(2014) 11 MAD CK 0097

In the Madras High Court

Case No : W.P. No. 8254 of 2014

B.H. Radha APPELLANT

Vs

The Regional Manager, Syndicate Bank RESPONDENT

Date of Decision : 06-11-2014

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(4)

Citation : AIR 2015 Mad 1 : (2015) 2 BC 383

Hon'ble Judges : P.R. Shivakumar, J;N. Paul Vasantha Kumar, J

Bench : Division Bench

Advocate : M.T. Arunan, Advocates for the Appellant; P. Sreenivasulu, Advocates for the Respondent

Judgement

P.R. Shivakumar, J.—This writ petition is filed by the wife and son of late K. Ravi, who was a panel Advocate of the respondent Bank, for the issuance of writ of certiorarified mandamus calling for the records of the first respondent in letter No. 6230/REC/2013 dated 17-7-2013 confirming the order of the second respondent in letter No. 6230/Genl/2012 dated 24-9-2012 and quash the same and to consequently direct the respondents to pay a sum of Rs. 10,09,605/- together with interest at 18% per annum with monthly rents from 1-7-2012 till date of payment in full within a date fixed by this Court. The facts leading to the filing of the writ petition are as follows:

"Late K. Ravi was an advocate practising in the Courts of Nilgiris District. He was also a panel advocate for Syndicate Bank. He had availed a loan for a sum of Rs. 5,00,000/- from Syndicate Bank on 20-2-2008 by creating an equitable mortgage along with his brother Chandramohan in respect of an immovable property measuring 12 1/2 cents jointly owned by him and his brother Chandramohan by deposit of title deeds. Late Ravi also availed 8 jewel loans aggregating a sum of Rs. 3,83,500/-. As the loans were not discharged as per the terms and conditions, the mortgage loan as well as the jewel loans were classified as NPA and the Bank initiated proceedings under the SARFAESI Act by issuing a demand notice under Section 13(2) of the Act followed by a possession notice under Section 13(4) of the said Act. Meanwhile the said Ravi died on 20-6-2011. The first petitioner in the writ petition is his widow and the second petitioner in the writ petition is his son and they have filed the writ petition as legal heirs of the deceased Ravi. Ultimately, the mortgaged property was brought for sale and in the public auction held, one Soundarapandian emerged as the successful bidder and the property was sold to him for a sale consideration of Rs. 39,05,000/-. After having paid the entire sale consideration and obtaining a sale certificate, the auction purchaser preferred a writ petition on the file of this Court in W.P. No. 31645 of 2012 praying for a direction to the respondent Bank to refund proportionate amount from the amount paid by him towards sale consideration on the premise that the actual extent available was only 10 1/2 cents as against the total extent of 12 1/2 cents reflected in the title deeds. Admittedly, the said writ petition was dismissed by this Court by an order dated 20-6-2013 and to the knowledge of the parties, till date no appeal came to be preferred by the auction purchaser."

2. Under the above said circumstances, the petitioners in the present writ petition came forward with the above said prayer. They do not challenge the validity of the auction sale. On the other hand, it is their contention that the sale proceeds can be adjusted towards the mortgage loan as well as the jewel loans subject to a condition that the jewels pledged as security for the jewel loans should be returned and the balance amount of sale consideration, after such adjustment, should be paid to them.

3. Per contra, it is the contention of the Bank that late K. Ravi as panel advocate had received professional fees, besides the expenses towards payment of Court fee, in respect of a number of cases entrusted to him to file suits against the defaulting debtors of the Bank; that on verification, it was found that in all those matters no suit came to be filed and the panel advocate had been furnishing false particulars to the Bank as if the cases were filed and they were pending and that hence, the Bank is entitled to retain the balance sale consideration as well as the jewels by virtue of general lien available to the Bank.

4. Learned counsel for the petitioners contends that the said claim of the Bank against late Ravi having not crystallized into an order or decree of a competent authority or Court, the Bank shall not be entitled to retain the jewels even after the jewel loans have been discharged and also the balance amount of sale consideration after adjusting towards the mortgage loan and the jewel loans. He also contends that the Bank can proceed against the legal representatives of deceased Ravi in an appropriate forum and if it gets a decree in its favour, then only it can proceed against them and that till then, there shall be no justification for the Bank to retain the jewels and the balance amount of sale consideration.

5. During the course of arguments, the learned counsel for the respondents (Bank) fairly conceded that, after having adjusted a part of the sale

consideration towards the amount due under the jewel loans, the Bank is bound to return the jewels. However, the learned counsel for the respondents sticks on to the stand of the respondents that the balance amount of sale consideration can be retained by the Bank towards the amount due from deceased K. Ravi in respect of his professional dealings with the Bank.

6. We paid our meticulous considerations to the above said contentions raised on both sides.

7. The petitioners are justified in contending that the retention of the balance sale consideration after adjusting a part of the same towards the amount due under the admitted loans shall not be justified as the Bank claims to retain the same for an unliquidated claim, which is yet to be crystallized into an order/ decree to be passed by a competent authority/Court. So far as the return of the jewels pledged as security for the Jewel loans is concerned it is conceded on behalf of the Bank that the petitioners are entitled to the return of the jewels as the jewel loans have been discharged. Even otherwise, legally the Bank cannot retain the jewels after the discharge of the jewel loans. Hence, we are of the view that the jewels pledged with the Bank in respect of jewel loans referred above shall be returned by the Bank to the petitioners, who are admittedly the legal heirs of deceased Ravi.

8. The properties sold under SARFAESI Act in the auction held on 26-6-2012 was the property jointly owned by late K. Ravi and his brother K. Chandramohan. For a sum of Rs. 5,00,000/- availed as loan by late K. Ravi, both of them had created the equitable mortgage by deposit of their title deeds in respect of the said property. The sale fetched a sum of Rs. 39,05,000/- as sale consideration. Late K. Ravi and his brother K. Chandramohan were said to have equal rights in the said property. Then half of the sale consideration shall be referable to the share of late K. Ravi and the other half shall be referable to the share of K. Chandramohan. K. Chandramohan has not challenged the auction. Though one Geetharani, the sister of late Ravi, chose to file a suit in O.S. No. 37 of 2011 on the file of the District Court, Udagamandalam, Nilgiris for partition claiming that she did have a share in the property, the said suit came to be dismissed for default on 9-6-2014. As such, out of a sum of Rs. 39,05,000/- realized as sale consideration, a sum of Rs. 19,52,500/- shall be the share of late K. Ravi. According to the Bank, after adjusting the amounts under the mortgage loan as well as the jewel loans, a balance amount of Rs. 5,50,000/- is available with the Bank. The respondents (Bank) shall be liable to pay the said amount to the writ petitioners as the Bank did have no justification in retaining the same towards the claim against late K. Ravi in respect of the professional dealings between the Bank and late K. Ravi. Since the claim of the petitioners for the refund of the said amount was not heeded to by the Bank, we are of the considered view that the petitioners shall be entitled to a direction for the payment of the said amount (Rs. 5,50,000/-) together with interest on the said amount calculated from the date of deposit of the same consideration by the auction purchaser till the date of

payment. We deem it appropriate to fix 9% simple interest as reasonable interest. In the result the writ petition is disposed of directing the respondent to release the admitted balance amount of Rs. 5,50,000/-, together with a simple interest at the rate of 9% per annum calculated from the date of deposit of the sale amount by the auction purchaser till payment to the writ petitioners, within a period of four weeks from the date of receipt of a copy of this order. The respondent shall also return the jewels pledged with the Bank. In case the claim of the sister of K. Ravi is upheld or the auction purchaser succeeds in his attempt to claim for refund of the proportionate sale considerations for the alleged deficiency in extent, the petitioners shall be liable to return the proportionate amount to the Bank. The respondent Bank shall also be at liberty to proceed against the legal heirs of K. Ravi for the recovery of any amount due to the Bank by instituting appropriate proceedings in an appropriate forum in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.