

Before Ajay Kumar Mittal & Manjari Nehru Kaul, JJ.

KANWALJIT SINGH AND OTHERS—Petitioners

versus

**PUNJAB FINANCIAL CORPORATION AND OTHERS—
Respondents**

CWP No.29540 of 2017

April 02, 2019

Constitution of India, 1950—Art. 226 and 227— The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002—Ss. 13(2), 13(3-A), 13(4), 17— S. 17 to be invoked only after action is taken by secured creditor u/s 13(4)—Petitioner sanctioned loan of Rs. 66.70 lakhs vide mortgage deed dated 01.10.1992—Default in repayment of loan—Security taken over in 1996 and unit sold for Rs.32 lakhs in 2001—Notice issued u/s 13(2) for recovery of outstanding amount—Objections filed u/s 13(3A) rejected—Held, in view of proviso to S. 13(3A), mere non-acceptance of objections would not entitle the borrower to prefer an application u/s 17—Borrower can take recourse to remedies provided u/s 17 only when action is taken by the secured creditor u/s 13(4)—Petition dismissed.

Held that Sub section (2) of Section 13 of SARFAESI provides that where any borrower under a liability to a secured creditor under a security agreement makes any default in repayment of secured debt or any installment thereof and his account is classified as non-performing asset by the secured creditor, then the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within 60 days from the date of the notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub section (4) of Section 13 of the SARFAESI Act. A proviso has been inserted by Act No.44 of 2016 with effect from 11.09.2016 to the effect that the requirement of classification of secured debt as non performing asset under this sub section shall not apply to a borrower who has raised funds through issue of debt securities and in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee. (Para 8)

Further held that a plain reading of sub section (3A) of Section 13 of SARFAESI Act shows that on receipt of notice under sub-section (2) of Section 13 of the SARFAESI Act, the borrower is entitled to make any representation or raise any objection to the secured creditor. On receipt of such representation or objection, the same shall be decided by the secured creditor and reasons for non acceptance thereof shall be conveyed to the borrower. The proviso to Section 13(3A) of the SARFAESI Act stipulates that the reasons for communication or the likely action of the secured creditor shall not confer any right upon the borrower to prefer an application before the DRT under Section 17 of the SARFAESI Act or the Court of District Judge under Section 17A of the SARFAESI Act. It is after the non-acceptance of the representation/ objections under section 13(3A) of the SARFAESI Act, the action is taken by the secured creditor under Section 13(4) thereof and then a right accrues to the borrower aggrieved by any of the measures under section 13(4) of the SARFAESI Act to take recourse to the remedies under Section 17 of the Act.

(Para 9)

Further held that admittedly, M/s Dashmesh Laminations Private Limited, Amritsar was sanctioned a loan of Rs.66.70 lacs vide mortgage deed dated 1.10.1992 for setting up a unit for manufacture of double paper covered aluminum and copper wire insulators at Village Vallah, Amritsar. As per the mortgage deed and bond of guarantee, borrowers Ravinder Singh, Swaran Singh and Surjit Kaur were the Directors of the company and Bhagwan Singh was guarantor. The loan was secured by way of mortgage of prime security on land in the name of Bhagwan Singh which was kept as a collateral security. Due to default in repayment of the loan, the security was taken over by the respondents in March 1996. Ultimately, action was taken under section 29 of the 1951 Act and the unit was sold vide sale agreement dated 30.3.2001 for Rs. 32 lacs. On not clearing the outstanding amount, the respondents initiated action under Section 32G of the 1951 Act. Notice under Section 13(2) of the SARFAESI Act was issued to the petitioners on 25.8.2014 giving full details of the outstanding amounts. The petitioners filed objections under Section 13(3A) of the SARFAESI Act which had not been accepted. Learned counsel for the petitioners could not show that any notice under Section 13(4) of the Act had been issued thereafter. In view of proviso to Section 13(3A) of SARFAESI Act which provides that mere non-acceptance of objections would not entitle the borrower to prefer an application under Section 17 of the SARFAESI Act, we do not find any justification in the petitioners'

approaching this Court seeking quashing of the order of rejection of objections by the respondents which is in the nature of an interim order. The petitioners may have grievance as and when notice under Section 13(4) of the SARFAESI Act is issued by the respondents. In case any notice under Section 13(4) of the SARFAESI Act is issued to them, it shall be open for the petitioners to take recourse to remedies available to them raising all the pleas in accordance with law.

(Para 10)

Sukhandeep Singh, Advocate
for the petitioners.

Arshdeep Singh Arora, Advocate
for the respondents.

AJAY KUMAR MITTAL, J.

(1) Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioners pray for quashing the impugned order dated 3.10.2017, Annexure P.10 passed by respondent No.3 – Punjab Financial Corporation, vide which the objections filed by them under Section 13(3A) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, “the SARFAESI Act”) have been rejected. Further prayer has been made for a direction to respondent No.1 to withdraw their notice dated 25.8.2014, Annexure P.4 issued under Section 13(2) of the SARFAESI Act, being ultravires, illegal, arbitrary and violative of Article 14 of the Constitution of India. Direction has also been sought for quashing the letter dated 28.11.2013 and notice dated 25.8.2014, Annexures P.3 and P.4 respectively, issued by the respondents.

(2) A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. One Swaran Singh son of Nirmal Singh and Ravinder Singh, residents of Amritsar were Managing Directors of M/s Dashmesh Lamination Private Limited. It was a company registered and incorporated in the year 1990. It had set up its factory at Village Vallah, District Amritsar. It was engaged in the manufacturing/production of DPC strips/wires which are used for the winding of transformers. The said Swaran Singh and other shareholders had invested huge amount of Rs. 25 lacs in setting up of the above said project. Swaran Singh, Ravinder Singh and Surjit Kaur had applied for a loan from respondent No.1 for completing their project and for setting up certain additional machinery. M/s Dashmesh Lamination Private Limited was sanctioned a loan of Rs. 66.70 lacs including financial

assistance from the State subsidy of Rs. 10.20 lacs, out of which less than Rs. 42 lacs was disbursed by the respondent Corporation. In lieu of repayment of the said loan amount, late Shri Bhagwan Singh, father of the petitioners agreed to mortgage his property as collateral security with reference to the above said mortgage deed. On 22.4.1994, M/s Dashmesh Lamination started its production unit. However, there was delay in disbursement of the loan amount by respondent No.2 on account of which the said unit could not properly function. Moreover, even before the entire loan amount could be disbursed, the respondent-Corporation exercised its power under Section 29 of the State Financial Corporation Act, 1951 (in short, "the 1951 Act") and took over the unit forcibly in March 1996. Even though the complete loan amount had not been disbursed as per the terms of mortgage deed, the respondents had proceeded against the petitioners. On 10.6.1996, Default Review Committee of Punjab Financial Corporation decided to restore the said unit and on 17.7.1996, additional subsidy of Rs. 16,13,000/- was sanctioned by the Punjab Industries department which was to be disbursed subject to availability of funds and as per seniority. On completion of all the formalities in July 1996, the petitioners requested the respondents to release the said amount but of no use. On 9.12.1998, the respondents put the unit on sale after valuing it for Rs.54 lacs. Auction of the said unit was held on 17.12.1998 and only three days' notice was given to the Directors to get a buyer for the said unit. According to the petitioners, the auction was unsuccessful. However, it came to the knowledge of the petitioners that in May 2001, the respondent Corporation sold the said unit at the price of Rs. 32 lacs. Thereafter, Directors of the said company filed CWP No.7961 of 2001 in this Court which was dismissed vide order dated 24.10.2013, Annexure P.2. On 28.11.2013, late Shri Bhagwan Singh received a registered notice stating that he had furnished collateral security in the said mortgage deed and that he had agreed to repay the loan to the Corporation in case of default committed by the concerned principal borrower. It was further stated that the concerned principal borrower had failed to repay the loan of the Corporation and that the Corporation had acquired the prime property under Section 29 of the 1951 Act and sold off the unit for Rs. 32 lacs. The Corporation had thus decided to initiate proceedings under Section 32G of the said Act for recovery of its balance outstanding against the collateral security. On 25.8.2014, the respondents issued notice under Section 13(2) of the SARFAESI Act to late Shri Bhagwan Singh stating that he being the collateral security was liable to pay the total outstanding amount of Rs. 46,34,60,046/-.

The said notice was challenged by late Shri Bhagwan Singh in CWP No.20259 of 2015 in this Court in which notice was issued. The reply was submitted by the respondent Corporation. During the pendency of the said writ petition, Bhagwan Singh died on 27.1.2017. The said writ petition was disposed of vide order dated 6.2.2017 without expressing any opinion on the merits of the case granting liberty to the legal representatives of Shri Bhagwan Singh to raise all the pleas as raised in the writ petition by way of filing objections under Section 13(3A) of the SARFAESI Act before the concerned authority within one month from the date of receipt of the copy of the order. Direction was given to decide the objections within next two months in accordance with law. The petitioners filed the objections under Section 13(3A) of the SARFAESI Act (Annexure P.8). The petitioners contended that out of total sanctioned amount of Rs. 66.70 lacs, only an amount of less than Rs. 42 lacs was disbursed. Secondly, the respondents had the right to proceed under Section 32G of the 1951 Act. The petitioners even appeared before the respondents. On 3.10.2017, respondent No.3 passed the order rejecting the objections raised by the petitioners. According to the petitioners, the objections raised by them have not been objectively dealt with. No cogent reasons have been given. Hence the instant petition by the petitioners.

(3) A written statement has been filed on behalf of the respondent Corporation wherein it has been inter alia stated that the loan taken by M/s Dashmesh Laminations Private Limited was secured by way of mortgage of property of late Bhagwan Singh, father of the petitioners. Due to default in the repayment of the loan, the security was taken over by the respondents in March, 1996. On request of the borrowers for additional loan, it was restored by the Default Review Committee in the month of July 1996. Thereafter, again the borrowers defaulted in repayment and the unit was taken over under Section 29 of the 1951 Act on 11.3.1999 and sold vide sale agreement dated 30.3.2001 at Rs. 32 lacs. Before finalizing the sale, the same was published in the newspapers and the borrowers were duly informed about the proceedings by issuing the letters. After the sale of the unit, the outstanding dues were not fully recovered. Thereafter, the respondents initiated action under section 32G of the 1951 Act against the collateral security. A certificate was issued on 24.10.2001 to the Collector, Amritsar to recover the balance dues. After inability of the Tehsildar to attach the said property, the respondents decided to initiate action against the petitioners under the SARFAESI Act and issued notice under section 13(2) of the said Act on 25.8.2014 mentioning the

complete details of the outstanding amounts. According to the respondents, as per the terms of the mortgage deed, the outstanding amount is Rs. 52,28,02,501/- till 15.9.2014 with further interest till realization. Every detail is mentioned in the notice under section 13(2) of the SARFAESI Act which was finalized on the basis of the account statement and record of the Corporation. On these premises, prayer for dismissal of the petition has been made.

(4) Replication was filed by the petitioners against the written statement controverting the averments made therein and reiterating the pleas raised in the writ petition.

(5) Calculation of the amount to be recovered from the petitioners was produced on record by way of affidavit dated 8/9.10.2018 of Shri Parbhat Garg, Manager, Financial Corporation.

(6) We have heard learned counsel for the parties.

(7) Before adjudicating the controversy involved in the present case, it would be apposite to reproduce Sub sections (2) and (3A) of Section 13 of the SARFAESI Act, which read thus:-

“Section 13. Enforcement of security Interest:

(1) XXXXXXXXXXXXX

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

Provided that –

(i) The requirement of classification of secured debt as non-performing asset under this sub section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) In the event of default, the debenture trustee shall be entitled to enforce security interest in the same

manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.

(3-A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under Section 17 or the Court of District Judge under Section 17-A.”

(8) Sub section (2) of Section 13 of SARFAESI provides that where any borrower under a liability to a secured creditor under a security agreement makes any default in repayment of secured debt or any installment thereof and his account is classified as non-performing asset by the secured creditor, then the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within 60 days from the date of the notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub section (4) of Section 13 of the SARFAESI Act. A proviso has been inserted by Act No.44 of 2016 with effect from 11.09.2016 to the effect that the requirement of classification of secured debt as non performing asset under this sub section shall not apply to a borrower who has raised funds through issue of debt securities and in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.

(9) A plain reading of sub section (3A) of Section 13 of SARFAESI Act shows that on receipt of notice under sub-section (2) of Section 13 of the SARFAESI Act, the borrower is entitled to make any representation or raise any objection to the secured creditor. On receipt of such representation/objection, the same shall be decided by the

secured creditor and reasons for non acceptance thereof shall be conveyed to the borrower. The proviso to Section 13(3A) of the SARFAESI Act stipulates that the reasons for communication or the likely action of the secured creditor shall not confer any right upon the borrower to prefer an application before the DRT under Section 17 of the SARFAESI Act or the Court of District Judge under Section 17A of the SARFAESI Act. It is after the non-acceptance of the representation/objections under section 13(3A) of the SARFAESI Act, the action is taken by the secured creditor under Section 13(4) thereof and then a right accrues to the borrower aggrieved by any of the measures under section 13(4) of the SARFAESI Act to take recourse to the remedies under Section 17 of the Act.

(10) In the present case, admittedly, M/s Dashmesh Laminations Private Limited, Amritsar was sanctioned a loan of Rs. 66.70 lacs vide mortgage deed dated 1.10.1992 for setting up a unit for manufacture of double paper covered aluminum and copper wire insulators at Village Vallah, Amritsar. As per the mortgage deed and bond of guarantee, borrowers Ravinder Singh, Swaran Singh and Surjit Kaur were the Directors of the company and Bhagwan Singh was guarantor. The loan was secured by way of mortgage of prime security on land in the name of Bhagwan Singh which was kept as a collateral security. Due to default in repayment of the loan, the security was taken over by the respondents in March 1996. Ultimately, action was taken under section 29 of the 1951 Act and the unit was sold vide sale agreement dated 30.3.2001 for Rs.32 lacs. On not clearing the outstanding amount, the respondents initiated action under Section 32G of the 1951 Act. Notice under Section 13(2) of the SARFAESI Act was issued to the petitioners on 25.8.2014 giving full details of the outstanding amounts. The petitioners filed objections under Section 13(3A) of the SARFAESI Act which had not been accepted. Learned counsel for the petitioners could not show that any notice under Section 13(4) of the Act had been issued thereafter. In view of proviso to Section 13(3A) of SARFAESI Act which provides that mere non-acceptance of objections would not entitle the borrower to prefer an application under Section 17 of the SARFAESI Act, we do not find any justification in the petitioners' approaching this Court seeking quashing of the order of rejection of objections by the respondents which is in the nature of an interim order. The petitioners may have grievance as and when notice under Section 13(4) of the SARFAESI Act is issued by the respondents. In case any notice under Section 13(4) of the SARFAESI Act is issued to them, it

shall be open for the petitioners to take recourse to remedies available to them raising all the pleas in accordance with law.

(11) In view of the above, the petition being devoid of any merit, the same is hereby dismissed with the observations as noticed above. Needless to say, anything observed hereinbefore shall not be taken to be an expression of opinion on the merits of the controversy.

Sumati Jund