(2014) 10 KL CK 0331

In the High Court Of Kerala

Case No : W.P. (C). No. 14455 of 2013 (F)

Aliyamma Varghese APPELLANT

Vs

The Joint Registrar RESPONDENT

Date of Decision : 24-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 10 KL CK 0331

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : James Abraham, Advocate for the Appellant; Biju Meenattoor, Govt. Pleader and M.G. Karthikeyan, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner is aggrieved with the refusal to re-convey the petitioner''s property mortgaged, for the satisfaction of a loan availed by the petitioner; which the respondent Bank purchased in the recovery proceedings initiated. The loan facility availed of from the respondent - Bank and the default committed, are admitted. The Bank having initiated recovery, obtained an award under section 69 and purchased the property in a sale conducted, which sale concluded with a conveyance dated 6.7.2006. Deed No. 1168/2006 of the Koothattukulam Sub Registrar Office, was executed in favour of the respondent-Bank.

2. Subsequent to that, the petitioner approached the Kerala State Farmer''s Debt Relief Commission, which granted an order by 1.10.2007. The order issued was one staying further proceedings pursuant to the notice. It is to be specifically noticed that when such an order was passed, the proceedings had concluded in a valid sale in favour of the Bank.

3. Eventually the application filed before the Kerala State Farmer''s Debt Relief Commission was allowed granting a relief of Rs. 70,000/- as per Ext. P3 and directing remittance of the balance amounts due in the account. The Debt Relief Commission also, did not take into account the fact that the loan itself stood

satisfied by the sale of the property effected in the name of the Bank. The Order thus passed by the Commission, is of no consequence insofar as the satisfaction of the loan pursuant to the sale conducted. The petitioner also did not choose to challenge the sale, despite admittedly, the petitioner being participated in the recovery proceedings and being well aware of the sale effected. The maximum the petitioner could have sought for, was the refund, of the relief allowed by the Commission. If credited to the Bank, such credit would have reduced the dues in the loan account to that extent. The purchase made by the Bank, without deducting such relief, would be for a price in excess of the amounts due in the loan. Any excess sale consideration definitely will have to be returned to the owner of the property mortgaged. In this instant case the relief was granted after the sale; even then that amount should have been immediately returned to the petitioner.

4. The petitioner, after Ext. P3, approached the Bank with Ext. P4; undertaking to remit the balance dues. The matter rested there, and it is very pertinent that there was no question of any balance remittance, since the loan stood satisfied by the purchase effected by the Bank. The petitioner also did not take any steps to get the property re-conveyed at that point of time. The petitioner''s contention is that the petitioner had been regularly making representations before the Managing Committee.

5. As per the decision of the Bank, disclosed in Ext. P6, the Bank decided to re-convey the property to the petitioner on payment of the entire defaulted amounts; despite the loan having been satisfied by the sale of the property. Such a decision was taken by the Bank as early as on 21.05.2008. The respondent Bank had also approached the Joint Registrar for sanction of the aforesaid decision under Rule 54(2) of the Kerala Co-operative Societies Rules, 1969. The Registrar having not passed any order, again a resolution was taken on 20.02.2009. This was also transmitted to the Joint Registrar for sanction.

6. All through the pending proceedings, the petitioner remained silent and did not take any measures either to expedite the sanction or to set aside the sale already made in favour of the Bank. The petitioner also did not offer before the respondent-Bank or before any authority the defaulted amounts, despite a resolution having been passed to re-convey the property. The petitioner could have very well approached this Court and sought for deposit of the amounts, pending consideration of the claim. But for an undertaking, now put forth, no effort was made to lay bare the bona fides. It is only later, in the year 2013 the petitioner filed the above Writ Petition.

7. The respondent Bank has specifically stated in its counter affidavit that the request made by the respondent-Bank for approval of the decision taken on 20.02.2009 was rejected by the Joint Registrar (General) by an Order dated 12.11.2009, itself. Definitely, if the petitioner had been diligent, the petitioner could have challenged the order dated 12.11.2009, which has been referred to, in the counter affidavit and a copy of which was handed over, across the Bar. The

petitioner having not taken the remedies at the proper time, this Court does not find any valid ground to interfere with the sale conducted in 2006 and the rejection of re-conveyance made in 2009; in a Writ Petition of 2013.

8. The learned counsel for the petitioner would place on record the decision of a Division Bench of this Court in Thampi Raj P.K. and others v. State Bank of Travancore and Others, 2012(4) KHC 232 wherein it was declared that the Banks are engaged in money lending business and should not indulge in real estate business with the borrowers'' property. The said finding of the Division Bench was on the peculiar facts revealed in the said case; with specific reference to the plight of the borrower''s family, the fact that the financing Bank had received rent from the property after it took possession of the same and ultimately the factum of a subsequent sale of the property for an astronomically higher amount, as compared to the dues that existed at the time of the sale in favour of the Bank. None of these facts exist, in the instant case.

9. It is also pertinent that the Division Bench specifically invoked the jurisdiction under Article 226 to grant relief in the said case. None can claim that the exercise of discretion under Article 226 is hence hedged in by the observations made therein and in all cases, whatever the facts be, whatever the delay occasioned and despite the borrowers having not resorted to legal remedies; universally, the property purchased in a Court auction/sale should be re-conveyed to the borrower on his undertaking to clear the loan dues with up-to-date interest. No such binding precedent is discernible in the afore cited decision nor can this Courts discretion be fettered by the observations made, on the peculiar facts.

10. The decision, on facts, would not be applicable since it is clear that the petitioner herein, had slept over her rights in the intervening period after the sale conducted in the year 2006. This Court declines exercise of the discretionary jurisdiction, insofar as any order of reconveyance of the property. It is also of relevance that though the respondent Bank had agreed to re-convey the property, in 2009, the Bank refuses such indulgence at present. The respondent Bank, however, has to pay the amounts received as relief, in the account, pursuant to Ext. P3. The amount of Rs. 70,000/- shall be refunded by the respondent Bank, to the petitioner with interest, from the date of receipt of the relief from the State Government till payment, at the rate applicable in the loan account, with cumulative quarterly rests, within a month of the date of receipt of the copy of this judgment. The Bank shall also give a written statement of computation of amount, along with the interest applied, at the time of payment.

The Writ Petition, is partly allowed without any order as to costs.