(2011) 09 KAR CK 0182

In the Karnataka High Court

Case No : Criminal P. No. 5132 of 2011

C. Prabhu and R. Channappa — APPELLANT

Vs

The Ashoknagar Co-operative Bank Ltd. — RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13 (4), 14
Security Interest (Enforcement) Rules, 2002 — Rule 2A, 3A

Citation : (2011) 09 KAR CK 0182

Hon'ble Judges : B.V. Pinto, J

Bench : Single Bench

Advocate : B.V. Malla Reddy, for the Appellant; Shailesh, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Pinto, J.—This petition is filed seeking to set aside the order dated 87.2011 passed by the X Addl. CMM, Bangalore City in Crl. Misc. No. 62/2011, in which the learned Magistrate has allowed the application filed u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [''Sarfaesi Act'' for short] and directed to take possession of the secured property from the possession of the Petitioners herein, within three months from the date of the said order.

2. Heard Sri Malla Reddy, B.V. learned Counsel appearing for the Petitioners and Sri Shailesh, learned Counsel appearing for the Respondent,

3. Learned Counsel for the Petitioners submits that the authorised officer, who has been appointed by the Respondent/bank is not an authorised officer u/s 2(a) of the Security Interest [Enforcement] Rules, 2002 [''Rules'' for short] and that the officer appointed is only a First Division Assistant. He submits that the officer appointed according to Section 2(a) of the said Rules as "authorised officer" shall

be an officer of the rank of not less than a chief manager of a public sector bank or equivalent thereto. Whereas, the authorised officer in this case is a First Division Assistant and therefore there is a violation of Rule 2(a) of the Rules.

4. It is further submitted by him that the notice under Rule 3A has not been served on the Petitioners and he has produced the acknowledgement of the registered letter, which does not bear the signature of the Petitioner. Therefore, the action taken by the Bank is contrary to the Rule 3A of the Rules. It is further submitted by him that the Applicant/Respondent is not a Bank within the meaning of the said Act. Therefore, the Sarfaesi Act is not applicable to the Co-operative Bank. Hence, he submits that the order dated 8.7.2011 may be set aside.

5. Sri Shailesh, learned Counsel for the Respondent submits that the question as to whether a Co-operative Bank is included within the meaning of the word ''Bank'' in the Sarfaesi Act has been set at rest by a Division Bench ruling of this High Court reported in The Authorised Officer/General Manager, Sri. Basaveshwar Co-operative Bank Ltd. Vs. Sri. Balappa Fakkirappa Gurlahosur, wherein, it has stated that a co-operative Bank is also included in the word "Bank" mentioned in the Sarfaesi Act.

6. So far as the merits of the case is concerned, learned Counsel appearing for the Respondent Bank submits that the Petitioners have got an alternative remedy in Section 17 of the Sarfaesi Act, which states that:

17. Right to appeal. (1) Any person [including borrower], aggrieved by any of the measures referred to in Sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken

7. However, the Petitioners have not

approached the authority provided under law and

have erroneously approached the Court under Section

482 Code of Criminal Procedure He has relied on the ruling reported in United Bank of India Vs. Satyawati Tondon and Others, in which, it is held in para No. 17, as follows:

17. There is another reason why the impugned order should be set aside. If Respondent No. 1 had any tangible grievance against the notice issued u/s 13(4) or action taken u/s 14, then she could have availed remedy by filing an application u/s 17(1). The expression ''any person'' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken u/s 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim

orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the Sarfaesi Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applied with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

8. On a careful consideration of the materials on record, it is seen that Sub-section (3) of Section 14 of the Act, states as follows:

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any Court or before any authority.

9. I am of the opinion that in view of the Section 14(3) of Sarfaesi Act, and the discussion made above, this petition is not maintainable and the same is hereby dismissed.

