

(2019) 10 RAJ CK 0082
In the Rajasthan High Court
Case No : Civil Writ Petition No. 18030 Of 2019

Ashok Kumar Mehta

APPELLANT

Vs

Bank Of Baroda And Ors

RESPONDENT

Date of Decision : 24-10-2019

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 18
Constitution Of India, 1950 — Article 226

Citation : (2019) 10 RAJ CK 0082

Hon'ble Judges : Ashok Kumar Gaur, J

Bench : Single Bench

Advocate : Anuroop Singhi

Final Decision : Dismissed

Judgement

The instant writ petition has been filed by the petitioner challenging the order dated 22nd October, 2019 passed by Debts Recovery Tribunal, Jaipur (for short "the Tribunal"). The petitioner has also prayed for a direction against the respondents for not confirming the sale of the secured assets.

Learned counsel for the petitioner submits that the order dated 22nd October, 2019 has been passed by the Tribunal without considering the facts that the petitioner has paid substantial amount to the respondent Bank and he always complied with the directions issued from time to time by the Tribunal for depositing the amount. Learned counsel for the petitioner has also produced statement/details of the amount deposited by the petitioner.

Learned counsel submitted that till date, the petitioner has paid Rs.2,77,03,000/-.

Learned counsel submitted that the respondent Bank has proceeded in arbitrary manner by putting property of the petitioner on auction and further, they have also taken steps to confirm the sale of the mortgaged property of the petitioner.

Learned counsel submitted that even after passing of the impugned order on

22nd October, 2019, the petitioner paid Rs.64,03,000/- on 23rd October, 2019.

Learned counsel submitted that in view of the entire payment, being made by the petitioner, necessary directions are required to be issued by this Court to restrain the respondent Bank to confirm the sale and further, this Court is required to direct the respondents to release all the title documents of the secured assets.

Learned counsel submitted that though the order, passed by the Tribunal, is an appealable order, considering the urgency in the matter and injustice against the petitioner, this Court is required to exercise extra ordinary power under Article 226 of the Constitution of India.

Learned counsel submitted that filing of appeal before the Debts Recovery Appellate Tribunal (for short "the Appellate Tribunal") is an illusory remedy and the petitioner would be put in such a condition where damage, which is done by confirmation of sale, will not be remedied by filing appeal.

Learned counsel submitted that bank officials are determined to take extreme steps to confirm the sale and they have got only one bidder, who has been given the property on reserve price. Learned counsel submitted that the petitioner had mortgaged as many as four properties but the respondent Bank, in a most arbitrary manner, has proceeded to sale the land of the petitioner, which is an agricultural land, situated in Khasra Nos.533, 534, 535 MI, 536, Revenue Village Tulsi Das ki Saray, Udaipur (Raj.) admeasuring 39300 Sq. Ft.

I have considered the submissions made by learned counsel for the petitioner and perused the record of the case.

This Court finds that the order passed by the Tribunal on 22nd October, 2019 is deciding the IA No.1289/2019, filed by the petitioner-applicant on 24th September, 2019. The Tribunal, while considering the previous order-sheets, has come to the conclusion that enough time was granted to the petitioner-applicant to deposit the outstanding amount and since, all the proposals, which were given earlier, have resulted into failure and as such, no further time was granted.

This Court finds that by the order dated 22nd October, 2019, the Tribunal has given liberty to the Bank to proceed ahead to confirm the sale without further delay.

This Court finds that the petitioner has statutory alternative remedy of filing appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The petitioner is also entitled to seek interim order or any other appropriate order while filing appeal before the Appellate Tribunal. Since, this Court does not have jurisdiction to entertain the present writ petition, cannot pass the orders, which have been sought in the present writ petition.

At this juncture, learned counsel for the petitioner submitted that at least, some

protection may be granted to the petitioner for the time being, as he has to file appeal before the Appellate Tribunal and disposing of the appeal or hearing of the stay application may take some time.

This Court is afraid to pass such order, as this Court, under Article 226 of the Constitution of India, cannot entertain the writ petition.

This Court further finds that if the petitioner makes out a case for interim relief before the Appellate Tribunal and further, the Appellate Tribunal, after considering all the facts and subsequent events which have taken place, like deposition of entire amount, etc., can pass necessary orders to meet the contingency.

This Court further finds that the petitioner has to satisfy the Appellate Tribunal with regard to the relief, which is claimed in the present writ petition, including, interim relief.

This Court does not have jurisdiction to entertain the present writ petition and as such, the same is dismissed.