(2014) 12 KAR CK 0252

In the Karnataka High Court

Case No : Writ Petition Nos. 18725-726/2014 (GM-DRT)

Ashwath APPELLANT

Vs

Corporation Bank RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2)

Citation : (2014) 12 KAR CK 0252

Hon'ble Judges : D.H. Waghela, C.J;Budihal R.B., J

Bench : Division Bench

Advocate : M. Sivappa, Sr. Counsel a/w Anil Kumar S., Advocate for M. Sivappa Associates, Advocate for the Appellant; V.B. Ravishankar and M.R. Patil, Advocates for Veerendra Patil, Advocate for the Respondent

Judgement

D.H. Waghela, C.J.—Petitioner has invoked articles 226 and 227 of the Constitution with the prayers to quash the order dated 23.1.2014 of Debt Recovery Appellate Tribunal, Chennai in appeal No. RA(SA) 136/2008 filed by the 1st respondent-bank, as also the even dated order in RA(SA) 126/2008 filed by the 2nd respondent. It is also prayed that the original order dated 15.2.2008 of Debt Recovery Tribunal (''DRT'' for short), Bangalore in ASA No. 136/2007 may be restored.

2. There is no dispute about the basic facts that petitioner had received notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (''SARFAESI'' for short) and possession was taken on 13.5.2006, even as the petitioner''s immovable properties were mortgaged to the respondent No. 1-bank and the outstanding balance due to the bank was to the tune of Rs. 3,27,797/-. The petitioner had approached the DRT, Bangalore with ASA 136/2007, wherein by order dated 15.2.2008, the DRT gave time of six months to the petitioner for regularization of his account. If the petitioner were to fail in regularizing his account, the bank

was declared to be at liberty to initiate fresh proceedings for recovery of its debt. If in the meantime possession of the mortgaged property were already delivered to the auction purchaser, it was directed to be returned to the petitioner herein. That order was carried in appeal before the Debt Recovery Appellate Tribunal (DRAT for short), Chennai in RA(SA) 126/2008, which was disposed on 23.1.2014 by the impugned order, declaring that the order in appeal of the DRT was in excess of jurisdiction and liable to be set aside. Thus, in short, appeal was allowed by the impugned order and the order of DRT was set aside.

3. Apart from rival contentions raised orally and in the pleadings, there was limited consensus among the parties including respondent No. 2 who claimed to be auction purchaser of the property mortgaged to the bank. Learned counsel for the petitioner has, by filing memo dated 4.12.2014, clearly stated as under:

"The petitioner submits in pursuance of the order of the DRT in No. ASA 136/2007 dated 15.2.2008 petitioner paid entire loan amount of Rs. 3,12,000/- on 25.4.2008 of Rs. 1,00,000/- and on 2.5.2008 of Rs. 2,75,416/- to the 1st respondent Bank and the 1st respondent Bank issued loan clearance certificate to the petitioner. On issuance of the loan closure certificate the original title deeds of the property which (sic) pledged with the Bank as security has been returned to the petitioner and petitioner is in possession of the property. The 2nd respondent has withdrawn the amount deposited towards auction purchase from the 1st respondent Bank, the petitioner is already absolved from his liability as he has discharged the entire loan amount even before the filing of the appeals by respondents 1 and 2 before DRAT, Chennai. It is opened to the 2nd respondent to make any claim whatsoever against the 1st respondent. Hence this memo."

4. The facts stated in the Memo are not denied or controverted on behalf of the respondents. The limited consensus among the parties is to the effect that even as the petitioner herein is absolved of the liability and responsibility towards the respondent No. 1-bank, the respondent No. 2 having been the auction purchaser and having incurred loss on account of purchase of property at the hands of the bank and also having incurred interest on the loan taken for the purpose of purchasing the property, he has an actionable claim against the respondent No. 1-bank. In view of the other fact that respondent No. 2 happens to be an officer of the respondent No. 1-bank and has retired by now, it would be open for respondent Nos. 1 and 2 to either settle their accounts amicably in accordance with the policy of the bank or work out the remedy against each other without bringing into question the right, title and interest of the petitioner in the property, which was mortgaged to the bank.

5. Accordingly, in terms of the above understanding and without prejudice to the rights of respondent Nos. 1 and 2 against each other, petition is disposed as partly allowed, with the declaration that the petitioner''s loan account in respect of the housing loan and the dispute regarding property mortgaged to the bank, shall stand resolved and closed. It can be hoped that respondent Nos. 1 and 2 having erstwhile relationship of master and servant and respondent No. 2 having

had his account with the respondent No. 1-bank, they would be able to settle their matter inter se, failing which, the aggrieved party shall have liberty to take appropriate legal action, without bringing in the petitioner as a party.

6. The petition stands disposed accordingly and the impugned order of DRAT is set aside by consent, with no order as to cost.

