

Calcutta High Court

HON'BLE JUDGE(S): **RAJASEKHAR MANTHA, J**

PIYAS BISWAS V. UNION OF INDIA

W. P.A. No. 14643 of 2021,, decided on 11/01/2022

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002) , S.13(2)- Debt recovery - Non-Performing Asset - SBI continued to deduct instalments from salary account of petitioner despite declaring his account as non- performing asset - Bank unable to explain circumstances for issuing third notice for debt recovery and why first proceeding itself could not be taken to its logical conclusion - Once account of debtor was declared non-performing asset, deduction of monthly instalments from his salary account could not be done - Court restrained Bank from deducting any further instalments from salary account of petitioner.

(Para 5, 6, 7)

Name of Advocates

Dhiman Ray, Dip Chand, for Petitioner; Falguni Bandopadhyay, Amitabha Majumdar, Anuradha B. Ray, Mrinal Kanti Das, for Respondents.

1.ORDER :-The writ petitioner is aggrieved by the fact that the State Bank of India has continued

to deduct instalments from the salary account of the petitioner despite declaring the account as nonperforming asset on 5 May, 2021.

2. Notice under Section 13(2) of the SARFAESI Act, 2002 was issued on May 20, 2021. The bank

has therefore issued a second notice under Section 13(2) of the SARFAESI Act, 2002 on 12 July, 2021 after declaring the account a Non Performing Asset on 3 July, 2021.

3. It is submitted by counsel for the petitioner that a third notice again on 04.01.2022 under Section

13(2) of the SARFAESI Act, 2002 has been issued and the said notice came to be published in the news papers as service could not allegedly be effected.

4.A copy of the news paper extract as also third notice dated 04.01.2022 is kept with the record.

5. This Court is unable to countenance and the bank is unable to explain under what circumstances

third notice under Section 13(2) has been issued. It is also not clear as to why the first proceeding under Section 13(2) could not be taken to its logical conclusion.

6. This Court is prima facie satisfied that since the account has been declared as non performing asset, deduction of monthly instalments from the salary account of the petitioner could not have been done. If the bank was entitled to deduct instalments even after notice under Section 13(2), the account could not have been declared as non performing asset.

7. This Court therefore restrains the bank from deducting any further instalments from the salary account of the petitioner in respect of the subject loan account until further orders.

a. Affidavit in opposition be filed within a period of three weeks. Reply, if any, be filed within a week thereafter.

9. Liberty to mention after completion of pleadings.

10. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Order Accordingly