

(2008) 02 MAD CK 0200

In the Madras High Court

Case No : Writ Appeal No. 163 of 2008, Writ Petition No. 1634 of 2008, M.P. No. 1 of 2008 in W.A. No. 163 of 2008 and M.P. No's. 1 and 2 of 2008 in Writ Petition No. 1634 of 2008

B. Jagadeesh

APPELLANT

Vs

The Union Bank of India

RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(3A), 13(4), 17, 31

Citation : (2008) 02 MAD CK 0200

Hon'ble Judges : S.J. Mukhopadhaya, J; M. Venugopal, J

Bench : Division Bench

Advocate : T.S. Sivagnanam, for the Appellant; Srinath Sridevan, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—As the parties in both the Writ Petition and the Writ Appeal are one and the same, the parties are arrayed as per the rank in the Writ Petition.

2(i). The petitioner who is the borrower, preferred W.P. No. 1634 of 2008 against the notice issued by the second respondent-Union Bank of India in Reference RO:LSD 800, dated 3.9.2007 and the consequential Tender-cum-Auction Sale Notice, dated 28.12.2007. Further prayer has been made to forbear the respondents from in any manner interfering with the peaceful possession and enjoyment of the agricultural lands in Survey Nos. 91/11, 91/25, 91/26, 91/24, 91/20, 91/25, 91/22, 91/23 and 91/21, Mulligur Village, measuring a total extent of 8.28 hectares, approximately 20.45 acres.

(ii) The aforesaid Writ Petition was initially heard by the learned single Judge on a petition for interim stay and by the impugned order dated 25.1.2008, the following conditional order of interim stay was passed:

2. Considering the facts and circumstances of the case, there will be an order of interim stay on condition that the petitioner shall pay a sum of Rs. 25,00,000/- (Rupees twenty five lakhs only) before 29.1.2008, failing which, the interim stay granted shall stand cancelled automatically without further reference to this Court.

The respondents are at liberty to proceed further in case of any default of payment.

(iii) Having asked the petitioner to pay a sum of Rs. 25 lakhs, the petitioner preferred Writ Appeal No. 163 of 2008 against such part of the interim order. In this background, we heard both the Writ Appeal and Writ Petition together on merits for their final disposal.

3. From the pleadings and records, it appears that the demand notice dated 3.9.2007 issued u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the Act") by the respondents-Union Bank of India (for short, "the Bank"). In the reply dated 17.10.2007 filed u/s 13(3-A) of the Act, the following pleas were taken by the petitioner:

(i) The claim made in the notice already formed part of the appeal filed by the petitioner which is pending in O.S.(S). No. 87 of 2006 and therefore, the question of making a subsequent demand under a fresh notice does not arise.

(ii) Notice u/s 13(2) is defective, since it does not disclose the execution of loan documents, nor it reflects as to on what interest the amount as alleged as outstanding had been claimed.

(iii) The very invocation of the notice as against an agricultural property is not sustainable in view of Section 31(i) of the Act.

4. The property being agricultural property, similar pleas have been taken by the petitioner before this Court. It is submitted by learned Counsel appearing for the petitioner that the respondents have not disputed the fact that the land in question is an agricultural property and thereby, the provisions of the Act are not attracted.

5. Learned Counsel appearing for the Bank referred to the reply submitted by the Bank, dated 27.10.2007 and in the grounds shown in the letter dated 27.10.2007 in reply to the petitioner's objection, it is only stated that the property offered as collateral by the petitioner in the account, does not come under the purview of the exemption laid down under the Act. Further, it is stated that the demand notice dated 3.9.2007 does not form part of the appeal filed by the petitioner, which is pending in O.A.(S). No. 87 of 2007.

6. We have heard the learned Counsel appearing for the parties and noticed the rival contentions.

7(i). It is not in dispute that the provisions of the Act will not apply in certain

cases as stipulated u/s 31 of the Act, including any security interest of created in agricultural land. But that is a question of fact to be determined taking into consideration the nature of the land; whether the security interest has been created on an agricultural land or not, as in the present case, in their reply, the Bank has disputed the fact that the land is covered u/s 31 of the Act.

(ii) Further, it appears from the submissions and pleadings that the Firm availed two loans and the petitioner and his brother availed two separate loans and in regard to one of them, the O.A. No. 87 of 2006 is pending before the Tribunal at Coimbatore. As u/s 17 of the Act, in the present case, including the borrower, if aggrieved by any measures referred to u/s 13(4) of the Act taken by the secured creditors, has a right to prefer an application along with the requisite fee before the Debts Recovery Tribunal, we are of the view that instead of deciding the case under Article 226 of the Constitution of India, the petitioner should avail the alternative remedy.

8(i). As we find that the auction-sale notice was issued on 28.12.2007 and in the normal course, application can be filed u/s 17 of the Act within 45 days from the date on which such measures have been taken, we allow the petitioner to prefer an application u/s 17 of the Act against the demand notice dated 3.9.2007 and the auction notice dated 28.12.2007, within three weeks from today.

(ii) If any application is preferred by the petitioner before the Tribunal having jurisdiction over the matter, within the aforesaid period of three weeks, the Tribunal, after issuing notice, will fix an early date and decide the matter on merits, after hearing the parties. The Tribunal shall also decide the preliminary issue whether the demand notice dated 3.9.2007 which was issued u/s 13(2) of the Act and the auction-sale notice dated 28.12.2007 which was issued u/s 13(4) of the Act, are maintainable, in view of Section 31(i) of the Act.

(iii) The petitioner is given liberty to file a petition for interim order before the Tribunal.

(iv) The respondents should not auction-sale the property in question for a period of five weeks from today.

(v) In case the petitioner fails to prefer any application or the petition for interim order, within the time stipulated above, the present order shall stand recalled.

9. In view of the above observation and direction, we are of the view that the Writ Appeal has become infructuous.

10. Both the Writ Appeal and Writ Petition are disposed of with the aforesaid observation and direction. No costs. The Miscellaneous Petitions are closed.