

M/s. S.V. Developers v. State Bank Of India, 2022 PLRonline 0193

Telangana High Court

JUSTICE UJJAL BHUYAN , SMT. JUSTICE P. MADHAVI DEVI

M/s. S.V. Developers v. State Bank Of India,

WRIT PETITION Nos.23067,27138 of 2019 And WRIT PETITION No.22195 OF 2021

07.06.2022

Sarfaesi S. 13(2) - Writ petition - Whether the notice dated 08.01.2018 issued by the respondent/SBI under Section 13 (2) of the SARFAESI Act is legal and valid? Corollary to the above is the question as to whether the High Court should interfere in such a notice under Article 226 of the Constitution of India? - At the stage of issuance of notice under Section 13 (2) of the SARFAESI Act, no interference is called for by the Court. Therefore, question of examining legality and validity of such demand notice would not arise - The adjudication would have to wait till the stage of Sub-Section (4) of Section 13 is reached, where after the aggrieved person including a borrower can file securitization application under Section 17 of the SARFAESI Act in which all grounds of challenge would be available. [Para 45]

Thus, on a careful consideration of the statutory language employed in the proviso to Sub-Section (3A) of Section 13 of the SARFAESI Act read with the Explanation to Sub-Section (1) of Section 17 of the SARFAESI Act, it is crystal clear that a notice under Section 13 (2) of the SARFAESI Act or the rejection of the objection raised to it including the reasons in support thereof would not give rise to a cause of action for instituting an action in law - To that extent, we find sufficient force in the contention advanced by the respondents that the writ petition filed is premature - The statute does not contemplate any intervention at this preliminary stage - Only when the process ripens into a definitive action taken by the secured creditor under Sub-Section (4) of Section 13 of the SARFAESI Act, the aggrieved person can avail the statutory remedy under Section 17 of the SARFAESI Act by filing securitization application before the jurisdictional Debts Recovery Tribunal. [Para 30]

NPA - Writ - Classification of a defaulter's loan account as NPA precedes issuance of demand notice under Section 13(2) of the SARFAESI Act - If a demand notice under Section 13 (2) of the SARFAESI Act does not give rise to any actionable claim or cause of action within the meaning of the SARFAESI Act, we fail to understand as to how action of the secured creditor in classifying the loan account as NPA can be challenged at this stage - The challenge thereto would also have to stand deferred till the stage of Section 13 (4) of the SARFAESI Act is reached. [Para 46]

SARFAESI Act - RDB Act - Whether respondent/SBI would be precluded from taking steps under the 1993 Act after having invoked provisions of the SARFAESI Act? - Nothing prevents a bank or a financial institution from continuing with the proceedings initiated by it earlier under the SARFAESI Act even if it has subsequently invoked the jurisdiction of the Debts Recovery Tribunal under Section 19 (1) of the 1993 Act - There is no doubt that both are special enactments - However, as has been held by the Supreme Court in Transcore , both the enactments are complimentary to each other - There is no question of any conflict between the two - Together they provide one remedy to the secured creditor. It is immaterial as to which remedy the secured creditor opts first - Both can proceed simultaneously or either of the remedies can proceed after the other enactment is invoked. [Para 54]

Issues dealt with

(i) Whether the notice dated 08.01.2018 issued by the respondent/SBI under Section 13 (2) of the SARFAESI Act is legal and valid? Corollary to the above is the question as to whether the High Court should interfere in such a notice under Article 226 of the Constitution of India?

(ii) Whether petitioner is entitled to the benefit of the OTS scheme under SBIOTS 2019 and whether the High Court under Article 226 of the Constitution of India can issue a direction to the respondent/SBI to accept the OTS proposal of the petitioner?

(iii) Whether respondent/SBI would be precluded from taking steps under the 1993 Act after having invoked provisions of the SARFAESI Act?

(iv) Is there any suppression of material facts by the petitioner? And If so, whether the same would disentitle the petitioner to any relief from the Writ Court?

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