(2016) 04 MAD CK 0018

In the Madras High Court

Case No : Review Application (Writ) No. 302 of 2015

Ambalavanan APPELLANT

Vs

K. Kailasam RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4)
Security Interest (Enforcement) Rules, 2002 — Rule 8

Citation : (2017) ACD 366

Hon'ble Judges : Mr. Satish K.Agnihotri and Mr. K.K.Sasidharan, JJ.

Bench : Division Bench

Advocate : Mr. R. Gandhi, Senior counsel, for Mr. R.G. Narendhiran, Advocate, for the Petitioner; Mr. AR.L. Sundaresan, Senior Counsel, for Mr. V. Adhivarahan, Advocate, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

K.K.Sasidharan, J.—This review application is filed by the auction purchaser to review the order dated 2 September 2015 in C.R.P.(NPD) No.2210 of 2015, primarily on the ground that while allowing the revision petition filed by the first respondent, direction was not issued to the Bank to refund the sale amount deposited by him along with the stamp duty and registration fee, with interest.

2. The first respondent availed financial assistance from the SAF Branch of Canara Bank, Coimbatore. Since the loan amount was not repaid as per schedule, the Bank initiated proceedings under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, [hereinafter referred to as ''SARFAESI Act'']. The first respondent challenged the measures taken by the Bank before the Debts Recovery Tribunal, Coimbatore. The order passed by the Debts Recovery Tribunal (hereinafter referred to as the Tribunal) was confirmed by the Debts Recovery Appellate Tribunal. The matter

was taken up before this Court on multiple occasions by way of civil revision petition and Writ Petition.

3. The Debts Recovery Appellate Tribunal [hereinafter referred to as the Appellate Tribunal] in the earlier round of litigation, recorded a finding that the sale was made in violation of the statutory rules.

4. The Bank sold the property in public auction. The applicant participated in the auction and purchased the property. The Bank executed the document in his name after collecting the sale amount. The Appellate Tribunal considered the challenge made by the first respondent to the sale in R.A.(S.A.)No.131/2011. The Appellate Tribunal set aside the order of the Tribunal after recording a finding that the sale was made in violation of the statutory rules and that it deserves to be set aside but denied relief solely on the ground that appropriate relief was not prayed for by the first respondent herein. The said order was challenged before this Court.

5. This Court set aside the order passed by the Tribunal and allowed the civil revision petition with the following findings :-

"41. We are not in a position to agree with the reasonings recorded by the DRAT for the following reasons.

(i) The Tribunal found that the sale was made in violation of the Statute and as such, it is liable to be set aside. In fact while concluding the order, the DRAT observed that albeit the sale was not in accordance with the Rules, as the appellant allowed the issuance of the sale certificate and did not question the same, he is not entitled to question the sale at a later point of time.

(ii) The confirmation of sale is a consequential action directly referable to the factum of sale.

(iii) The petitioner filed I.A.No.877 of 2010 for amendment of the prayer. The said application was not taken independently. It was disposed of along with S.A.No.34 of 2010 by order dated 31 May 2011. The final order was challenged in R.A.(S.A.) NO.131 of 2011. The order in I.A.No.877 of 2010 was part of the final order dated 31 May 2011 in S.A.No.34 of 2010, which was challenged in appeal by the petitioner.

(iv) In the appeal, the prayer was to set aside the order dated 31 May 2011 in S.A.No.34 of 2010. The order dated 31 May 2011 would include the order in I.A.No.877 of 2010. Therefore the DRAT was not correct in its observation that the order in I.A.No.877 of 2010 has become final on account of the failure on the part of the petitioner to challenge it before the Appellate Tribunal.

(v) The confirmation was made pursuant to the sale made on 5 March 2010. When it is made out that the sale itself was bad in law the confirmation would go automatically. There is no need for a further prayer to set aside the sale.

(vi) The petitioner has made a prayer requesting the DRAT to grant other reliefs befitting the facts and circumstances of the case. The DRAT is having jurisdiction to mould the relief taking into account the peculiar facts and circumstances of the case. Merely because confirmation was made and sale certificate was issued subsequently, it cannot be said that the petitioner is not entitled to canvass points with regard to the illegal sale.

(vii) The confirmation of sale itself is a disputed question of fact, in view of the observation made by the Division Bench in its order dated 5 March 2013 in W.P.No.27569 of 2012. It reads thus:

"6............. Ld. Counsel stated that the sale certificate has been issued by the Authorised Officer and that no confirmation letter has been given to the Auction Purchaser so far."

(viii) Paragraph 17 of the order dated 8 October 2013 in Review Application Nos.94 and 143 of 2013 clearly shows that the Bank itself has taken a stand that no confirmation letter was communicated to the auction purchaser. The said finding was given on the basis of the statement made by the Bank. Therefore it is very clear that there was no confirmation before issuing the sale certificate. Such being the factual position, the DRAT was not correct in arriving at a finding that the very prayer has become infructuous on account of the issuance of sale certificate and therefore the petitioner is not entitled to a remedy not withstanding the invalidity of the auction sale.

42. The petitioner very clearly demonstrated that the auction sale was in violation of Rules 8 and 9(1) and the said contention was accepted by DRAT by giving reasons. When it is made out that the auction was conducted in utter violation of the mandatory provisions of the Statute, the DRAT is bound to set aside the sale. When the invalidity goes to the root of the matter, technicality has no say. We are therefore of the view that the DRAT was not correct in dismissing the appeal in spite of its finding that the sale was conducted in utter violation of the statutory rules. The petitioner is therefore entitled to succeed."

6. According to the applicant, the Bank is bound to refund the amount paid by him along with the stamp duty and registration charges with interest @ 18%.

7. The learned Senior counsel for the applicant contended that the applicant has purchased the property pursuant to the auction notification issued by the Bank. The sale was ultimately set aside by this Court. The Bank was expected to refund the amount to the applicant with interest @ 18%. It was only on account of the indifferent attitude taken by the Bank, the applicant was constrained to file this review petition.

8. The learned Senior counsel for the second respondent contended that the Bank has already refunded the amount to the applicant. The liability to pay interest lies with the first respondent, who borrowed money from the Bank. Since the applicant purchased the property in public auction knowing fully well that the sale would be challenged before Courts, he cannot be heard to say that he

should be paid interest for the amount deposited by him.

9. The Bank issued the sale notice to auction the property mortgaged by the first respondent. The applicant participated in the auction. The bid submitted by the applicant was accepted by the Bank and the sale was confirmed in his name. The applicant paid a sum of Rs. 65,07,000/- to the Bank. The amount was deposited on 27 August 2010. The sale was subsequently set aside by this Court. The Bank refunded the amount deposited by the applicant. However, interest was not paid. The Bank cannot be heard to say that the purchaser of the property is not entitled to interest. The money was deposited with the Bank. The Bank was having the money throughout the proceedings. The Bank utilized the money. The Bank charges different rates for different transactions. The Bank is charging 14% for mortgage loans. There are other transactions wherein the Bank charges even 18% interest per annum. Such being the factual position, the Bank cannot be heard to say that the applicant has to be satisfied only with the principal amount. We are of the view that the Bank having kept the amount for years together, is bound to pay interest to the applicant.

10. The Bank has already refunded the principal amount to the applicant. We direct the second respondent to pay the amount spent by way of stamp duty and registration charges, along with interest @ 9% p.a. within a period of two weeks from the date of receipt of a copy of this order.

11. The review application is disposed of with the above direction. No costs.

