(2017) 02 P&H CK 0197

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 27465 of 2015

Bawa Kiranjit Singh — APPELLANT

Vs

Authorised Officer of Canara Bank — RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2)

Citation : (2017) 2 LawHerald 1093

Hon'ble Judges : Mr. Ajay Kumar Mittal and Mr. Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Mr. Rajat Gautam, Advocate, for the Petitioners; Mr. Arvind Rajotia Advocate, for the Respondent Nos. 1 and 2; Mr. Ashok Singla, Advocate, for the Respondent No. 3; Mr. Rajesh Sharma, Advocate, for the Respondent No. 4

Final Decision : Dismissed

Judgement

Ramendra Jain, J.—Bawa Kiranjit Singh (petitioner no.1), Bawa Rajinder Singh (respondent no.3) and Bawa Harbans Singh (respondent no.4), being partners of M/s. Bombay Motor Trading Company, sought financial assistance, from respondent no.2-Canara Bank in the shape of O.D. Limit of Rs. 124 lac and NFILC of Rs. 25 lac by way of hypothecation of stocks and mortgaging of factory, land and building located at Sultanpur Road, Kapurthala and land measuring 14 Kanals 15 Marlas in the name of said firm. However, due to losses in business, the aforesaid firm could not repay the loan amount and ultimately, respondent no.1 initiated proceedings under the Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI") for recovery and issued notice under section 13 (2) of the Act, showing a total outstanding of Rs. 1,34,83,841.36 Paise due against the partnership firm. On receipt of the said notice, according to petitioner no.1, he immediately, contacted his other partners, namely, Bawa Rajinder Singh (respondent no.3) and Bawa Harbans Singh (respondent no.4), but they did not respond. Hence, before expiration of two months'' time mentioned in the notice under section 13(2) of the Act, petitioner no.1, finding no other alternative, filed his objections, dated 01.09.2015, to respondent no.1-Bank, stating that he was ready to clear the liability of the bank subject to release of the mortgaged property in his favour on the principles of "Law of Subrogation" and "equity of reimbursement". However, the respondent-bank rejected his request with respect to principle of subrogation, vide letter dated 10.9.2015 (Annexure P-10). Thereafter, one time settlement (for short "OTS"), letter dated 17.09.2015 (Annexure P-11) on bank format, was taken from petitioner no.1 by respondent no.2-bank and took the entire OTS amount of Rs. 1,39,00,000/- from petitioner no.2 on behalf of petitioner no.1 and closed the account vide letter dated 13.10.2015 (Annexure P-12) but did not release the mortgaged property in favour of the petitioners only.

2. Hence, by way of the present writ petition under Articles 226/227 of the Constitution of India, the petitioners have sought issuance of a writ of certiorari/ mandamus for setting aside order dated 10.09.2015 (Annexure P-10) passed by the Chief Manager/Authorised Officer, Canara Bank, 3, The Mall, Kapurthala, dismissing the objections of the petitioners dated 01.09.2015 (Annexure P-9), to release the mortgaged property only in their favour under law of subrogation as full and final payment has been deposited by the petitioners alone on their own behalf.

3. Reply, on behalf of respondent no.3, by way of affidavit, has been filed controverting the pleas taken up by the petitioners in their writ petition. In the preliminary submissions, it is specifically asserted that the writ petition under Articles 226/227 of the Constitution is not maintainable as the same is based upon non-existent and false documents and as such, is liable to be dismissed.

4. Learned counsel for the petitioners contended that since the petitioners have repaid the entire loan amount in exclusion to other partners, therefore, they are entitled to receive the title deeds of the mortgaged property without any demur or protest.

5. In response to the assertions raised by learned counsel for the petitioners, learned counsel for respondent no.3 contended that the title documents have already been handed over to the petitioners and thus, they have got no locus standi to continue with the present writ petition and thus, the same may be dismissed as infructuous.

6. After giving our thoughtful considerations to the submissions raised by learned counsel for the parties, we find that there is an inter se dispute between the partners of M/s. Bombay Motor Trading Company, i.e., petitioner no.1, respondent nos. 3 and 4, for which respondent nos 1 and 2 have nothing to do and have been dragged unnecessarily into the litigation.

7. It is no denying fact that there is inter-se dispute between the partners of M/s. Bombay Motor Trading Company, i.e., petitioner no.1 and respondent nos. 3 and 4. The plea of the respondent-bank is that they have no concern with the internal

matter of the partners of the said firm and principle of subrogation does not apply in loan cases. Since the disputed questions of fact are involved in the instant petition and the same are required to be established by leading cogent and convincing evidence, therefore, in our considered opinion, these pleas cannot be gone into, while exercising the writ jurisdiction under Articles 226/227 of the Constitution of India. However, if at all, the partners of the aforesaid firm have any grievance against each other, they may avail appropriate remedy in accordance with law.

8. For the reasons recorded here-in-above, no case is made out for interference by this court in exercise of writ jurisdiction conferred by Articles 226/227 of the Constitution of India, and as such, finding no merit in the writ petition, the same is dismissed. However, liberty is granted to the petitioners to avail the appropriate remedy in accordance with law.