Authorised Officer has different connotations, which have been dealt with in many judicial pronouncements. It was held in **Ex parte Sidebotham, In re, Sidebotham**, (1880) 14 *Chancery Division* 458 at page-465, that “a person aggrieved” must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.” In **Santosh Kumar Agarwalla vrs. State of Orissa**, AIR 1973 Orissa 217, it was held that the words “person aggrieved” do include a person, who has genuine grievance because an order has been made which prejudicially affects his interest. The words “a person aggrieved” were defined in **Ex parte Official Receiver, In re, Reed, Rowen and Co.** (1887) 19 QBB 174 – “a person aggrieved must be a man against whom a decision has been pronounced which has wrongfully refused him something which he had a right to defend.”

5. With the aforesaid background of fact and interpretation of the words “persons aggrieved”, let us now see whether the petitioner is an aggrieved person within the meaning of Section 17 of the SARFAESI Act. The petitioner is a Public Sector Undertaking and O.Ps.5 to 12 are the owners of the land, which is undisputed. The said land was initially leased out to one M/s.Caltex India Ltd. in the year 1966, which was subsequently taken over by the H.P.C.L. The owner of the land executed a lease agreement with the H.P.C.L. in the year 1976 for a period of twenty years for the purpose of establishing a petrol pump in Bhubaneswar, which expired in the year 1999. Thereafter, a fresh lease agreement was entered into between the legal heirs of the land owner and H.P.C.L. in the year 2004 for a period of five years and the period of lease had also expired and no fresh lease deed has been executed after the period of five years. Basing upon the aforesaid factual background, the H.P.C.L. rests its claim over the property as a lessee. O.Ps.-5 to 12 became defaulters in respect of certain loans incurred by them from the Bank in question and ultimately, the property was put to auction under Section 13(4) of the SARFAESI Act, vide notice dated 4.3.2010.

6. The petitioner-H.P.C.L., initially filed a writ petition bearing W.P.(C) No.6501/2010 challenging the aforesaid auction sale notice as a lessee and this Court while disposing of the same on 7.4.2010 directed that the land covered under the auction sale notice would be deferred by 15 days so that in the meantime the petitioner could get permission from the higher authority for participating in the auction and further directed that if the petitioner failed to participate in the auction, it would not be necessary for O.P.1-Authorised Officer of the Bank to wait for the petitioner and it would also be open to O.P.1 to go ahead with the auction. In pursuance of the said direction, the petitioner did not participate in the said auction and filed another writ petition bearing W.P.(C) No.10819/2010 challenging the sale of property as well as the certificate issued under Rule 9(6) of the Securities Interest (enforcement) Rules, 2002 so also a petition to review the order of this Court dated 7.4.2010 passed in W.P.(C) No.6501/2010. This Court vide its judgment dated 15.12.2010 disposed of W.P.(C) No.10819/2010 saying that as a statutory remedy is available to the petitioner by way of an appeal, there is no necessity of referring the dispute between the Bank and the petitioner to the Committee of Disputes. As a matter of fact, the main dispute is between the land owner and the Bank, which has given rise to the proceedings under the SARFAESI Act. The petitioner being a lessee in respect of a part of the entire property has been dragged into the dispute. It is strictly not a dispute between two Government bodies. So liberty was given to the petitioner to file an appeal under Section 17 of the SARFAESI Act. It was further observed that the observation made in the earlier writ petition that the petitioner has no right or locus standi to challenge the auction sale notice does not in any manner affect the petitioner’s right to file an appeal.

7. Now with the limited question, the petitioner has come to this Court, whether it is liable to pay the application fees. As we have already indicated that as per the fee structure mentioned in Rule-13 of the Security Interest (Enforcement) Rules, 2002, if the petitioner is an aggrieved person other than the borrower, it has to pay fees,

which is higher than the fees required to be paid in category (e) of the table, i.e., any other application by any person.

From the interpretation of “person aggrieved”, it is crystal clear that the petitioner is an aggrieved person. In this regard, our attention is drawn by the learned counsel for the petitioner to the computer generated judgment passed by the Bombay High Court in the case of **Trade Well, a Proprietorship Firm and Mr. Suniel K.Meheta, Proprietor of Trade Well vrs. Indian Bank (order dated 2.4.2007 passed in Criminal Writ Petition No.2767/2006)** and in paragraph-67 thereof, it is held that the borrower and the third party are not remediless. Remedy is provided in Section 17 where appropriate relief can be given to them. It is after measures under Section 13(4) are taken that an application under Section 17 can be filed by a borrower or any person and in that application, all grievances including the grievance that reasons were not communicated can be voiced. In paragraph-90 of the said judgment, it is held that remedy provided under Section 17 is an efficacious alternative remedy available to the third party as well as to the borrower where all grievances can be raised. So this judgment is no way solve the issue at hand, i.e., whether the petitioner is liable to pay the application fees.

8. Learned counsel for the petitioner further draws our attention to the judgment of the Punjab and Haryana High Court in the case of **Kalyani Sales Company & Another vrs. Union of India & Another**, reported in 1 (2006) BC 1 (DB), in paragraph-25 of which it is held that in the absence of any fee prescribed in terms of Section 17(1) of the Act, the fee payable could be the fee payable on an application filed for interlocutory order in terms of Serial No.4 of Sub-Rule (2) of 1993 Rules as the application is to the Debts Recovery Tribunal. It is held that an application under Section 17(1) of the Act would be maintainable on payment of a fixed court fee of Rs.250/- till the rules are made in terms of Section 17(1) of the Act. Rule 7 of 1993 Rules provides that every application under Section 19(1) or Section 19(2) or Section 19(8) or Section 30(1) of the Act or interlocutory application or application for review of decision of the Tribunal shall be accompanied by a fee provided in the Sub-rule (2). So this judgment will in no way be helpful to the petitioner as it does not deal with an appeal filed under Section 17(1) of the SARFAESI Act. We have no scintilla of doubt that for an interlocutory application, the amount payable is Rs.250/-. For the sake of persuasion, the order of the D.R.T., Nagpur (2005) 1 BCR-276 is also referred by the petitioner. In view of the decisions which we have referred to above, we are not inclined to refer the said decision. This judgment does not also help the petitioner as it only decides the locus standi of the person coming within the meaning of Section 17(1) of the Act to file an appeal. All those decisions cited by the petitioner will in no way be helpful the petitioner to bring it within the ambit of Sub-Rule (2) of Rule 13(1) of the Rules.

9. The petitioner is now challenging directly or indirectly the action of the Bank taking over possession of the property, over which the petitioner lodges its claim. The petitioner is certainly a “person aggrieved” within the meaning of Section 17 and

its application can only be treated as an appeal. Accordingly, the petitioner is liable to pay the application fees as prescribed in Rule 13(1)(d) of the Security Interest (Enforcement) Rules, 2004. The question of limitation shall be taken up only after the application fees are paid and the appeal is registered. Immediately after the payment of the fees, the Tribunal shall take up the issue of limitation and deal with the matter in accordance with law.

The writ petition is accordingly disposed of.

Writ petition disposed of.