

Constitutional Writ

Present:

The Hon'ble Mr. Justice Jayanta Kumar Biswas

Judgment on 03.09.2010

W.P. No.17695 (W) of 2010

Sri Sudarsan Prodhan & Anr.

v.

The State of West Bengal & Ors.

Points:

Appeal - Whether appeal lies against the possession-cum-sale notice issued under section 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 S. 17

Facts:

Petitioners filed writ petition questioning a possession notice and a possession-cum-sale notice issued by the authorized officer of the United Bank of India under provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Petitioners stated that no notice under section 13(2) of the Act was served upon them and there is no other efficacious, alternative remedy available to them other than to move the instant writ petition.

Held:

Against the possession notice and the possession-cum-sale notice both issued by the authorized officer of the Bank as measures taken by him under

sub-s.(4) of s. 13 of the Act, the petitioners' statutory remedy was an appeal under s. 17 of the Act before the Debts Recovery Tribunal. Hence there is no reason to say that they did not have any other efficacious remedy. Para 2

Mr. Amitabha Ghosh and Mr. A. Banerjee, advocates, for the petitioners.

Mr. Krishnendu

Bhattacharyya, advocate, for the second respondent. Mrs. Seba Roy and

Mrs. Soma Kar

Ghosh, advocates, for the State.

The Court: The petitioners in this art. 226 petition dated August 19, 2010 are questioning a possession notice dated July 29, 2010(at p.38) and a possession-cum-sale notice dated August 2, 2010(at p.39) both issued by the authorized officer of the United Bank of India under provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In para.17 the petitioners have stated as follows: "17. That the petitioners state that there is no other efficacious, alternative remedy available to the petitioner other than to move the instant writ petition."

2. The case stated in para.17 is evidently an incorrect case. Against the possession notice and the possession-cum-sale notice both issued by the authorized officer of the Bank as measures taken by him under sub-s.(4) of s. 13 of the Act, the petitioners' statutory remedy was an appeal under s. 17 of the Act before the Debts Recovery Tribunal. Hence there is no reason to say that they did not have any other efficacious remedy. By referring to the case stated in paras. 7 and 9 counsel for the petitioners has argued that since the impugned notices were issued without first issuing a notice under s. 13(2) of

the Act, the petitioners are entitled to approach the High Court under art. 226 contending that the impugned notices have been issued without jurisdiction. In both the notices the authorized officer stated that requisite notice under s.13(2) had been issued. In the notice dated July 29, 2010 it was mentioned that the s.13(2) notice was issued on January 27, 2010. Nowhere in the petition the petitioners have questioned the correctness of the facts stated in the notices. On the contrary, they have made bald allegation that without issuing the s.13(2) notice measures have been taken under sub-s.(4) of s.13. I am not prepared to accept the petitioner's bald allegation in view of the fact that they have chosen not to question the correctness of the categorical assertion of the authorized officer, especially in the notice dated July 29, 2010, that the s.13(2) notice was issued on January 27, 2010. In my opinion, this is not a fit case for interfering in exercise of power under art. 226. The proceedings initiated by the secured creditor under the special statute are not to be derailed.

3. For these reasons, the petition is dismissed making it clear that nothing herein shall prevent the petitioners from appealing to the Tribunal if otherwise permissible in law. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)