(2014) 04 KAR CK 0070

In the Karnataka High Court

Case No : Writ Petition No. 50501 of 2013 (GM-RES)

Gayathri K.R. APPELLANT

Vs

Canara Bank RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 14

Citation : (2014) 4 BC 594 : (2014) 4 KarLJ 610

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : B. Vijay Shetty, Advocate for the Appellant; Sunanda S. Rathod, Advocate for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—In this writ petition, petitioners are challenging the order dated 22-10-2013 vide Annexure-A passed by the Additional Chief Metropolitan Magistrate, Bangalore, in C. Misc. No. 5891 of 2013. As per the said order, at the instance of the 1st respondent-Bank, learned Magistrate has allowed the petition filed by the Bank u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, ''Securitisation Act'') and has held that the respondent-Bank is entitled to take possession of the schedule property with police help.

2. Petitioners 1 to 4 and respondent 3 are the children of the 2nd respondent. They claim to be the joint owners of property in question. The 3rd respondent has availed loan from the 1st respondent-Canara Bank. The 2nd respondent has stood as guarantor by mortgaging the schedule property. As the loan amount has not been re-paid, Bank has initiated proceedings under the Securitisation Act. The property was brought for sale.

3. Action of the Bank was challenged by the 3rd petitioner claiming as one of the co-owners of the property in S.A. No. 286 of 2013 before the Debts Recovery

Tribunal at Bangalore. In the said application, interim order of stay was granted, subject to the condition that petitioner 3 shall deposit a sum of Rs. 5.00 lakhs within one month. The said sum has not been deposited by the 3rd petitioner and therefore, the interim order of stay is not in operation. Thereafter, the respondent-Bank has initiated proceedings u/s 14 of the Securitisation Act before the Chief Metropolitan Magistrate and the Chief Metropolitan Magistrate has passed the order under challenge vide Annexure-A permitting the Bank to lake over possession of the premises with police help. Aggrieved by this order, present writ petition is filed.

4. I have heard the learned Counsel for the petitioner and the learned Counsel appearing for the 1st respondent-Bank.

5. Main contention urged by the learned Counsel for the petitioner is that without notice to the petitioners and without providing an opportunity of being heard to them, joint family property is sought to be taken over by dispossessing the coparceners having share in the joint family property. It is urged by the petitioners that a suit in O.S. No. 3607 of 2013 is pending before the City Civil Court at Bangalore wherein all the petitioners/plaintiffs have obtained an order of temporary injunction against respondents 2 and 3, their mother and brother from alienating the suit schedule property. It is further urged that without taking note of this aspect, the impugned order has been passed and therefore, the same is unsustainable.

Having heard the learned Counsel for the parties, I find that petitioners have to agitate their grievance before the Debts Recovery Tribunal. They cannot be permitted to approach this Court filing this writ petition. One of the petitioners having availed the remedy before the Debts Recovery Tribunal has failed to comply with the condition imposed in the interim order by depositing the amount of Rs. 5.00 lakhs as ordered by the Tribunal. If the petitioners are interested in protecting their possession, they have to move the Tribunal and seek appropriate relief by depositing the amount as ordered by the Tribunal.

Reserving such liberty, this writ petition is dismissed.