(2013) 10 MAD CK 0132

In the Madras High Court

Case No : Writ Petition (MD) No. 15530 of 2013 and M.P. (MD) No''s. 1 and 2 of 2013

B. Suba Alias Pandiammal APPELLANT

Vs

The Authorized Officer, Karur Vysya Bank RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0132

Hon'ble Judges : M. Venugopal, J;M. Jaichandren, J

Bench : Division Bench

Advocate : G.R. Swaminathan for T. Antony Arulraj, for the Appellant; Pala Ramasamy, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned counsel appearing on behalf of the petitioner, as well as the learned counsel appearing on behalf of the respondent. The petitioner has stated that she is owning one acre and three cents of agricultural land, in Survey No. 421/1B2, in Avaniyapuram Village, Madurai District. She had purchased the said land, by way of sale deed, vide document No. 10044 of 2007, on the file of the office of the Sub-Registrar, Joint-IV, Madurai, dated 21.09.2007. It has been further stated that the petitioner had given the land in question, on lease, to the third parties, for cultivation. Due to a dispute regarding the tenancy, the matter is pending before the Tashildar, (South) Madurai, in T.R. No. 4/12/B2.

2. It has been further stated that M/s. Miracle Garments, a partnership firm, had obtained a loan of Rs. 86/- Lakhs, from the corporation bank, Tiruppur, during the year, 2009. The petitioner stood as a guarantor, for the said loan, by offering her land, as security. While so, the loan account had been taken over by the respondent bank. On 05.06.2012, the respondent bank, had issued a notice, u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (herein after referred to as ''the

Act''). Thereafter, the petitioner had explained to the respondent Bank stating that the land in question is an agricultural land and therefore, it would not come under the purview of the provisions of the Act.

3. It had also been stated that, by an order, made by this court, in W.P. (MD) No. 7395 of 2013, the amount deposited by the successful bidder concerned, in the tender cum auction conducted, in respect of the said property, on 06.03.2013, had been refunded. The main reason for the claim made by the successful bidder, for the refund of the amount, was that the land in question, belonging to the petitioner, is agricultural in nature. In such circumstances, the petitioner has preferred the present Writ Petition, under Article 226 of the Constitution of India.

4. The main contention appearing on behalf of the petitioner is that the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 would not apply, in respect of the land belonging to the petitioner, in Survey No. 421/1B2, Avanipuram Village, as it is agricultural in nature. Therefore, the impugned tender cum auction notice issued by the respondent bank, on 29.08.2013, is illegal and void.

5. The learned counsel appearing on behalf of the petitioner had submitted that the petitioner ought not to be compelled to challenge the impugned notice issued by the respondent bank before the Debts Recovery Tribunal, as per the provisions of the Act, as the said notice is ex facie illegal. Therefore, the question of the petitioner availing the alternative remedy available under the provisions of the Act would not arise.

6. The learned counsel had further submitted that the land in question had been entered in the Patta Pass Book issued to the petitioner, as per the provisions of the Tamil Nadu Patta Pass Book Act, 1983. As per the provisions of the said Act, only agricultural lands would be entered in the patta pass book. He had also submitted that, in the impugned notice issued by the respondent bank, the land in question has been described as Nanja land. Further, the said land had been shown, as Nanja land, in the auction notice issued by the respondent bank. Even in the adangal issued in respect of the land in question the land is shown as fallow land (tharisu).

7. The learned counsel appearing on behalf of the petitioner had also submitted that the character of the land in question is independent of the operations conducted in the land. The purpose for which, the loan had been availed, would not be a relevant factor to decide the character of the land. The learned counsel appearing on behalf of the petitioner had relied on the decision of a Division Bench of this Court, in Eshwar Purushothaman Gardens Vs. Indian Bank, , wherein, it had been held that the nature of the land and its usage should be taken together to decide the issue as to whether the land in question is an agricultural land, if the predominant purpose, for which it is used is agriculture in nature, the provisions of the Act would not apply to the said land, as per Section 31(i) of the Act. Therefore, as the respondent bank had admitted that the land in

question is an agricultural land, it cannot invoke the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, for bringing the land in question for sale, by way of public auction.

8. Per contra, the learned counsel appearing on behalf of the respondent Bank had submitted that the contentions raised on behalf of the petitioner cannot be accepted, as the loan had been given for a commercial purpose, by the respondent bank, for the export of garments. Further, there is no admission, by the respondent bank, that the land in question is agricultural in character, as contended by the learned counsel appearing on behalf of the petitioner. He had also submitted that the liability of the petitioner, who is a guarantor, is co-extensive with that of the principal borrower.

9. He had further submitted that it would not be open to the petitioner to challenge the tender-cum-auction notice, dated 29.08.2013, when an alternative and efficacious remedy is provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, especially, when disputed questions of facts are raised. In view of the submissions made on behalf of the petitioner, as well as the respondent, and on a perusal of the records available, we are of the considered view that the petitioner has not shown sufficient cause or reason to interfere with the tender-cum-auction notice, dated 29.08.2103, issued by the respondent bank. It is for the petitioner to prove, with sufficient evidence, that the land in question is agricultural in character. Such an exercise could be undertaken by the petitioner, only before the appropriate forum established for the said purpose under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. When efficacious and alternative remedy is available for the petitioner to seek his relief under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, this Court would not be inclined to interfere in such matters. The Supreme Court in United Bank of India Vs. Satyawati Tondon and Others, and GM, Sri Siddeshwara Co-operative Bank Ltd. and Another Vs. Sri Ikbal and Others, has made it clear that this Court should not interfere with the procedures initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as alternative remedies are available therein. Further, it is a well settled proposition of law that the liability of the guarantor is co-extensive with that of the principal borrower.

In such circumstances, we do not find it appropriate to grant the relief, as prayed for by the petitioner, in the present Writ Petition. It is for the petitioner to approach the appropriate forum, if so advised, to seek his relief, in the manner known to law. As such, the present Writ Petition deserves to be dismissed. Hence, it is dismissed. However, it goes without saying that it would be open to the petitioner to raise all the legal contentions available to him, under law, before the appropriate forum. Consequently, the connected miscellaneous petitions are closed. No costs.

