

## IN THE SUPREME COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.1359 OF 2013

YASHWANT G. GHAISAS &amp; ORS.

.....APPELLANTS

VERSUS

BANK OF MAHARASHTRA

.....RESPONDENT

## O R D E R

This appeal is directed against order dated 06.12.2012 of the National Consumer Disputes Redressal Commission whereby the complaint filed by the appellants for issue of a direction to the respondent to de-freeze their account and restore Rs.2,04,67,264/- to the cash credit / term loan of M/s. Mint Bio-Fuels Ltd. and also for payment of compensation of Rs.10,00,000/- and legal expenses was dismissed.

The appellants are members of the same family. They got registered a limited company under the name and style M/s. Mint Bio-Fuels Ltd. They opened saving bank accounts with fixed deposits. The respondent sanctioned loan to the company to the tune of Rs.17 crores. At the instance of the respondent, the appellants are said to have accepted National Bank for Agricultural and Rural Development (NABARD) as consortium partner. In June, 2010, the company's account was declared as non-performing asset. In February, 2011, the appellants approached the respondent for restructuring the repayment schedule but their request was not accepted. The respondent issued notice dated 5.6.2012 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the 2002 Act'). The company contested the notice and claimed that action of the bank was not bona fide.

Having failed to persuade the company and its Directors, guarantors/promoters to repay the loan together with interest, the respondent decided to freeze the account(s) of the appellants by exercising the right to set-off.

The appellants challenged the action of the bank by filing a complaint under Section 21 of the Consumer Protection Act, 1986 (for short, 'the 1986 Act'). The National Commission referred to Section 34 of the 2002 Act whereby jurisdiction of all Courts and authorities to entertain challenge to the action taken by the bank has been ousted and dismissed the complaint by recording the following observations:

"19. The National Commission is not empowered to arrogate to itself the powers which come within the jurisdiction of debt recovery tribunals. This matter is purely covered within the jurisdiction of DRT or DRAT. If there is any grievance against the notice under Section 13(2) of the SARFAESI Act that should be brought to the notice of the concerned authority. It is well settled that main creditor and the guarantors are equally responsible. There lies no rub for the bank to take action against the guarantor directly. It can not be alleged that he is adopting the policy of pick and choose. From the allegations stated above, there appears to be no deficiency on the part of the opposite party. In case the bankers are working within the ambit of SARFAESI Act, it cannot be said to be deficiency on the part of the bank. It must be established that there is deficiency on the part of the bank. In that case this commission can take action. For the reasons stated above, the complaint is dismissed at the stage of its admission. Nothing will preclude the complainants from approaching appropriate Forum as per law."



(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master

( Signed order is placed on the file )