(2006) 06 MAD CK 0303

In the Madras High Court

Case No : Writ Petition (MD) No. 964 of 2006, WPMP. No''s. 1040, 2234 of 2006 and WVMP. No. 80 of 2006

Geo Tech Ground Water and Irrigation Consultants — APPELLANT

Vs

The Authorised Officer, Indian Bank Veeraraghapuram Branch — RESPONDENT

Date of Decision : 17-06-2006

Acts Referred:
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17, 2, 31

Citation : (2006) 06 MAD CK 0303

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : M. Ajmal Khan, for the Appellant; S. Suresh, for Aiyer and Dolia, for the Respondent

Final Decision : Dismissed

Judgement

K. Mohan Ram, J.—With consent of learned Counsel on either side, the writ petition itself is taken up for final disposal.

2. Petitioner borrowed a sum of Rs. 8 lakhs from the Respondent bank in 1993. Since the Petitioner committed default in repayment, the Respondent filed a suit in O.S. No. 301 of 1998 on the file of the Principal Subordinate Court, Tirunelveli for recovery of a sum of Rs. 7,88,556.72 being the principal and further interest. In the said suit, a preliminary decree came to be passed on 21.12.2001. To recover the amount due as per the decree, the Respondent published a notice in ''Dina Malar'' dated 29.6.2005 purported to be a notice u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Act) calling upon the Petitioner to settle the amount within 60 days. By the said notice, the Petitioner was put on notice that if the Petitioner fails to settle the dues, action will be taken u/s 13(4) of the Act. Thereafter, proceedings have been taken u/s 13(4) of the Act as the Petitioner failed to settle the loan amount. The impugned proceedings issued u/s

13(4) of the Act is under challenge in the above writ petition.

3. The impugned proceedings is challenged on the following grounds:

i. No notice is given in writing to the Petitioner as required u/s 13(2) of the Act; and

ii. Since the Respondent filed a suit in O.S. No. 301 of 1998 on the file of the Principal Subordinate Court, Tirunelveli and obtained a decree, the Respondent is not entitled to proceed further u/s 13(2) of the Act.

4. The writ petition was admitted on 1.2.2006. At the time of admission, a conditional stay was granted. The Respondent bank filed a petition to vacate the stay granted on 1.2.2006 inter alia contending that the Petitioner has got an appeal remedy before the Debts Recovery Tribunal u/s 17 of the Act and the writ petition filed without exhausting the alternate remedy of appeal is not maintainable. It is further contended that subsequent to the notice issued by the Respondent, the auction sale notice was published in the newspapers and the auction was also conducted and one Mr. Kavin Vendan was the successful bidder for a sum of Rs. 16.10 lakhs. The sale was confirmed in his favour and he also paid the entire bid amount. The sale certificate was issued in his favour on 28.1.2006. The writ petition has been filed belatedly after fully knowing the entire facts. The allegation that no notice was issued u/s 13(2) of the Act has been denied.

5. It is further stated in the affidavit filed in support of the vacate stay petition that the notice u/s 13(2) of the Act was issued on 15.3.2003 itself and thereafter, possession notice u/s 13(4) of the Act was issued on 29.6.2005 and the same was also published in the tamil daily ''Dina Malar'' dated 29.6.2005. The receipt of demand notice dated 15.3.2003 and the possession notice dated 29.6.2005 was acknowledged by the Petitioner in their letter received by the Respondent on 23.8.2005. It is also stated that suppressing all the above said facts, the Petitioner has filed the above writ petition with false averments and obtaining of a decree from the civil Court by the Respondent is not a bar for invoking the provisions of the Act for bringing the property for sale.

6. Heard both sides.

7. Learned Counsel for the Petitioner has put forth the following submissions:

i. The Petitioner was not issued with the notice u/s 13(2) of the Act;

ii. The Respondent cannot invoke the provisions of the Act, since the bank has already obtained a decree against the Petitioner; and

iii. The Respondent cannot invoke the provisions of the Act in respect of agricultural lands belonging to the Petitioner, as the Respondent is aware of the provisions contained in Section 31 (i) of the Act exempting the auctioning of the agricultural lands.

8. The first contention of the Petitioner has to be rejected in the light of the admission contained in the letter written by the Petitioner to the Respondent, which is filed in page No. l of the typed set filed by the Respondent wherein the Petitioner referred to the demand notice dated 15.3.2003 and the possession notice dated 29.6.2005. Having received the demand notice and the possession notice, the Petitioner has made a false statement in the affidavit. Hence, the said contention is liable to be rejected.

9. Regarding the second contention of the Petitioner, learned Counsel for the Respondent submits that the term ''debt'' is defined u/s 2(ha) of the Act, which reads as follows:

Debt shall have the meaning assigned to it in Clause (g) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

Section 2 (g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 defines the term ''debt'', which is as follows:

Debt means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil Court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application.

10. In the light of the definitions of the term ''debt'' as contained in the above said two Acts, it is crystal clear that ''debt'' includes any liability (inclusive of interest) which is claimed as due and payable under a decree or order of any civil Court and subsisting on, and legally recoverable on, the date of application. It is pertinent to point out here that the Petitioner has not disputed the legality or validity of the civil Court''s decree or the Petitioner''s liability to pay the decreed amount and hence, the Respondent bank is entitled to invoke the provisions of the Act and therefore, the second contention of the Petitioner is also liable to be rejected.

11. Regarding the third contention of the Petitioner viz. the Respondent bank is not entitled to proceed against the agricultural lands of the Petitioner in view of the provisions contained in Section 31(i) of the Act, learned Counsel for the Respondent submits that since the other immovable properties belonged to the Petitioner, as stated above, have been sold and a sum of Rs. 16.10 lakhs has been realised, the Respondent bank is not going to proceed against the agricultural lands belonging to the Petitioner.

12. In the light of the above submission made by the learned Counsel for the Respondent, this Court is of the view that the third contention of the Petitioner need not be gone into.

13. No other submission has been made by the learned Counsel for the Petitioner. Therefore, for the foregoing reasons, the writ petition fails and is dismissed. No costs. Consequently, the above WPMPS and WVMP are also dismissed.

14. Learned Counsel for the Petitioner submits that pursuant to the order of this Court dated 1.2.2006, the Petitioner deposited a sum of Rs. 6,58,000/- and in view of the dismissal of the writ petition, the Petitioner is entitled to get back the said amount.

15. Learned Counsel for the Respondent undertakes that the said amount will be returned to the Petitioner within one week from the date of receipt of a copy of this order.

16. Therefore, it is just and proper that the Respondent should be directed to refund the said sum to the Petitioner. Accordingly, the Respondent is directed to refund the said sum of Rs. 6,58,000/- (Rupees six lakhs and fifty eight thousand only) within a week from the date of receipt of a copy of this order by way of a demand draft.

