(2023) 03 KL CK 0165

In the High Court Of Kerala

Case No : Writ Petition (C) No. 39873 Of 2022

Abdul Bari — APPELLANT

Vs

Authorised Officer Canara Bank Ltd — RESPONDENT

Date of Decision : 16-03-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 2(1)(zf), 13(2), 13(4), 31(i)

Citation : (2023) 03 KL CK 0165

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : S.K.Premraj, C.Anilkumar, V.Saritha, P.M.Manash, Jain Varghese, Aadil Nazarudeen, E.K.Nandakumar, Gopikrishnan Nambiar M, K.John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham, Raja Kannan, Pranoy Harilal

Final Decision : Dismissed

Judgement

T.R. Ravi, J

1. This writ petition has been filed praying to quash Ext.P9 order dated 22.11.2022 in I.A.No.192/2022 in AIR (SA) No.184/2021 on the files of the Debt Recovery Appellate Tribunal, Chennai and for a direction to restore AIR (SA) No.184/2021 and all other petitions therein.

2. Heard Sri.S.K.Premraj, on behalf of the petitioners and Sri.E.K.Nandakumar, Senior Advocate instructed by Sri M.Gopikrishnan Nambiar, on behalf of the respondents.

3. The petitioners stood as guarantors of M/s.Kailas Gold and Diamonds, Kakkathuruthy, Thrissur for an overdraft facility of □ 2,00,00,000/-, which was availed on 15.02.2016. Two items of properties belonging to the petitioners were mortgaged. The account became NPA on 06.07.2017. A demand notice was issued under Section 13(2) of the SARFAESI Act on 06.11.2017 and symbolic

possession was taken under Section 13(4) of the Act on 25.01.2018. The Securitisation Application S.A.No.358/2018 was filed before the Debt Recovery Tribunal II, Kerala, Ernakulam Bench contending that the properties mortgaged were agricultural land and the respondents are not entitled to proceed against the said properties. On 29.05.2020, by Ext.P1 judgment, S.A.No. 358/2018 was dismissed. The Tribunal considered the effect of the report of the Advocate Commissioner appointed in the case and the other evidence that was available and held that there is nothing on record to show that the properties were agricultural lands at the time of mortgage and that the applicants had not executed any document stating that they have created security interest over agricultural lands. It is noticed that the title deeds show the properties as garden lands/dry lands. WP(C) No.9469/2021 was filed by the petitioners challenging Ext.P1 order and the writ petition was disposed of by Ext.P2 judgment directing the petitioners to pursue their appeal before the Debt Recovery Appellate Tribunal, Chennai. The petitioners again approached this Court by filing WP(C) No.525/2022 when coercive steps were being taken and this Court by Ext.P3 order directed that the petitioners shall not be dispossessed for a period of six weeks, on condition that they deposit a sum of ☐ 10,00,000/- on or before 07.02.2022. The petitioners preferred R.P.No.142/2022 against the order in WP(C) No.525/2022 which was admitted on 04.02.2022. This Court directed that the petitioners shall not be dispossessed till 04.03.2022. The order was extended on 04.03.2022 for a period of two weeks by Ext.P5. On 23.03.2022, by Ext.P6 order, the review petition was closed directing the petitioners to seek their remedies before the Debts Recovery Appellate Tribunal and the dispossession was stayed for a further period of one month to enable the petitioners to move the Appellate Tribunal. The petitioners again filed WP(C) No.21776/2022 which was disposed of by Ext.P7 judgment. This Court found that the petitioners failed to prove their bonafides and are not entitled to any indulgence from this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The Court also noticed that Ext.P2 judgment was a result of suppression of material facts, since the orders were obtained stating that an appeal had been filed, while the appeal was filed only in the month of October 2021. After finding that there is considerable merit in the contention taken by the counsel for the respondent Bank, as a last chance, to ensure that petitioners did not lose any opportunity for seeking relief from the Appellate Tribunal, the taking of dispossession was deferred till 21.07.2022 to enable the petitioners to move the Appellate Tribunal. The petitioners challenged Ext.P7 judgment before a Division Bench in Writ Appeal No.998/2022. The Division Bench noted the respondent Bank's contention that Ext.P2 interim order was obtained on 09.04.2021 by suppressing material facts. The Court observed that non-disclosure of the details of the past and pending litigation concerning the subject matter of the dispute would amount to material suppression of facts disentitling a litigant from discretionary remedy under Article 226 of the Constitution of India. The Writ Appeal was dismissed.

4. Thereafter, the Appellate Tribunal by Ext.P9 order rejected the application for

condonation of delay in filing the appeal. The Appellate Tribunal noted the facts that had led to the appeal. The Tribunal found that the true facts had not been placed even in the petition for condonation of delay filed before the Tribunal.

5. Respondents 1 & 2 have filed a counter affidavit stating that 72.25 cents of land with residential building and 42.25 cents of land with the residential building in Kedavur Village in Thamarassery Taluk were the properties mortgaged. It is pointed out that even though conditional interim orders were passed, the conditions were not complied with. In Ext.P7 and Ext.P8 judgments, this Court has already held that there was a suppression of material facts while obtaining orders from this Court. It is further pointed out that the Appellate Tribunal had found that the petitioners had not approached the Tribunal with clean hands and untrue statements had been made. When no appeal had been preferred, in April 2021, it was specifically contended before this Court that an appeal had been preferred and the Appellate Tribunal had not been able to consider it because of the pandemic. A categoric statement like that cannot be treated as a mistake and is necessarily a statement intended to mislead the Court. It was also stated that the petitioners had in August 2022, submitted a cheque for an amount of ☐ 50,00,000/- in furtherance of a One-Time Settlement proposal, which was returned for insufficiency of funds. It is also pointed out that even though the interim order dated 12.12.2022 in the writ petition erroneously notes the appearance of the Standing Counsel, as a matter of fact, there was no appearance, since the writ petition was moved without serving a copy on the Standing Counsel. Reliance is placed on the judgments in K.Sreedhar vs. M/s.Raus Constructions Pvt. Ltd. & Ors. [(2023) SCC OnLine (SC) 13)], Sivankutty vs. State Bank of Travancore [(2010) SCC onLine Kerala 2228] and Green Valley Farms vs. Syndicate Bank [2020 (1) KLJ 420].

6. In Sivankutty (supra), a Division Bench of this Court found that whether a land is agricultural land has to be ascertained on the basis of several factors and it is for the statutory Tribunal to decide. In Greeen Valley (supra), a Division Bench held that the finding of the DRT that land is not agricultural land cannot be challenged in a writ petition. In K.Sreedhar (supra), the Hon’ble Supreme Court has referred to two other earlier Supreme Court decisions in ITC Ltd. v. Blue Coast Hotels Ltd. [(2018) 15 SCC 99] and Indian Bank v. K.Pappireddiyar [(2018) 18 SCC 252].

7. In Blue Coast (supra), the Hon’ble Supreme Court considered the purpose of enacting Section 31(i) of the SARFAESI Act and held that the provision is intended to protect agricultural land held for agricultural purposes by agriculturists from the extraordinary provisions of the Act, which provides for enforcement of security interest without intervention of the Court and also to deter the creation of security interest over agricultural land as defined in Section 2(1)(zf). The Court found that security interest cannot be created regarding property specified in Section 31. In Pappireddiyar (supra), the Hon’ble Supreme Court held that whether the land is agricultural is to be decided based on several

factors including the parties’ intention when creating the security interest. In K.Sreedhar (supra), after referring to the above two decisions, the Hon’ble Supreme Court held that Court has to look at whether the land is actually used as agricultural land. The Court also observed that the secured property is put as a security by way of mortgage, etc. meaning thereby the same was not treated as agricultural land, such properties cannot be said to be exempted from the provisions of the SARFAESI Act under Section 31(i) of the SARFAESI Act.

8. In the present case, the DRT had held that the property could not be treated as agricultural land. The Appellate Tribunal has refused to condone the delay in filing the appeal because the petitioner did not approach the Court with clean hands and had suppressed material facts. The reasoning of the Appellate Tribunal cannot be faulted on the fact situation in this case. A Division Bench of this Court had earlier found that the petitioner had suppressed material facts. No grounds are made out for interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The writ petition fails and is dismissed.

