(2013) 07 CAL CK 0134

In the Calcutta High Court

Case No : Writ Petition No''s. 392-393 of 2013

GBM Manufacturing Pvt. Ltd. and Another APPELLANT

Vs

Indian Overseas Bank and Others RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Citation : (2013) 4 CHN 694 : (2013) 3 WBLR 649

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Asish Chakraborty and Aruna Ghosh, for the Appellant;Siddhartha Banerjee, for the Respondent

Judgement

Sanjib Banerjee, J.—The parties agree that the facts and law are the same in both matters and an order on the one petition will govern the other matter. The facts relating to W.P. No. 392 of 2013 are referred to herein. Despite obtaining directions, the respondent bank has chosen not to use any affidavit.

2. The writ petitioners assail an order passed by a recovery officer under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 as being without jurisdiction and claim that on such ground the order would be amenable to a challenge in this extraordinary jurisdiction despite such order being appellable u/s 30 of the said Act of 1993 before the Presiding Officer of the Debts Recovery Tribunal.

3. Certain facts need to be noticed at the outset. The respondent bank instituted proceedings u/s 19 of the said Act of 1993 before the appropriate Debts Recovery Tribunal and obtained a certificate therein. The bank applied u/s 25 of the said Act of 1993 to execute the certificate and obtained an order in the nature of attachment relating to an immovable property on January 4, 2013. Pursuant to such order of attachment passed by the recovery officer, the petitioners say that a proclamation was put up on the property owned by the petitioners that it had been attached. The petitioners applied before the recovery

officer for annulling the order of attachment on the ground that the petitioners had purchased the property at a Court sale in the year 2007 and the petitioners got title from such sale and were not aware of the respondent bank having any interest in the property. It transpires that the constituent of the respondent bank had mortgaged the property in favour of the respondent bank and the title deeds remained with the bank till or about June 12, 2006 when the constituent obtained delivery thereof. It appears that prior to the constituent obtaining the title deeds from the respondent bank, the constituent had made over copy deeds relating to the same property to the UCO Bank on the basis of which a mortgage was created. According to the respondent bank herein, the bank''s constituent had obtained the certified copy of the deed on some false allegation and without reference to the respondent bank since the respondent bank was in possession of the title deeds and had only returned the same in the year 2006. The mortgage with UCO Bank appears to have been created on March 14, 2002.

4. UCO Bank sought to take steps against the property in question whereupon the constituent appears to have challenged such action by instituting proceedings under Article 226 of the Constitution in this Court. In an appeal carried from the order passed on such petition, the property was ultimately sold to the petitioner company herein and the sale was confirmed by an order of May 3, 2007. The sale notice had been published in newspapers on March 13, 2007.

5. Though it appears to be somewhat hazy as to how a property was sold in an appeal arising out of a petition challenging the bank''s action taken under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, nothing need be said on such aspect of the matter since the connected orders passed in the appeal are not available and, in any event, the recovery officer could not have, directly or indirectly, set aside the order of sale passed by this Court.

6. In the respondent bank''s execution proceedings before the recovery officer, the respondent bank obtained the order of attachment at a time when the respondent bank may not have been aware that the sale of the property had been effected, under orders of this Court, in favour of the petitioner company herein. The petitioners'' attempt to have the order of attachment of January 4, 2013 recalled or set aside resulted in the recovery officer passing the impugned order on April 2, 2013.

7. At the time that the present petition was received, the respondent bank had questioned the propriety of the order being challenged in this jurisdiction. Such objection was repelled by an order dated May 14, 2013. Notwithstanding such position, a further argument has been made on behalf of the respondent bank that the petitioners should be left free to pursue the remedy available u/s 30 of the said Act of 1993 or institute a suit to assert the petitioners'' title in respect of the property. Though the respondent bank could not have urged such grounds in the light of the previous order on the present petition, such argument is also dealt with herein as there seems to be no merit therein.

8. The petitioners refer to a judgment reported at Raza Textiles Ltd. Vs. Income Tax Officer, Rampur, for the proposition that when the jurisdiction of a quasi-judicial authority is questioned, a writ of certiorari may be issued in appropriate cases notwithstanding some other remedy being available against the order passed by the quasi-judicial authority. The petitioners also rely on a judgment reported at The Tax Recovery Officer II, Sadar, Nagpur Vs. Gangadhar Vishwanath Ranade (Dead) Through Mrs. Shobha Ravindra Nemiwant, for the proposition that in course of exercising the authority as the recovery officer has in this case, such officer had only to assess whether the applicant before such officer was in possession of the property in question in his own right and not adjudicate upon the applicant''s title to the property.

9. u/s 29 of the said Act of 1993, the rules in Schedules II and III to the income Tax Act, 1961 have been made applicable to the said Act of 1993. Rule 11 of Schedule II to the Income Tax Act provides for the extent of investigation by a tax recover officer. Rule 11(4) permits the tax recovery officer to go into the question of possession of the defaulter or of some person on behalf of the defaulter, but precludes the recovery officer from deciding a question pertaining to the title to the property in question. In the second of the Supreme Court judgments referred to by the petitioners herein, it was observed that the recovery officer had no authority to assess any dispute pertaining to title and, to the extent such adjudication had been made, it was without jurisdiction. The petitioners say that since the authority exercised by the debt recovery officer in this case by going into the question of title is without jurisdiction, the availability of the alternative remedy of an appeal u/s 30 of the said Act of 1993 would not dissuade this Court from exercising its jurisdiction under Article 226 of the Constitution. That question has already been answered at the receiving stage of this petition. The only further aspect of this matter is whether the petitioners should be left free to institute a suit, in accordance with Rule 11(6) of the second schedule to the Income Tax Act.

10. In view of the fact that the order of the recovery officer appears to be not only in derogation of a Court sale in favour of the petitioner company but also in ignorance of the bounds of the jurisdiction of the debt recovery officer, it cannot be said that these petitioners should be left free to assert their title to a property which has been sold by a High Court. The debt recovery officer, in this case, surprisingly, decided on the conduct of the bank''s constituent in furnishing copy title deeds to UCO Bank at a time when the respondent bank was in possession of the original title deeds. In the absence of UCO Bank, which could have had no further interest in the matter since it had already received the payment, the debt recovery officer held that the mortgage created by the bank''s constituent with UCO Bank-was void and whatever followed therefrom was liable to be struck down. In a convoluted way the order of the debt recovery officer has the effect of negating the Division Bench order of this Court unmindful of the fact that this Court exercises superintendence over the Debts Recovery Tribunal under Article 227 of the Constitution.

11. Since it is evident that the debt recovery officer travelled way beyond his authority to adjudicate on the petitioners'' lack of title to the property in question on the ground that the respondent bank''s constituent could not have created a mortgage in respect of the property in favour of UCO Bank when the title deeds remained deposited with the respondent bank, such order cannot be sustained.

12. W.P. No. 392 of 2013 and W.P. No. 393 of 2013 are allowed by setting aside the order of the debt recovery officer passed on April 2, 2013. As a consequence, the order of attachment of January 4, 2013 is also set aside as the respondent bank could not have had any claim to the property in question on that date since the property did not belong to the constituent of the respondent bank.

13. The petitioners would have been entitled to substantial costs if the petitioners were in a position to resolve the mystery as to how a Division Bench of this Court sold a property while it was in seisin of an appeal arising out of a petition under Article 226 of the Constitution. There will be no order as to costs.

Urgent certified photocopies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

