
(2008) 06 MP CK 0047
In the Madhya Pradesh High Court

Abhay Kumar

APPELLANT

Vs

Chief Manager, State Bank of Indore and Others

RESPONDENT

Date of Decision : 26-06-2008

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 14, 17
Transfer of Property Act, 1882 — Section 35, 53A

Citation : AIR 2009 MP 24 : (2008) ILR (MP) 2780 : (2008) 4 MPJR 230 :
(2008) 4 MPLJ 33 : (2006) 1 RCR(Criminal) 277

Hon'ble Judges : S.K. Kulshrestha, J; Manjusha P. Namjoshi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Kulshrestha, J.

This order shall also govern the disposal of W.A. No. 548/2008 as both arise from the common order dated 12-6-2008, passed by the learned single Judge in W.P. No. 3429/2008 and W.P. No. 3430/2008. The said writ petitions were filed by the petitioners assailing the action of the respondent/Bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act"), by which on the allegation that the account of the borrower had become a non-performing asset, the properties were auctioned and steps were taken u/s 14 of the said Act for obtaining possession thereon.

It is not disputed before us that the appellants were in possession of the properties mortgaged by the borrower, and after the account was declared as non-performing, remedy u/s 13 of the Act was resorted to. Since the property was in possession of the appellants, action was initiated u/s 14 to obtain possession in accordance therewith.

The case of the petitioners as unraveled by the pleadings before us was that the petitioners had come into possession of the property after payment of substantial

consideration in accordance with an agreement executed in the year 2004 and were, therefore, entitled to retain possession under the provisions of Section 53-A of the Transfer of Property Act and to enforce the said agreement and seek specific performance. Learned Counsel for the respondent No. 1 has, however, submitted that since the act has overriding effect u/s 35, the claim founded on the possession under the provisions of the Transfer of Property Act on the basis of the part performance of the contract allegedly entered into by the appellants with the principal borrower, was untenable.

4-5. On examining the merits of the case of the petitioners, the learned single Judge observed that the agreement of sale on which strong reliance was placed was on a plain paper which did not disclose the mode of payment. The learned single Judge observed that a prudent man is not expected to part with substantial amount to the vendor without any receipt. The agreement was also doubted on the ground that it was allegedly executed on 20-2-2004, but notarised on 2-5-2007 after the respondent/Bank had already published the notice on 23-3-2007.

From the facts taken into consideration by the learned single Judge, while there can be no dispute that the agreement relied upon by the petitioners was of a dubious character and unreliable, the fact however remains that insofar as the petitioners are concerned, they were in possession and, therefore, they were also the persons aggrieved within the meaning of Section 13(4)(a). Learned Counsel for the respondent, however, urges that under the provisions of Section 17 of the Act, the petitioners should have approached the Debt Recovery Tribunal.

Insofar as the objection with regard to the alternative remedy is concerned, this point was not raised before the learned single Judge and, therefore, we are refraining to delve into the manner.

The action u/s 14 directly affects the interest of the appellants. We are surprised to find that although the Bank vide letter dated 19-6-2008, had informed that the property had been sold and the entire amount outstanding against the principal borrower had been paid no instruction was given by the Bank to its counsel to inform the Court while the petition was pending before the learned single Judge that the property already stood sold and money recovered.

Be that as it may, insofar as the rights of appellants are concerned, they can, on the basis of agreement on plain paper, claim that it was in pursuance of an agreement to sale that he was inducted. Learned Counsel for the respondent/Bank has referred to the decision of the Punjab and Haryana High Court Delhi Punjab Goods Carrier Pvt. Ltd. Vs. Bank of Baroda, , in support of his contention that if in the mortgaged property, tenancy is created, the tenant cannot seek protection under the tenancy law unless it is proved that the tenancy was created prior to the creation of the charge.

In the present case, the claim of the appellants is anchored on the provisions of Section 53(A) and such disputed questions cannot normally be decided in a writ

petition. However, since it is an admitted position that the appellants are in possession of the property in question, we grant time to the appellants upto 31st October, 2008 to vacate the property. The action of the Bank and any other person claiming under it, shall remain stayed upto the said date.

With the above liberty to continue in possession of the property upto 31st October, 2008, both these appeals are dismissed.