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SARFAESI Rulings



Prachi Narayan
prachi@vinodkothari.com
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**M/s. Dr. P.B's Health & Glow Clinic Ltd. & Ors vs Oriental Bank Of Commerce,
In the High Court at Calcutta Civil Revisional Jurisdiction,
C.O. No. 2989 of 2013**

Facts of the case

The Petitioners are the debtors and had availed the credit facilities from the Respondents. Petitioners made repayment of loan to some extent but not entirely, and accordingly the Respondent took recourse under the provisions of Section 13(2) of the SARFAESI Act, 2002. Consequently, possession of the mortgaged property was taken up and it was duly advertised. Petitioners also filed an application under Section 17(1) of the SARFAESI Act, 2002 before the Debts Recovery Tribunal, which was dismissed by the impugned order. Being aggrieved, the Petitioners approached this court.

The Petitioners contended that the Reserve Bank of India has provided guidelines for one time settlement of the loan and accordingly, one time settlement should have been duly considered by the Respondent. The Respondent without following that settlement formula had taken possession of the property. The Respondent provided the statement of accounts to show the quantum of dues from the Petitioner to the Respondent. Also, in reply to the notice under Section 13(2) of the SARFAESI Act, 2002, the Petitioners had sent a letter dated December 18, 2012 requesting the bank to permit them to repay the dues in small weekly installments and had also deposited 10 cheques amounting to Rs.25.50 lakhs. The Petitioners did not point out any irregularities against the steps under Section 13(2) of the 2002 Act.

Judgment: The court held that notice issued under Section 13(2) of the 2002 Act was duly tendered to the Petitioners. When the persons under occupation of the premises/property refused the notice, the same was affixed on the conspicuous part of the said premises. Therefore, the notice was duly served in presence of the occupiers of the secured assets.

With regard to settlement of loans, the court held that some post-dated cheques were issued but, all the cheques were not honored and some of them had been bounced for non-availability of the fund. The loan amount had been described as NPA on June 30, 2012 and as such, steps had been taken for recovery of the loan under the provisions of the SARFAESI Act, 2002. According to the provisions of Section 18 of 2002 Act, an appeal lies to the Appellate Tribunal, within the specified time, from the date of receipt of the order of the Debts Recovery Tribunal under certain terms and conditions. Accordingly, the court found the application devoid of merits and thus dismissed the same.

http://judis.nic.in/Judis_Kolkata_App/detail.aspx



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Deepthi Trading Company vs The Authorised Officer In the High Court of Madras

C.R.P.No.1956 of 2013

Facts of the Case:

The first petitioner is the borrower. The second and third petitioners are husband and wife. The second petitioner is running the business of the first petitioner/trading company. The third petitioner is doing some other business. According to the first respondent/bank, the amount that has been borrowed from the bank was declared as a non-performing asset and consequent to the same notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was issued calling upon the petitioners to pay certain amount and since the said notice has not been properly responded and no amount was paid, possession notice under Section 13(4) of the SARFAESI Act was issued and that was challenged by the petitioners before the Debts Recovery Tribunal-III, Chennai.

Thereafter, the SARFAESI Application was taken up for final disposal and following issues were formulated for consideration: (i) Whether the applicant in the above SARFAESI Application is entitled to get the relief as prayed for? (ii) Relief and costs?

The Tribunal came to the conclusion that it had no jurisdiction over the subject matter of the case placing reliance on decision of the Delhi High Court in *Amish Jain and another v. ICICI Bank Limited, 2012 (6) CTC 369*, wherein it was held that where Tribunal has no jurisdiction over a case, it is legally bound to dismiss the application. The Tribunal also in paragraph (7) of the order, decided on merits of the case and came to the conclusion on the validity of the notice issued under Section 13(4) of the SARFAESI Act.

Judgment: The court held that once the Tribunal found that it had no jurisdiction to entertain the SARFAESI Application, it is bound to return the papers and as such is not empowered to pass any order touching upon the merits of the case. The court placed reliance on decision of the Supreme Court in *Sri Athmanathaswami Devasthanam v. K.Gopalaswami Aiyangar, AIR 1965 SC 338* and held that when the Tribunal had no jurisdiction over the subject matter of the suit it cannot decide any question on merits. It can simply decide on the question of jurisdiction and once concluded that it has no jurisdiction over the matter has to return the plaint.



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Thus, in view of the above, the law on the issue can be summarized to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order VII Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction.

In light of the same the court further held that the period during which the case was before the Tribunal having no jurisdiction shall be excluded in view of Section 14 of the Limitation Act and also the Petitioner may seek adjustment of court fee paid in that Tribunal.

Link: <http://www.indiankanoon.org/doc/14971844/>

Punjab National Bank vs. Raju M. Thomas

O.P.(DRT).No.1390 OF 2012 and O.P.(DRT).No.2835 OF 2012

1. Whether guarantor can be construed as “borrower” under section 2 of the SARFAESI Act, 2002?

The guarantor is very much a 'borrower' as defined under Section 2(f) of the Act which states: "borrower means any person who has been granted financial assistance by any bank or financial institution or who has given a guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance".

2. Whether Authorized officer has an obligation to serve notice to the guarantor too under the Act?

Rule 8(6) of the Rules casts a duty on the Authorised Officer to serve a notice on the borrower about the proposed sale of the property at least 30 days ahead. That such a



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notice has to be served on each of the borrower is evident from Rule 3(3) and Rule 3(4) of the Rules. Any failure to issue notice as stated above shall invalidate the sale.

3. Whether the DRT would have jurisdiction to consider and adjudicate with regard to post 13(4) events or whether its scope in terms of S.17 of the SARFAESI Act would be confined to the stage contemplated under S.13 (4)?

The Court relied on the decision of Supreme Court in *Authorised Officer Indian Overseas Bank and Another v M/s. Ashok Saw Mill AIR 2009 SC 2420* where it was held that "*The DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under S.13 (4) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of S.13 (4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT*".

Link: http://judis.nic.in/judis_kerala/chejudis.aspx