

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 5622 of 2019

Kanthi Lal Mandal

..... Petitioner

Versus

1. Allahabad Bank, Kolkata

2. The Chief Manager-cum-Authorized Officer, Allahabad Bank, Giridih Branch,
Giridih

..... Respondents

CORAM**HON'BLE MR. JUSTICE RAJESH SHANKAR**

For the Petitioner:

Mr. A. K. Sahani

For the Bank:

Mr. Rohan Kashyap

04/24.06.2020 The case is taken up through Video conferencing.

2. The present writ petition has been filed for quashing the 'Possession Notice' dated 24.09.2019 (Annexure-6 to the writ petition) issued by the respondent No.2 under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act, 2002') read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 [hereinafter referred to as 'the Rules, 2002'].

3. Learned counsel for the petitioner submits that the petitioner is the proprietor of M/s Asha Industries at Chatro, Giridih which is engaged in manufacturing of hard coke. The petitioner's industry is a small scale industry duly registered with different departments/institutions of the Central/State Government. Allahabad Bank, Giridih Branch, Giridih sanctioned Rs.25,00,000/- as cash credit loan and Rs.25,00,000/- as term loan in favour of the petitioner. Subsequently, the loan amounts were revised and cash credit facility was enhanced to Rs.95,00,000/- whereas the term loan was sanctioned at Rs.39,00,000/-. The petitioner was regularly paying the instalments to the Bank till 30.09.2018. On 25.07.2015, the Deputy Commissioner, Giridih constituted a Task Force, who made an inspection in the hard coke plant of the petitioner and sealed his factory premises. On the information given by the Assistant Mining Officer, Giridih, an F.I.R being Giridih (M) P.S. Case No. 385/2015 was lodged against the petitioner. The petitioner was granted anticipatory bail in the said case by the learned Principal Sessions Judge, Giridih in A.B.P No. 911/2015.

Thereafter, the petitioner filed an application for release of the seized coal, but no report was submitted by the police. Thereafter, the petitioner filed W.P.(Cr.) No. 712/2015 before this Court for release of the seized coal which was disposed of vide order dated 30.07.2016 directing the Sub-Divisional Judicial Magistrate, Giridih to consider the petitioner's application after verifying the relevant reports. Pursuant to the order dated 30.07.2016 of this Court, the petitioner requested the Deputy Commissioner, Giridih to remove the seal put in the factory premises of the petitioner. The Deputy Commissioner, Giridih requested the Superintendent of Police, Giridih to take necessary steps for release of the seized coal, but no step was taken. Thereafter, the petitioner filed W.P.(Cr.) No. 186/2017 before this Court for issuance of a direction upon the Deputy Commissioner, Giridih as well as the Superintendent of Police, Giridih to remove the official seal put in the factory premises of the petitioner and to release the seized coal. However, during the pendency of the said writ petition, the respondent No.2 has issued the impugned 'Possession Notice' dated 24.09.2019 in terms with Section 13(4) of the Act, 2002. The petitioner however has not been served with any notice declaring the said loan accounts as Non-performing Asset (NPA). The respondent No.2 has issued the impugned 'Possession Notice' in the local newspaper showing symbolic possession over the immovable property of the petitioner as described therein without sending any notice under Section 13(2) of the Act, 2002.

4. Mr. Rohan Kashyap, learned A.C to Mr. P. S. A. S. Pati, learned counsel for the respondent-Bank, submits that the petitioner being the borrower of the said loans has got alternative/efficacious/statutory remedy of preferring an application under Section 17 of the Act, 2002 before the Debts Recovery Tribunal, Ranchi against the impugned 'Possession Notice' dated 24.09.2019. Hence, the present writ petition is not maintainable at this stage.

5. Having heard learned counsel for the parties and keeping in view that the respondent-Bank has already issued the impugned 'Possession Notice' dated 24.09.2019 under Section 13(4) of the Act, 2002 read with Rule 8(1) of the

Rules, 2002, I am of the view that the petitioner has got alternative/efficacious/statutory remedy of preferring an application under Section 17 of the Act, 2002 before the Debts Recovery Tribunal, Ranchi against the said notice.

6. The Hon'ble Supreme Court in the case of **United Bank of India Vs. Satyawati Tondon & Ors.** reported in **(2010) 8 SCC 110**, has held as under:

"42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective."

7. Further, in the case of **Standard Chartered Bank Vs. Noble Kumar & Ors.** reported in **(2013) 9 SCC 620**, the Hon'ble Apex Court has held as under:

"27. The "appeal" under Section 17 is available to the borrower against any measure taken under Section 13(4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible under Section 13(4). Alienating the asset either by lease or sale, etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, Section 14 authorises the Magistrate only to take possession of the property and forward the asset along with the connected documents to the borrower (sic the secured creditor). Therefore, the borrower is always entitled to prefer an "appeal" under Section 17 after the possession of the secured asset is handed over to the secured creditor. Section 13(4)(a) declares that the secured creditor may take possession of the

secured assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure under Section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under Section 17 is available.”

8. So far as invoking of writ jurisdiction in the matters of realization of loan by the financial institutions are concerned, the Hon’ble Apex Court in a judgment rendered in the case of **Authorized Officer, State Bank of Travancore & Anr. Vs. Mathew K.C.** reported in **(2018) 3 SCC 85**, while considering the earlier judicial pronouncements made in this regard, has held thus:

“15. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex-parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payers expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in *Satyawati Tandon* (supra), has also not been kept in mind before passing the impugned interim order:-

“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, Whirlpool Corpn. v. Registrar of Trade Marks and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order.”

16. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion of the Division Bench that the counter affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference.”

9. Considering the provisions of the Act, 2002 as well as the aforesaid judicial pronouncements of the Hon’ble Apex Court, I am not inclined to entertain the present writ petition at this stage and the same is accordingly dismissed as not maintainable. The petitioner is however at liberty to take appropriate recourse before the Debts Recovery Tribunal, Ranchi in accordance with the provisions of the Act, 2002.