

Hon'ble Sharad Kumar Sharma, J.

Mr. Tapan Singh, learned counsel for the petitioners.

Mr. Tumul K. Nainwal, learned Brief Holder for the State.

Admittedly, the petitioners are the borrowers and subsequently, they were declared as to be defaulters, as would be apparent from the narration of fact that an order of declaration of NPA was issued on 20.11.2019.

Further, the records itself reveal that the proceedings under Section 13 of the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002, had already been initiated and not only that as a consequence thereto, the possession of property has already been taken by the respondents under Section 13 (4) of the Act.

The contention of the petitioners is that the act taking over of the possession, after a lapse of one year is arbitrary and he further submits that the petitioners had even been depositing their installments and a very meager amount is left due to be paid, which this Court could direct the respondents to accept it and to mitigate the proceedings of taking over the possession by the respondents.

The SARFAESI Act, is a special statute framed under central legislation, and it has got an overriding effect since being a self

contained provision for drawing recovery proceedings, it also provides a forum to an aggrieved person for redressal of his grievance, as against the action taken under Sections 13 and 14 of the SARFAESI Act by approaching under Section 17 of the Act, before the Death Recovery Tribunal.

In view of the above legal position, which is reflected from the pleadings, the remedy available to the petitioners as against the impugned action, which they have complaint off for taking over of the possession itself shows that it has been taken under Rule 8(1) framed under the Act.

In that view of the matter, this Court is of the view that based on the records available, the recourse available to the petitioners for redressal of their grievance against the act of possession under Section 13 (4) would be available to them before the Death Recovery Tribunal under Section 17 of the Act. Consequently, I am of the view, that the writ petition is not maintainable and the same is accordingly dismissed, with the liberty open to the petitioners to approach before the Death Recovery Tribunal for the redressal of his grievance.

All pending applications stand disposed of, if any.

(Sharad Kumar Sharma, J.)
Vacation Judge
29.01.2021

