(2017) 03 GUJ CK 0002

In the Gujarat High Court

Case No : Misc. Civil Application (For Review) No. 439 of 2017 In Special Civil Application No. 20847 of 2015

Aniruddhsinh Pratapsinh Gohil — APPELLANT

Vs

Gruh Finance Limited — RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17

Citation : (2017) 2 BC 462

Hon'ble Judges : Mr. N.V. Anjaria, J.

Bench : Single Bench

Advocate : Mr. N.K. Majmudar, Advocate, for the Applicant No. 1; Advance Copy Served to GP/PP, for the Opponent No. 2; Mr. Harshadray A Dave and Mr. Shashvata U. Shukla, Advocates, for the Opponent No. 1

Final Decision : Dismissed

Judgement

Mr. N.V. Anjaria, J.(Oral)—The captioned Miscellaneous Civil Application was originally required to be notified on 1st Marcy, 2017 as per order dated 27th February, 2017. However, on 01st March, 2017 only Civil Application for condonation of delay was notified.

1.1 At the time of hearing of the Civil Application, acting on a mistake that the captioned Miscellaneous Civil Application was also notified, learned advocates for the parties proceeded to argue the main Miscellaneous Civil Application which had resulted into an order. However after passing of the order and transferring the same, since it was noticed that the order could not have been passed as the Miscellaneous Civil Application was not notified, the order passed in Civil Application No.2734 of 2017 was immediately recalled.

1.2 Thereafter learned advocate for the respondent drawing attention of the Court to the said aspect wanted to move a Note for Speaking to Minutes, which was not necessary as the order was by the time, was already recalled as above.

1.3 The office has now notified main Miscellaneous Civil Application today on board.

1.4 Now the following order is passed in the captioned Review Application.

2. Heard learned advocate Mr. N.K. Majmudar for the applicant and learned advocate Mr.Harshadray Dave for the respondent Gruh Finance Limited.

3. It may be stated at the outset that the present applicant was not a party respondent in Special Civil Application No.20847 of 2015. The said petition came to be decided by judgment dated 07th December, 2016. It appears that the Letters Patent Appeal No.275 of 2017 along with the civil application was preferred by the applicant which culminated into order dated 10th February, 2017 passed by the Letters Patent Bench.

3.1 The said order may be reproduced hereinunder.

"Learned counsel appearing on behalf of the applicant does not press the Civil Applications as well as Letters Patent Appeal with a liberty to move appropriate application before the learned Single Judge who disposed of Special Civil Application No. 20847 of 2015, for review/recall of the judgment and order passed in Special Civil Application No. 20847 of 2015, which is impugned in the present Letters Patent Appeal.

Permission is accordingly granted. Civil Application No. 2611 of 2017 with Letters Patent Appeal [Stamp] No. 275 of 2017 and Civil Applications [Stamp] No. 1722/2017 & 1723/2017 are dismissed as not pressed of with the above liberty.

As and when application is preferred by the applicant, the same be considered in accordance with law on its own merits, without in any way influenced by withdrawal of the present proceedings."

3.2 It may be recollected that in the main petition, the original petitioner Gruh Finance Limited, called in question the order passed by the District Magistrate under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The principal ground on which the order of the District Magistrate was assailed was that the District Magistrate had travelled into the arena of adjudication, which was not within his jurisdiction, while entertaining the application of the bank under Section 14 of the Act.

3.3 After considering various decisions on the aspect, this court noted as under:-

"Looking at the order of the District Magistrate rejecting application under Section 14 of the SARFAESI Act, the said authority has reasoned that the Bank gave finance to two different persons by mortgaging one property; that though loan is obtained, documents were lying with the different Bank; that the possession of the property remained with the seller and that the parties have been litigating for their civil rights before the civil court as well as before the High Court. It was reasoned that since in relation to the secured assets there were questions of law involved and the parties were litigating, order under

Section 14 could not be passed. The District Magistrate also referred to Civil Suit No.279 of 2013, order below Exhibit 22 passed in the Civil Suit, further observing that the Civil Suit was pending and was not finally decided. The District Magistrate thereafter stated that in view of pendency of the civil litigation, notice was necessary to be issued to the occupant of the property. It held that for all those reasons, decision was not required to be taken for handing over of the possession of the secured assets to the Bank."

3.4 Finally allowing the matter, the court held as under:

"7. For the foregoing discussion and reason, the present petition is required to be allowed. The order dated 23rd October, 2015 passed by the District Magistrate, Rajkot rejecting the application of the petitioner under Section 14 of the SARFAESI Act, 2002 is hereby set aside. The District Magistrate shall pass a fresh order in accordance with law within three days from the date of receipt of the writ of this order for rendering the assistance to the petitioner for taking possession of the mortgaged properties/secured assets.

8. It is needless to state that this Court has not expressed anything on merits on the rights and contentions of the parties which they may agitate in accordance with law before the appropriate adjudicatory forum. Such rights and remedies are open and available."

4. Praying to recall the aforesaid order dated 07th December, 2016 passed in Special Civil Application No.20847 of 2015, it was contended by learned advocate for the applicant that the applicant has got in his favour a registered gift deed executed and despite he being in occupation by virtue of deed of gift, the property was mortgaged with the bank. In other words, the applicant claims that he is holder of the secured assets under a gift deed. It was submitted that in view of the said fact and the capacity of the applicant, it was incumbent on the part of the original petitioner to make him party in the proceedings before the Magistrate. He further submitted that a civil suit was also instituted by the applicant and the matter is today pending before the supreme court. He, therefore, submitted that it was responsibility on part of the original petitioner to apprise the court regarding all those facts.

4.1 On the other hand learned advocate for the original petitioner submitted that this application for review is throughly misconceived. He submitted that even if the petitioner has a grievance, he has a remedy under section 17 of the SARFAESI Act before the Debt Recovery Tribunal by preferring an appeal. It was submitted that the applicant falls within the connotation of "aggrieved person'' under the said section. It was submitted that the order passed by this court dated 07th December, 2016 under review permits original petitioner to take the possession. It was further submitted that the present applicant has to be attributable with the knowledge of the proceedings under the SARFAESI Act as the Gruh Finance Ltd. was a party in the suit proceedings. It was submitted that the present attempt to seek review is not well-meant and is intended to buy time by this way or that way.

5. It is well settled that review is not rehearing of the matter. Also it is trite that the review is not to be converted into appeal proceedings. New grounds cannot be urged in the guise of the review. As far as the merits of review prayer is concerned, no ground whatsoever is made out the applicant to review the order; nor any such ground found to be existing.

6. It cannot be gainsaid that the petitioner is an ''aggrieved person'' within the meaning of section 17 of the SARFAESI Act and he would have a remedy of preferring an appeal before the Tribunal. The Tribunal has powers to adjudicate the contentions which is sought to be raised by the applicant herein. When the applicant has such remedy available, the review is throughly misconceived even otherwise. What could be only observed in favour of the applicant in this proceedings is that if the applicant avails the remedy and prefer an appeal before the Debt Recovery Tribunal, the Tribunal shall consider the same in accordance with law and it shall be without being influenced by the order under review or this order, and on merits.

7. The present application is rejected. Notice is discharged.

