(2024) 02 KL CK 0200

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33048 Of 2023

Ahammed Basheer — APPELLANT

Vs

South Indian Bank Ltd — RESPONDENT

Date of Decision : 22-02-2024

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2)

Citation : (2024) 02 KL CK 0200

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : Kodoth Sreedharan, Sunil Shanker, Vidya Gangadharan, Sandhra.S, Hareesh Anandan, Gayathri.M.M, Devayani Nair T.H.

Final Decision : Dismissed

Judgement

N. Nagaresh, J

1. The petitioners, who are owners of a house building situated in 30 Cents of land in Chemmanad Panchayat, state that in the year 2017 the original title deed of the property was entrusted with the 5th respondent and his 6th respondent-wife who were neighbours and immediate relatives of the petitioners. The title deed was not returned and the petitioners were informed that the 4th respondent, who is son of respondents 5 and 6, is in custody of the title deed.

2. The petitioners state that on 27.07.2021 they received a notice from the 1st respondent-Bank claiming dues to the tune of ☐ 3 Crores. On enquiry, the petitioners learnt that the 4th respondent had obtained a loan of ☐ 3 Crores and the title deed of the property of the petitioners was mortgaged as security.

3. The signatures of the petitioners were forged in the loan documents. The Bank, however, issued Section 13(2) notice and sought to take over possession of the property. The Chief Judicial Magistrate's Court, Kasaragod issued order appointing Advocate Commissioner to take over possession of the property. As

per Ext.P2, the Advocate Commissioner reported that possession of the property has been taken. The petitioners filed OP(DRT) No.257/2022. This Court directed the Debts Recovery Tribunal to pass orders on the application moved by the 4th respondent. According to the petitioners, the 4th respondent has played a fraud on the petitioners.

4. The petitioners moved a criminal complaint before the Chief Judicial Magistrate as per Ext.P4 CMP No.3314/2023. The Chief Judicial Magistrate directed the police to register a crime. The petitioners state that the loan transaction is as a result of pure fraud and the petitioners cannot be penalised or dispossessed based on a fraudulent transaction. The petitioners therefore seek to quash Ext.P2 order dated 26.07.2023 in CMP No.216/2022 passed by the Chief Judicial Magistrate's Court, Kasaragod which recorded the report of the Advocate Commissioner.

5. I have heard the learned counsel for the petitioners and the learned Standing Counsel representing the respondents.

6. It is clear from the pleadings and arguments that the title deed of the property of the petitioners was pledged with the 1st respondent-Bank for a loan transaction in favour of the 4th respondent. The documents relating to the loan transaction bear the signatures of the petitioners. The petitioners allege that those signatures were forged and loan was taken fraudulently and that the petitioners have not mortgaged the property by way of security.

7. It is to be noted that the alleged loan papers are of the year 2017. When the Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the petitioners along with the 6th respondent filed OP(DRT) No.257/2022, in the year 2022. Till the year 2022, the petitioners had no case that the loan transaction was fraudulent. The petitioners filed the criminal complaint only on 14.09.2023.

8. In the circumstances of the case, as long as the loan documents are not found to be fraudulent, no interference can be made in the proceedings initiated by the 1st respondent-Bank invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The writ petition is therefore devoid of any merit and it is dismissed.

