(2016) 12 BOM CK 0106

In the Bombay High Court

Case No : Writ Petition No. 5639 of 2016

Dr. Kishor Chimasaheb Nimbalkar APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 05-12-2016

Acts Referred:

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

Citation : (2017) 2 BC 67 : (2017) 2 MhLJ 645 : (2017) 1 NIJ 798

Hon'ble Judges : Anoop V. Mohta and A.S. Gadkari, JJ.

Bench : Division Bench

Advocate : Mr. Sandeep S. Koregave, Advocate, for the Petitioners; Mr. C.P. Yadav, AGP, for the Respondent Nos. 1 and 6; Mr. R.L. Motwani, Advocate, for the Respondent No. 3

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—Rule made returnable forthwith.

Heard finally, by consent of the parties.

2. The Petitioners, by this Writ Petition filed on 8 May 2016, have challenged the stated action of Respondent No.3, not considering the Application for One Time Settlement Scheme (OTS Scheme), under the Reserve Bank of India Guidelines (RBI Guidelines). The prayer is also made for appropriate orders and to issue direction to consider the Application for OTS scheme.

3. The background history of the issues so raised in the matter, is as under:The Petitioners are running the Hospital. Respondent No.4 is a bank, registered under the Banking Regulation Act and runs under the RBI guidelines. The Petitioners obtain a home loan of Rs.34,00,000/- in the year 2002 and another loan of Rs.6,80,000/- in the year 2003 from Respondent No.4. The Petitioners by 78 EMI of Rs.49,273/per EMI, paid total amount of Rs.40,00,000/. But due to some

difficulties the Petitioners unable to repay some EMIs within time. On 15 December 2007, Respondent No.4Bank issued two notices under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short, "the SARFAESI Act") for amounts of Rs.6,53,191.68 and 41,86,231.12/-. The Petitioners send reply and raised objection to the Bank notice. Respondent No.4Bank not replied to the objections.

4. In the year 2009, Respondent No.4 transferred loan account to Respondent No.3. On 19 June 2009, Respondent No.3 issued notices under Section 13(2) of the SARFAESI Act, for two account amounting to Rs.54,89,782.12 and Rs.8,49,550.37/-. On 8 June 2011, Respondent No.3 issued notice under Section 13(4) of the SARFAESI Act and denied the Petitioners'' request of OTS Application. The Petitioners trying to settle the loan accounts by way of OTS, but no proper response received from Respondent No.3. Respondent No.3 rejected the proposal. On 16 November 2013, Respondent No.1 Collector passed final order under Section 14 of the SARFAESI Act whereby, directed to execute the order within one month. The Petitioners again tried to settle the loan accounts as per the RBI Guidelines under OTS Scheme, but in vein. On 5 May 2016, Respondent No.5 send the notice of possession at the instance of Respondent No.3 stating to hand over the possession by 19 May 2016. Hence the present Writ Petition.

5. By impugned communication, Respondent No. 3 has already rejected the proposal so submitted by the Petitioners in the year 2011 itself. The Petitioners, in spite of the rejection of the proposal, filed applications after applications for reconsideration. That resulted into delay in taking further steps/measures as required under Section 13 of the SARFAESI Act. The basic notice issued under Section 13(2) of the SARFAESI Act was of dated 11 February 2008. Respondent No.3, having once rejected the Applications, required to proceed as per the scheme and object of the SARFAESI Act, without further delay. However, because of various Applications, further measures are delayed. The submission that Respondent No.3 needs to consider the OTS Scheme, based upon the Apex Court Judgment in Sardar Associates & Ors. v. Punjab & Sind Bank & Ors., (2009)8 SCC 257, in our view, is of no assistance. The power of RBI to frame such guidelines has been recognised and accepted by the Supreme Court by taking note of provisions of law, including the SARFAESI Act and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, "the RDDBFI Act"). This Judgment, in any way, cannot be utilized by the Petitioners for any direction to be issued to the Bank and/or against the Bank for considering the Applications filed again and again, as already rejected so recorded above. It is settled that ultimately, the Financial Institutions/Banks required to consider the facts and circumstances while applying the RBI Guidelines. There is no scope and/or power of the Court which can be invoked by the persons like the Petitioners for any mandamus or to decide such Applications, once it is rejected by giving the detailed reasons. In any case, that cannot be the reason to delay for taking further steps/measures under the SARFAESI Act.

6. This is one of the case, where the Petitioners, by filing the said Applications from time to time, avoided to give the possession as Respondent No.3 has already proceeded further under the SARFAESI Act to take physical possession of the property in question. We have noted that the Respondents has already invoked Section 14 of the SARFAESI Act and proceeded by getting the appropriate order from Tahasildar of the Karveer Division, Kolhapur. Through the affidavit, a document (punchanama) dated 20 February 2016 is placed on record showing the Petitioners'' endorsement that Petitioner No.1 himself would pay the amount and/or give the vacant possession within 15 days with a clear understanding that he would not obstruct to the possession being taken. The volunteered statement so recorded, is a part of affidavit in reply of Respondent No. 3, dated 18 May 2016. In spite of above statement, the Petitioners failed to make the payment and not giving the possession though recorded above.

7. In vacation on 18 May 2016, the Division Bench of this Court, (headed by Mr. Justice A.S. Gadkari, J.) passed an order "No urgency, Remove from Board." and orally directed him to deposit 50% of the outstanding amount within one week, as per the earlier order. This statement is also not in dispute. The learned counsel appearing for Respondent No.3, however, submitted that in spite of opportunity so given again by the Court/Authority, the Petitioners failed to deposit the amount and got delayed the execution/the proceedings of taking possession of the property in question.

8. The submission of the learned counsel appearing for the Petitioners that, now the case is fixed for taking possession by the Tahasildar of Karveer Division, Kolhapur. Therefore, requested to further stay the execution again, as he is willing to deposit the amount. The learned counsel appearing for Respondent No.3, however, in view of above earlier orders and the conduct of the Petitioners, resisted the same and submitted that whole intention only is to delay the execution of the order of taking possession. The learned counsel appearing for the Petitioners, on instructions, also expressed their inability even to deposit the basic amount with interest, of the notice before the next date.

9. Therefore, taking overall view of the matter, and as even notice under Section 13 of the SARFAESI Act, itself is of the year 20072008 and the same is pending and all the measures out of the same are pending and so also the execution/ proceedings to take possession though ordered by the learned Authority under Section 14 of the SARFAESI Act, we see this is not the case, where the Court in Writ Jurisdiction, in the above admitted position of facts, apart from the scheme and object of the SARFAESI Act so recorded in the Judgment passed by the Division Bench of this Court (Coram:Anoop V. Mohta and A.A. Sayed, JJ.) in Blue Coast Hotels Limited v. IFCI Limited & Anr.,2016(3) ABR 769 and the conduct so recorded above, to grant any discretionary and/or protective reliefs to the Petitioners.

10. Therefore, we are inclined to dismiss the present Writ Petition at this stage, itself. Writ Petition is dismissed. Rule discharged accordingly. No costs.

