(2017) 02 KL CK 0055

In the High Court Of Kerala

Case No : W.P(C) No. 25010 of 2016 (A)

Abhilash Berly APPELLANT

Vs

The Federal Bank Limited RESPONDENT

Date of Decision : 07-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Article 136
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), Section 2(g), Section 2(ha), Section 36

Citation : (2017) 173 AIC 564 : (2017) 1 DRTC 656 : (2017) 1 KerLJ 879 : (2017) 1 KLT 747

Hon'ble Judges : Mr. K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Sri. K.C. Sudheer, Advocate, for the Petitioner; Sri. Reji George and Sri. Binoy Davis, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. K. Vinod Chandran, J.—The petitioner is aggrieved with the recovery proceedings initiated under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ''SARFAESI'' Act). The challenge raised is on two grounds; one of limitation and the other of the necessary requirement for initiating a proceeding under Section 13(2) of the SARFAESI Act having not been satisfied.

2. The ground of limitation is urged on the contention that, as per Section 36 of the SARFAESI Act, there is a limitation provided for taking proceedings under the Act, which is relatable to the limitation as provided in the Limitation Act. Article 62 of the Limitation Act, provides a period of 12 years, for enforcement of payment of money secured by a mortgage; which has to run from the date when the money became due, which in the instant case, relates back to the date on which the amounts were recalled in the year 2000.

3. The brief facts to be noticed are that the petitioner availed a credit facility from the respondent Bank on 10.03.1999 of Rs.3,00,000/-. The petitioner also mortgaged his property for the aforesaid loan. The Bank filed a suit numbered as O.S No.131/2000, the plaint of which is produced as Ext.P1, on 06.09.2000. The notice was issued prior to the filing of the suit on 05.02.2000 and the suit was decreed on 24.07.2002 by Ext.P2. A proceeding for execution of the decree, is filed before the Debt Recovery Tribunal Ernakulam numbered as O.A 426/2013. The present proceedings under the SARFAESI Act, initiated first in 2013, is challenged on the ground that the limitation expired in 2012, taking the period when the period of limitation as commenced on 05.02.2000, on which date, the loan was recalled and notice was issued.

4. The learned Counsel for the respondent Bank however relies on 2011(2) KLJ 633 (E.P Sreedharan v. The Manager Indian Bank and Anr.) to contend that the limitation applicable, insofar as a decree having been obtained, would be Article 136 of the Limitation Act, which runs from the date of decree; i.e., 24.07.2002. The notice under Section 13(2) is dated 15.05.2013 as is seen from Ext.P5, well within the limitation period prescribed, based on which the present proceedings are continued. The argument is advanced on the contention that a decree too would come within the definition of a debt as defined in the SARFAESI Act.

5. A debt as defined under the SARFAESI Act is as here-under:

Section 2(ha): "debt" shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993..."

Hence clause (g) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is also relevant which is extracted here-under:

"debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application."

6. A debt hence inter alia means a liability payable under a decree or order of any Civil Court. The decree being defined a debt under the SARFAESI Act, the limitation as provided under Section 36 of the SARFAESI Act would have to be related to Article 136 of the Limitation Act, which is the period of limitation provided for execution of a decree.

7. Section 36 of the SARFAESI Act is extracted herein below:

S.36 Limitation: "No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of Section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963"

8. The measures under sub section (4) of Section 13 has to be taken within the period of limitation prescribed under the Limitation Act, 1963 and hence for recovery of the amounts due under a decree, the limitation provided in the Limitation Act; being twelve years from the date of decree, the notice issued under the SARFAESI Act, is well within the period of limitation.

9. Further contention taken is of the debt having not been declared as a non performing asset (NPA). The learned Counsel would specifically refer to ground D in the writ petition to contend that the same has not been controverted by the respondent in their counter affidavit. Reliance is also placed on 2015(4) SCC 770 (Keshavlal Khemchand and Sons Private Limited and Others v. Union of India) to contend that unless there is declaration of debt as a Non-Performing Asset (NPA) there could be no proceedings taken under the SARFAESI Act,

10. In the present case, the notice issued under Section 13 (2) is at Ext.P3. The notice itself specifically says that the account became a NPA (Non Performing Asset) as per the guidelines of the Reserve Bank of India. The guidelines of the RBI mandate the account to be classified as an NPA when there is a default made for a specified period and the loan remains unserviced. "RBI''s Prudential Norms on Income Recognition, Asset Classification and Provisioning Pertaining to Advances" brought out by a Circular dated 30.08.2001 are the guidelines issued by the RBI. This has been extracted, in Mardia Chemicals Ltd. v. Union Of India (2004) 4 SCC. 311. An asset, including a leased asset, becomes non-performing when it ceases to generate income for the bank. A Non Performing Asset, as per the circular, is defined as a credit facility in respect of which the interest and/or instalment of principal has remained ''past due'' for a specified period of time, which from 1995 onwards was two quarters. As of now it is one quarter is the submission of the learned Counsel appearing for the respondent bank.

11. In any event, here, the petitioner does not have a contention that he has made any repayment as stipulated in the original agreement at least after the decree has been passed. In such circumstance, the contention that the account has not been declared as an NPA is a mere ruse to get over the recovery proceedings. This Court does not find any reason to thwart the recovery proceedings initiated by the respondent Bank.

12. In such circumstance, writ petition would stand dismissed. No costs.

