
North Eastern Development Finance vs M/S. L Doulo Builders And Suppliers Co.

Facts

The respondent approached the appellant for a loan to set up a cold storage unit in Dimapur, Nagaland, and the loan agreements were signed in May 2001. During this time, article 371A was enforceable, which meant that the tribal land cannot be transferred or mortgaged to non-tribals, so the respondent company could not mortgage their land to the appellant (corporation). Due to this hindrance, the respondent company mortgaged the land to the local authority, Model Village Council. This council provided guarantee promising to repay the loan if the respondent company defaulted. The local laws, in case of a default, allowed the council to sell those assets. The respondent failed to repay the loan and following this, the appellant issued demand notices and used the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 to recover the money. 18 years later, in 2019, appellant took possession of the respondent assets after getting an order from the local authority. The respondent challenged this action in high court. HC ruled in the favor of the respondent company.

Issue

1. Did the Appellant had a valid security interest or mortgage that could be enforced under the SARFAESI act, especially in light of Article 371A of the Constitution?
2. Was the SARFAESI Act applicable in Nagaland at that time?

Rule

The appellant sought to invoke section 13(2) and 13(4) of the SARFAESI act.

1. Section 13(2) allowed a secured creditor to issue demand notice when the borrower defaults. This demand notice allows the borrower to repay the loan within a 60 days period.
2. Section 13(4) in case the borrower fails to repay their dues in the 60 days period then this section allows them to take enforcement measures without going to court, such as taking the possession of the secured assets and selling them.

Analysis

The court first interpreted the article 13(4) of the SARFAESI act, which clearly stated that the section can be used only in cases where there is a secured creditor who has a valid security interest. The other prerequisite, includes the enforceability of the act to the state in question (here, Nagaland).

Applying this rule, the court found out that there was no property that was ever mortgaged in favor of the appellant. The respondent's property was handed to Model Village Council, who only acted as a guarantor under the local laws. The court held the arrangement of a guarantor is different from that of a security interest. Therefore, the appellant was not a secured creditor and hence, he could not invoke section 13(3) and 13(4) of the SARFAESI act.

The court then went on to interpret article 371A of the constitution of India. It noted that the SARFAESI act affected the ownership and transfer of land as mentioned in article 371 A. It found that demand notice was sent in 2011 and the possession in 2019 which held that the SARFAESI act was not adopted in Nagaland at that time. Therefore, the appellants action under this act was without any credibility or legal authority.

After interpreting these points the court inferred that the SARFAESI act was not applicable in Nagaland at the relative time and that there was no enforceable security interest.

Judgment

The deed of guarantee executed by the Model Village Council did not amount to a "security agreement" under the SARFAESI act. The appellant had no authority to invoke the act and he was the secured creditor. The court clarified that the appellant was free to recover the cost from other remedies available in law.

Conclusion and significance

No valid arrangement existed because of the Article 371A of the constitution and also, the SARFAESI act was not enforceable in Nagaland at that time. The case reinforces the constitutional supremacy that no act can override the constitution. It also creates the limits for the enforceability of the SARFAESI act.