

उपायुक्त का न्यायालय, कोडरमा

विविध वाद-46/2013

इलाहाबाद बैंक झुमरीतिलैया बनाम रूबी वर्णवाल

आदेश

08.02.17

मुख्य प्रबंधक, इलाहाबाद बैंक झुमरीतिलैया शाखा द्वारा Section 14 (1&2) of the Securitisation & Reconsconstruction of Financial Assets and Enforcement of Security interest Act 2002 के अन्तर्गत यह वाद दायर किया गया है।

आवेदन पत्र में यह अंकित किया गया है कि विपक्षी श्रीमती रूबी वर्णवाल पति कुमार आनंद, निवासी गैस गोदाम गली, पोस्ट-झुमरीतिलैया, थाना-तिलैया द्वारा इलाहाबाद बैंक झुमरीतिलैया से 6,00,000/- (छ: लाख) रुपये गृह ऋण लिया गया जिसका खाता नं०-21130662277 है। दिनांक 12/06/2013 तक उक्त लोन की राशि बढ़कर 12,44,181/- (बारह लाख चौवालीस हजार एक सौ एकासी) रुपये हो गयी है। बकाये राशि की वसूली हेतु ऋणी एवं गारन्टर महानंद मोदी को Securitisation & Reconsconstruction of Financial Assets and Enforcement of Security interest Act 2002 की धारा 13 (2) के अन्तर्गत नोटिस की गई। 60 दिन बीत जाने पर भी ऋण का भुगतान नहीं किया गया। मौजा-गुमो, थाना-तिलैया नं०-12 के खाता नं०-540, प्लॉट नं०-5835/6308 रकवा-5.51 एकड़ जो सेलडीड नं०-2170 दिनांक 28/04/2015 को क्रय की गई, की भूमि जो बैंक के पास बंधक के रूप में है, को विक्री करने का आदेश देने की प्रार्थना की गई है।

विपक्षी का कहना है कि,

1. That the petitioner Allahabad Bank after due scrutiny of the paper of land and other securities sanctioned Rs. 8,00,000/- (Eight Lacs) to Opp. Party on August 2008. The Opp. Party mortgaged her landed property in custody of the petitioner and the Opp. Party constructed building on the land of Khata no. 540, Plot no. 5835/6308, Area 5.51 Dec. at present residing in the said house with her family members.
2. That the Opp. Party had a Medical retail shop in front of the Telaiya Police station and used to deposit the loan amount out of the Income of the said Medical shop, which was run by her husband Kumar Anand.
3. That the above said Medical shop of the Opp. Party became failure for want of sufficient capital and finally it was closed in the year 2008.
4. That due to no source of Income the Opp. Party could not deposit the loan amount regularly in the bank as per direction of the Allahabad Bank, but she used to deposit some amount time to time as per her convenience in the bank and received deposit slip since 2008.
5. That the Opp. Party Ruby Burnwal till today has deposited about Rs. 2,31,000/- (Two Lacs Thirty One Thousand). In the bank against her loan and she will deposit the rest amount in future regularly.

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6. That on the other hands the petitioner sent notice through this Court to the Opp. Party for depositing the loan amount Rs. 12,44,181/-including interest of the loan since 2008.
7. That the Opp. Party tried her best to clear of the debt of the bank, but the situation was beyond her control as such she failed to deposit loan amount regularly on the other hand the Opp. Party has no other source of income, however she managed the amount with much difficulties.
8. That the husband of the Opp. Party has now started his medical shop again to earn his livelihood and the Opp. Party will regularly deposit Rs. 5000/- per month to clear the loan of the bank. The Opp. Party also assured the learned court she will also try to deposit a huge amount whenever it is possible.
9. That as the Opp. Party is not in a position to deposit total sum or loan at a time with interest therefore, she prays before the learned court to minimise the interest, so that the Opp. Party may deposit loan as early as possible.
10. That the Opp. Party has no other shelter to live to with her family members except the house in question. Hence the Opp. Party may be given a chance to over come the problem and the Bank/Petitioner may be directed not to proceed with the case further.
11. That the Opp. Party has filed all the money deposit receipt with this petition for your honours kind consideration and favourable order.

दोनों पक्षों के विद्वान अधिवक्ताओं को सुना एवं सरकारी अधिवक्ता से भी मंत्रणा प्राप्त किया।

In Union Bank of India v.State of Maharashtra, AIR 2010 Bom. 150, the court held that Section 14 of the SARFAESI Act is an enabling section which empowers Magistrate only to assist secured creditor in taking possession of the secured assets and, therefore, the power vested in the District Magistrate is limited and specific. Plain reading of Section 14 of the SARFAESI Act demonstrates that it does not clothe the District Magistrate with power to undertake any adjudication in respect of any dispute between the parties regarding the secured assets.

Further in Tensile Steel Ltd. V. Punjab and sind Bank, AIR 2007 Guj. 126, the Hon'ble Court told that the Magistrate can consider whether secured property is identifiable and whether 60 days' notice was issued under Sec. 13 (2) as secured creditor can resort to S. 13(4) and take possession of the secured assets only after issuing notice. But, even as an executing or administering authority, before taking action, he must himself be satisfied that notice under under Sec. 13 (2) was issued and the property to be proceeded is the secured property.

In the instant case the secured creditors has filed all the relevant documents conforming to the SARFAESI Act and the opposite party has not denied any of the technical provision as pertained in section 13 & 14 of the SARFAESI Act.

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However in her reply the opposite party has prayed for allowing the Opposite Party to deposit loan amount monthly at the rate of Rs. 5000/-month.

As it has already been laid down that D.M. has no adjudicatory power under this act, hence his plea is hereby rejected and there is sufficient ground to take possession of the secured asset and pass it over to the secured creditor i.e. the branch of Allahabad Bank Jhumsritelaiya.

अतः मैं अग्रिलेख में उपलब्ध साक्ष्यों और इलाहाबाद बैंक, झुम्सीतिलैया के विद्वान अधिवक्ता और विद्वान सरकारी अधिवक्ता को सुनने के पश्चात् संतुष्ट हूँ कि SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT 2002 धारा 14 (1) एवं 14 (2) के अनुरूप श्रीमती लखी कर्णवाल द्वारा इलाहाबाद बैंक, झुम्सीतिलैया से लिये गये ऋण एवं उधार को चुकता करने हेतु उनके द्वारा बैंक के पक्ष में रखी गई बन्धक सम्पत्ति को कब्जे (Possession) में लेने और इसे Secured Creditor इलाहाबाद बैंक, झुम्सीतिलैया को अग्रसारित करने के पर्याप्त साक्ष्य एवं कारण मौजूद हैं। अतः SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT 2002 धारा 14 (2) के अन्तर्गत इसको कब्जा में लेने और इसे Secured Creditor को अग्रसारित करने का आदेश देता हूँ।

इलाहाबाद बैंक, झुम्सीतिलैया के पक्ष में बंधक रखी सम्पत्ति को अपने कब्जा में लेकर ऋण एवं उधार के चुकता करने हेतु SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT 2002 धारा 14 (1) एवं 14 (2) के अनुरूप विधि सम्मत कार्रवाई करें।

लेखापित एवं संशोधित

उपायुक्त, कोडरमा।

उपायुक्त
कोडरमा।