

(2007) 05 P&H CK 0082
In the Punjab And Haryana At Chandigarh

Balbir Singh

APPELLANT

Vs

Sukriti Likhi and Others

RESPONDENT

Date of Decision : 15-05-2007

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17

Citation : (2007) 147 PLR 220 : (2007) 4 RCR(Civil) 497

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The petitioner filed a writ petition on 23.4.2005 challenging the notice dated 5.4.2005. In the aforesaid writ petition, the petitioner undertook to deposit a sum of Rs. 2,00,000/- within one week and the balance amount as expeditiously as;possible before the date fixed in the writ petition. Such order was passed on April 26, 2005 while issuing notice of motion for 4.8.2005.

2. The said writ petition was finally decided on 15.12.2005 wherein the petitioner was given liberty to avail of the statutory remedy as prescribed in Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter to be referred as "the Act"). It was further ordered that if the petitioner has complied with the terms of the interim order passed in the petition, the same shall continue till the prayer for interim relief is considered and decided by the learned Tribunal.

3. The grievance of the petitioner is that even though the petitioner has filed an appeal in terms of Section 17 of the Act, but still the respondents have taken over possession of the premises in dispute and demolished the construction raised thereon on 3.3.2006. It is, thus, alleged that the respondents have violated the orders passed by this Court.

4. On behalf of the respondents, it has been pointed out that out of more than

Rs. 6 lacs of the amount due, the petitioner deposited Rs. 2 lacs on 4.5.2005 i.e., beyond the period of one week granted to the petitioner to deposit the amount and still further the petitioner has not deposited any amount over and above Rs. 2 lacs before the date fixed or as a matter of fact till today. Even an appeal was filed u/s 17 of the Act on 10.02.2006, although in terms of the order passed by this Court, the appeal could be filed on or before 31.01.2006. Therefore, it is contended that there is no effective interim order in favour of the petitioner in respect of which the petitioner can be permitted to raise any grievance.

5. In addition thereto, it is also pointed out that auction of the property was conducted on 21.03.2005 i.e., much before the petitioner approached this Court. Earlier, two sisters of the petitioner had filed a civil suit before the Civil Judge (Senior Division), Jagadhri along with an application for grant of ad interim injunction. The sisters of the petitioner have sought injunction against the confirmation of auction held on 21.03.2005. The application for ad interim injunction was declined on 13.04.2005. The petitioner was defendant No. 2 in the said suit but without disclosing the fact of the said suit and also that injunction has been declined, the petitioner has filed writ petition before this Court wherein interim order aforesaid was granted.

6. Learned Counsel for the petitioner has vehemently argued that the order of the Court, whether right or wrong, has to be obeyed. Since the order has not been obeyed, the respondents are liable to be proceeded for contempt of the Court. Reference is made to the case reported as Union of India (UOI) and Others Vs. Subedar Devassy PV, .

7. Vide order dated 26.04.2005, the petitioner was granted one week time to deposit Rs. 2 lacs. The said amount was to be deposited on or before 2.5.2005 but the same was deposited on 4.5.2005. The petitioner has not sought any extension of time for the deposit of the amount nor has not sought condonation of delay in deposit of the amount after the period prescribed. Still further, the appeal was required to be filed on or before 31.01.2006. The interim order was to continue only if the appeal was filed within the period of limitation. Therefore, it cannot be said that the interim order granted on 26.4.2005 was valid and operative on 3.3.2006 when the defendants had taken possession of the suit property and demolished the building.

8. The matter needs to be examined from another angle as well. Ad interim injunction application filed in the civil suit was declined by the civil Court on 13.04.2006. The petitioner is a party to the said suit but in the writ petition, the petitioner has not disclosed the factum of such injunction application having been declined by the civil Court. The petitioner, who has not approached this Court with clean hands, cannot be permitted to raise an argument that the order of this Court has not been complied with.

9. The reliance of the petitioner on Subedar Devassy PV's case (supra) is again misconceived. In the said judgment, it has been held that the contempt Court is

primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. However, the facts of the case does not show that there is contumacious conduct of the respondents which can be said to lead to contempt of the Court.

10. It may be noticed that the orders passed by this Court on 15.12.2005 was based upon earlier judgment of this Court in C.W.P. No. 2550 of 2005 titled Kalyani Sales Company and Another Vs. Union of India (UOI) and Another, , decided on 08.12.2005. The said judgment has since been set aside by Hon''ble Supreme Court in Transcore v. Union of India and Anr. (2007) 145 P.L.R. 222 where in it has been held that the secured creditor has a right to proceed against the security in terms of the Act without withdrawing the proceedings before the Debts Recovery Tribunal. It has been further held that notice issued to take over possession is not restricted to symbolic possession but actual physical possession.

11. Consequently, I do not find any reason to continue with the present contempt petition. The same is accordingly dismissed. Rule is discharged.