(2012) 02 KAR CK 0003

In the Karnataka High Court

Case No : Writ Appeal No. 10188 of 2011

Authorized Officer, Karnataka Bank Ltd. APPELLANT

Vs

M/s Bharat Engineering Company RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13 (2), 14, 14 (1), 14 (2)

Citation : (2012) 02 KAR CK 0003

Hon'ble Judges : H.G. Ramesh, J;A.S. Pachhapure, J

Bench : Division Bench

Advocate : Uday P. Honguntikar, for the Appellant; N.B. Diwanji, Advocate for R1 and Sri Manvendra Reddy, Government Advocate for R2 and R3, for the Respondent

Final Decision : Allowed

Judgement

H.G. Ramesh, J.—By consent of the learned Counsel on both sides, the appeal is heard on merits and is being disposed of by this judgment. This appeal is by the Karnataka Bank Ltd. and is directed against the order dated 8th July 2010, passed by a learned Single Judge of this Court allowing writ petition No. 80720/2010 filed by respondent No. 1-borrower. Facts in brief: Respondent No. 1 had availed a loan of Rs. 30,00,000/- from the appellant-Bank. Demanding repayment of the said loan, the Bank had issued a notice u/s 13(2) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002, (''the Act'' for short). Since respondent No. 1 did not comply with the notice, the Bank filed an application before the District Magistrate, Gulbarga, u/s 14 of the Act to take possession of a secured asset. The District Magistrate by his order dated 10.10.2009 had directed the Tahsildar to take possession of the secured asset. It is relevant to refer to the District Magistrate''s order dated 10.10.2009:

In view of the foregoing facts and in exercise of the powers conferred u/s 14 of

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. I, Dr. R. Vishal, IAS, Deputy Commissioner & District Magistrate, Gulbarga District do hereby direct the Tahsildar Gulbarga to take possession of the property of Smt.Kirandevi Koralli all the piece of the property bearing CMC No. 1-9/30, Plot No. 55, Sy. No. 38, Brahmpur, Khuba Layout Gulbarga together with construction, if any, and handover the property to the Authorised Officer, Karnataka Bank Ltd., Mahaveer Circle, Kankanady, Mangalore.

The Boundary of the property is as follows:....

(underlining supplied)

Challenging the above order, the borrower i.e. Respondent No. 1 had filed the aforesaid writ petition before this Court. The learned Single Judge, by the order impugned herein, by following a judgment rendered by a learned single Judge of this Court in W.P. No. 2222/2006 (DD 2.3.2006) held that the District Magistrate could not have delegated his power to the Tahsildar to take possession of the secured asset and accordingly allowed the writ petition by setting aside the order of the District Magistrate referred to above to the extent it directed the Tahsildar to take possession of the secured asset.

2. Learned Counsel appearing for the appellant-Bank contended that the view taken by the learned Single Judge is contrary to sub-section (2) of section 14 of the Act as sub-section (2) permits the District Magistrate to direct any other officer to take possession of any secured asset. In support of his contention, he referred to a Division Bench judgment of the Bombay High Court in Puran Maharashtra Automobiles and Satyam Automobiles Vs. The Sub Divisional Magistrate, The Naib-Tahasildar (Revenue-1) and The Janata Sahakari Bank Ltd., .

3. To examine the contention urged, section 14 of the Act requires to be referred:

14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.- (1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may. for the purpose of taking possession or control of any such secured asset, request. in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be. the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto: and

(b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate of the District Magistrate may take or

cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

(emphasis supplied)

We will now refer to para 17 of the Bombay High Court judgment Puran Maharashtra Automobiles and Satyam Automobiles Vs. The Sub Divisional Magistrate, The Naib-Tahasildar (Revenue-1) and The Janata Sahakari Bank Ltd., wherein the question of law raised is answered in favour of the appellant- Bank:

17. Taking into consideration that the nature of powers that are exercised by the District Magistrate or Chief Metropolitan Magistrate u/s 14 of the said Act are purely executioner in nature and particularly when no element of quasi judicial functions or application of mind is required while exercising the said powers, we are unable to accept the contention of the appellants, that the District Magistrate is a persona designata and that he cannot delegate the powers to other officer. In any case Sub-section (2) of Section 14 of the said Act permits the District Magistrate or Chief Metropolitan Magistrate to take steps for giving effect to the provisions of Sub-section (1) of Section 14 of the said Act.

4. In our opinion, in view of sub-section (2) of Section 14 of the Act, it is perfectly permissible for the Chief Metropolitan Magistrate or the District Magistrate to take such steps himself, or may cause to be taken such steps, as may, in his opinion, be necessary for the purpose of securing compliance with the provisions of sub-section (1) of section 14 of the Act. The language employed in sub-section (2) would clearly permit the District Magistrate to direct any other officer to take possession of any secured asset. Accordingly, we hold that it is open to the District: Magistrate to delegate the power conferred on him u/s 14(1) of the Act to take possession of any secured asset, to any other officer. Hence, we find no legal infirmity in the order dated 10.10.2009 passed by the District Magistrate, Gulbarga, which is referred to above. The view taken by the learned Single Judge is contrary to the clear language employed in sub-section (2) of Section 14 of the Act. In the result, we make the following order:

The impugned order dated 8th July 2010, made in W.P. No. 80720/2010 is set aside; W.P. No. 80720/2010 is dismissed. The appeal is accordingly allowed. In view of allowing of the appeal, I.A. No. 2/2011 filed by the appellant does not survive for consideration; it stands disposed of accordingly.

Appeal allowed.

