

Constitutional Writ

Present:

The Hon'ble Mr. Justice Jayanta Kumar Biswas

Judgment on 24.08.2010

W.P. No.17389 (W) of 2010

Tarit Ahmed Molla

v.

Authorised Officer & Ors.

Points:

**Authorised Officer**-Document signed by the bank's Advocate whether can be accepted as the reply of the Bank's authorized officer to the petitioner's objection to the s.13(2) notice.- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 –S.13(2)

Facts:

Writ petitioner alleged that the authorised officer of the Bank has not given any reply to the petitioner's objection to the notice under s.13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Bank produced a document alleging authorised officer's reply to the petitioner's objection to the s.13(2) notice signed by the bank's Advocate.

Held:

The authorised officer was under a statutory obligation to give reply to the objection. He was not authorised to delegate any part of the job to any other person. I am unable to accept the argument that the defect is a technical one. I am, therefore, of the view that the document cannot be accepted as the Bank's authorized officer's reply to the petitioner's objection to the s.13(2) notice.

Para 6

Cases cited:

Digivision Electronics Ltd. v. Indian Bank & Anr., 126 Com. Cas. 630

Mr Shiv Shankar Banerjee and Mr Dipak Kumar Mookherjee, advocates, for the petitioner.

Mr P.K.Roy, Mr S.C.Roy and Mr S. Bandopadhyay, advocates, for the first-third respondents.

The Court: Mr. Banerjee, counsel for the petitioner in this art. 226 petition dated August 13, 2010, submits that the petitioner has two grievances:

(i) the Bank unauthorisedly added a substantial amount to increase the petitioner's liability; (ii) the authorised officer of the Bank has not given any reply to the petitioner's objection to the notice under s.13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. Mr. Roy, counsel for the Bank, submits that the petitioner did not mention in his objection to the s.13(2) notice that the Bank had unauthorisedly added any amount to increase the petitioner's loan liability. He has produced a document dated July 23, 2010 and has said that it is the authorised officer's reply to the petitioner's objection to the s.13(2) notice.

3. After going through the document Mr. Banerjee has submitted that the thing, signed by the Bank's advocate, cannot be treated as the authorised officer's reply, because nothing in the provisions of s.13 empowered or entitled the authorised officer to delegate any part of his statutory duty to the Bank's advocate.

4. Relying on a Division Bench decision of the Madras High Court in Digivision Electronics Ltd. v. Indian Bank & Anr., 126 Com. Cas. 630, Mr.

Roy has submitted that the defect being a technical one cannot be a ground to interfere in the matter under art.226.

5. It is true that in his objection to the s.13(2) notice the petitioner did not take the point that the Bank had unauthorisedly added a substantial amount to his loan account. The point has, however, been taken in the petition. But here the principal question is whether the document dated July 23, 2010 can be accepted as the reply of the Bank's authorized officer to the petitioner's objection to the s.13(2) notice.

6. The authorised officer was under a statutory obligation to give reply to the objection. He was not authorised to delegate any part of the job to any other person. I am unable to accept the argument that the defect is a technical one. I am, therefore, of the view that the document cannot be accepted as the Bank's authorized officer's reply to the petitioner's objection to the s.13(2) notice. I do not see how the relied on decision is of any assistance in this case.

7. The above-noted situation leads to the inevitable conclusion that the authorised officer of the Bank is yet to reply to the petitioner's objection to the s.13(2) notice. It means that the authorized officer has to examine the petitioner's objection closely and give a statutory reply. Since the position is that the authorised officer has not yet given his reply to the petitioner's objection, I think in the interest of justice it will be appropriate to permit the petitioner to submit an additional objection.

8. For these reasons, I dispose of the petition ordering as follows. The petitioner will be free to submit an additional objection. If he wants to file an additional objection, then he shall file it within a week. Within a week thereafter the authorized officer of the Bank shall give his reply to the petitioner's objections. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)

