
(2010) 08 CHH CK 0011
In the Chhattisgarh High Court
Case No : Writ Petition No. 4808 of 2010

Deepak Panch and Another

APPELLANT

Vs

Sent Bank Home Finance Limited and Others

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 14, 17, 17(1)

Citation : AIR 2011 Chh 32

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J.—The Petitioners are aggrieved by the order dated 9-4-2010 passed by the Chief Judicial Magistrate, Bilaspur on an application and in exercise of powers u/s 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act").

2. The Respondent No. 1 had submitted the subject application after issuance of and publication of notice u/s 13(2) of the SARFAESI Act when the borrower did not deposit the loan amount after expiry of the period of 60 days. The application u/s 14 has been moved for taking possession of the secured asset. The Chief Judicial Magistrate has issued warrant of possession in favour of the Respondent No. 1.

3. Learned Counsel for the Petitioners has argued that the Petitioners are not borrowers and that they are bona fide purchaser of the property from one Bundi Bai and are in possession of the property for last more than seven years. He also submits that they have obtained the loan from Respondent No. 4 bank and no amount is due against them, therefore issuance of warrant of possession is illegal and that the application was moved without arraying them as party even though

they are in possession of the property.

4. In the matter of United Bank of India Vs. Satyawati Tondon and Others, decided on 26th July, 2010 the Supreme Court has held thus in paragraph 17 of the report.

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 applies 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.

5. In view of the law laid down by the Hon"ble Supreme Court and in view of the availability of the alternative remedy of filing an application before the tribunal u/s 17(1) of the SARFAESI Act, this Court is not inclined to entertain this writ petition filed under Article 227 of the Constitution of India.

6. The petition is dismissed as not maintainable.