

(2015) 10 MAD CK 0141

In the Madras High Court

Case No : C.R.P. No. 4134 of 2014 and M.P. No. 1 of 2014

B. Kamal

APPELLANT

Vs

Ramasamy & Co. and Others

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 17

Citation : AIR 2015 Mad 301

Hon'ble Judges : Satish K. Agnihotri and K.K. Sasidharan, JJ.

Bench : Division Bench

Advocate : Kuberan for Rank Associates, for the Appellant; S. Sethuraman, for the Respondent

Final Decision : Disposed Off

Judgement

K.K. Sasidharan, J.—The apprehension that the proceedings challenging the Sale Certificate would be decided in the absence of the auction purchasers appears to be the reason which made the petitioner to file this Civil Revision Petition invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

Brief facts:

2. The first respondent availed financial assistance from the Vadapalani Branch of Indian Bank. Since the loan amount was not paid as per schedule and the account was found non performing, the Bank initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"). The property bearing Plot No. 5, Varghese Avenue, Ashok Nagar, Chennai which was offered as security was put in auction. The petitioner along with respondents 2 to 4 purchased the property pursuant to the sale notification. The SARFAESI Application filed by the first respondent along with three others, was dismissed by the Debts Recovery Tribunal (hereinafter referred to as "DRT"). The

related appeal was allowed by the Debts Recovery Appellate Tribunal, Chennai (hereinafter referred to as "DRAT"). The writ petition filed against the order passed by the DRAT was allowed by a Division Bench of this Court in W.P. No. 292 of 2013. The review petition to review the order in W.P. No. 292 of 2013 was also dismissed by the Division Bench. Thereafter the first respondent filed a SARFAESI application before the DRT, Chennai to set aside the sale certificate. The application was dismissed as not maintainable. The said order was challenged before the DRAT. The DRAT entertained the appeal and granted an order of interim stay. It is the said order which is under challenge in this Civil Revision Petition.

The contentions in the Counter Affidavit:

3. The first respondent through its partner filed a counter affidavit wherein it was contended that the validity of the sale certificate was not an issue in W.P. No. 292 of 2013. The Court was concerned only with the application filed for amendment of the petition to challenge the sale proceedings. The Division Bench was pleased to observe that the proper remedy was only to challenge the sale specifically by filing an independent SARFAESI application. The present application before the DRT was therefore in accordance with law.

Submissions of parties:

4. The learned counsel for the petitioner contended that though caveat was lodged, reasonable opportunity was not given to the petitioner to oppose the appeal. According to the learned counsel, the names of auction purchasers were deleted from the array of parties and thereafter only the appeal was entertained. To a query from the Court, the learned counsel submitted that the petitioner would be satisfied in case he is permitted to take part in the appellate proceedings.

5. The learned counsel for the first respondent while supporting the impugned order submitted that the auction purchasers are still parties to the proceedings before the DRAT. According to the learned counsel, the order in question was passed in the presence of the learned counsel for the petitioner and respondents 2 to 4. The contra statement is now made only to make out a case in the Civil Revision Petition.

6. We have also heard the learned counsel for the Bank.

Analysis:

7. The fifth respondent (hereinafter referred to as "Bank") initiated proceedings under the SARFAESI Act against the first respondent. The sale notice issued by the Bank dated 25 August 2009 was challenged by the first respondent and three others (hereinafter referred to as "borrowers") in S.A. No. 101 of 2009 before the DRT, Chennai. During the currency of the SARFAESI application, the secured asset was sold in auction. The borrowers therefore filed an application in I.A. No. 279 of 2010 for amendment of SARFAESI application for the purpose of

challenging the auction sale. The borrowers filed another application in I.A. No. 280 of 2010 for the purpose of impleading the auction purchasers. The applications were dismissed by DRT as not maintainable. Thereafter S.A. No. 101 of 2009 was dismissed as infructuous.

8. The borrowers challenged the order in I.A. No. 279 of 2010 in S.A. No. 101 of 2009 before the DRAT. The DRAT allowed the appeal as per order dated 28 February 2012 in MA (SA) No. 185 of 2011 and directed the DRT to take up the matter for fresh disposal.

9. The order dated 28 February 2012 on the file of DRAT was challenged by the petitioner and the other auction purchasers, respondents 2 to 4 herein, before the Division Bench in W.P. No. 292 of 2013. The writ petition was allowed with a finding that the proper course was to file an independent SARFAESI application challenging the auction sale and not by way of amendment of the pending proceedings. The review petition filed thereafter to review the order dated 15 March 2013 in W.P. No. 292 of 2013 was also dismissed by order dated 25 July 2014.

10. While dismissing the review application, the Division Bench once again indicated that the borrowers had the right to challenge the sale under Section 17 of the SARFAESI Act, but however they did not choose to question the sale.

11. The first respondent immediately thereafter filed SARFAESI application before DRT challenging the sale certificate dated 29 October 2009 issued in favour of the auction purchasers.

12. The DRT without either understanding the scope of the earlier proceedings or the indication given by the Division Bench in W.P. No. 292 of 2013 and Review Application No. 165 of 2013 that the proper course is only to file an independent SARFAESI application challenging the auction sale and sale certificate, dismissed the application. The DRT proceeded as if on account of the dismissal of the SARFAESI Application filed earlier the present application is not maintainable, overlooking the fact that it was only the amendment application which was dismissed earlier and not a comprehensive SARFAESI application challenging the auction sale or the sale certificate.

13. The appeal preferred by the first respondent was rightly entertained by the DRAT after overruling the contention regarding limitation. The exercise of discretion by the DRAT was in accordance with the observation made by the Division Bench in W.P. No. 292 of 2013 and review Application No. 165 of 2013 that the proper course was to challenge the sale certificate specifically by filing independent SARFAESI application. There is no question of limitation in view of the initiation of SARFAESI application by the first respondent, within 18 days from the dismissal of review application in R.A. No. 165 of 2013. We therefore reject the ground taken by the petitioner with respect to limitation and maintainability of fresh SARFAESI proceedings challenging the sale certificate.

14. Though the petitioner has alleged that the first respondent has made an endorsement deleting the names of auction purchasers, the learned counsel for the borrower maintained that no such action was taken and the petitioner and respondents 2 to 4 are still shown as parties to the statutory appeal. Since the sale certificate issued to the petitioner and respondents 2 to 4 is the subject matter of the present proceedings, we are of the view that they are necessary parties to the appeal.

15. The DRAT is directed to implead the petitioner and respondents 2 to 4 as parties, in case they are not arrayed as parties, and decide the appeal on merits and as per law.

16. The Civil Revision Petition is disposed of accordingly. Consequently, the connected MP is closed. No costs.