(2005) 01 KAR CK 0027

In the Karnataka High Court

Case No : Writ Petition No''s. 10425 and 10426 of 2004

Actis Technologies Private Limited and Another — APPELLANT

Vs

Canara Bank and Another — RESPONDENT

Date of Decision : 13-01-2005

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19 (7), 25, 26, 29

Citation : AIR 2005 Kar 282 : (2005) 4 BC 422 : (2005) 126 CompCas 917 : (2005) ILR (Kar) 2044 : (2005) 2 KarLJ 458 : (2005) 1 KCCR 659

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : L.M. Chidanandayya, for the Appellant; P.N. Ramesh, Bangalore Law Associates, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The subject-matter of these writ petitions is the entire first floor of property bearing No. 73/3, situated at Nandidurga Crescent Road, Bangalore-46, measuring 1500 sq. feet. The Recovery Officer has brought this property for sale as per Annexure-A for recovery of a sum of Rs. 1,33,61,383/- in pursuance of a Recovery Certificate issued by the Debt Recovery Tribunal in terms of a decree passed against M/s. ABN Granites Limited. The petitioner contends that the said property never belong to M/s. ABN Granites Limited, and it was never mortgaged to the Bank as a security for payment of loan amount. In fact,, before purchasing this property the petitioner got a paper publication issued calling upon any person who has interest to come forward and state so. When there was no claim from any quarter he proceeded to purchase the property under a registered sale deed dated 8-8-1996 as per Annexure-H from its Vendor, for a valuable consideration. The Katha has been made out in the name of the petitioners and they have been paying the tax. The petitioner is in possession of the property and therefore it is contended that the Sale Certificate issued by the Recovery Officer is one without jurisdiction as the petitioner is not a party to the proceedings and the aforesaid property is not the subject-matter of the proceedings. This Court after entertaining the writ petitions granted an interim Order of stay of Annexure-A for a period of two weeks on 23-3-2004 and it is subsequently continued until further orders. By virtue of the interim Order granted by this Court the property is not yet sold.

2. Learned Counsel appearing for the petitioners contends, when the property which is brought to sale belongs absolutely to the petitioner-Company and there is no decree against the petitioner-Company passed by the Debt Recovery Tribunal as the said property is not the subject-matter of the proceedings before the DRT nor this property was mortgaged in favour of the bank, the Recovery Officer has committed an illegality in bringing the property in question for sale, that too, without notice to the petitioners and therefore, the sale proclamation at Annexure-A is liable to be quashed.

3. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 at Chapter V, provides a comprehensive machinery for recovery of debts determined by the Tribunal. Section 25 deals with the modes of recovery of debts. It reads as follows:

"The Recovery Officer shall, on receipt of the copy of the certificate under Sub-section (7) of Section 19, proceed to recovery the amount of debt specified in the certificate by one or more of the following modes, namely.--

(a) attachment and sale of the movable or immovable property of the defendant;

(b) arrest of the defendant and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the defendant".

Further, the party who has suffered the decree is precluded from disputing the correctness of the amount specified in the Certificate before the Recovery Officer as is clear from Section 26 of the Act.

4. Section 29 of the Act stipulates that the provisions of Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income Tax.

5. The Second Schedule to the Income Tax Act provides for procedure for recovery of tax. Rule 11 of the Second Schedule deals with the investigation by Tax Recovery Officer. It states thus.--

"(1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or Objector must adduce evidence to show that--

(a) (in the case of immovable property) at the date of service of the notice issued under this Schedule to pay the arrears, or

(b) (in the case of movable property) at the date of the attachment,

he had some interest in, or was possessed of the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an Order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an Order is made may institute a suit in a Civil Court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the Order of the Tax Recovery Officer shall be conclusive".

The above proviso makes it clear that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed. Once such a claim is made and not rejected on the ground that it was made with the object of unnecessarily delaying the proceedings, the Tax Recovery Officer is under an obligation to hold an enquiry regarding the claim of the claimant. In such an enquiry or claim the Objector must adduce evidence to show that, in the case of immovable property at the date of service of notice issued under this schedule to pay the arrears, or in the case of movable property at the date of the attachment, he had some interest in, or was possessed of the property in question. Upon the said investigation, if the Tax Recovery Officer is satisfied that, for the reasons stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, in his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an Order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale. However, if the Tax Recovery Officer is satisfied that the property was at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

Sub-rule (6) of Rule 11 of the Second Schedule provides that where a claim or an objection is preferred, the party against whom an Order is made may institute a suit in a Civil Court to establish the right which he claims to the property in dispute, but, subject to the result of such suit (if any), the Order of the Tax Recovery Officer shall be conclusive. Therefore, a comprehensive mechanism is provided in law for putting forward a claim by a person who is not bound by the decree and whose property is wrongly brought to sale by the Debt Recovery Officer. When the petitioner has an alternative and efficacious remedy which is statutorily provided, which is very comprehensive one, it is inappropriate for this Court to entertain this writ petition. Accordingly, I pass the following order:

The writ petitions are rejected. Liberty is reserved to the petitioners to put forward their claim in respect of the above property before the Recovery Officer as aforesaid. The interim Order granted earlier stands vacated.

The Office is directed to return all the papers filed along with these petitions to enable the petitioners to put forward their claim before appropriate forum.

No costs.

