**(2012) 07 KAR CK 0061**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 82836 of 2011 (GM-RES)

Gobburkar Nagappa APPELLANT

Vs

The Deputy Commissioner and District Magistrate, The Tahasildar Tahasil Office, The Authorise Officer and General Manager and The Branch Manager HDFC RESPONDENT

**Date of Decision :** 04-07-2012

**Acts Referred:**

**Citation :** (2012) 07 KAR CK 0061

**Hon'ble Judges :** A.N. Venugopala Gowda, J

**Bench :** Single Bench

**Advocate :** N. Krishnacharya, for the Appellant; Manavendra Reddy, Government Advocate for R1 to R2 and Sri Krishna Aralikatti, for R3 and R4, for the Respondent

**Final Decision :** Dismissed

# Judgement

A.N. Venugopala Gowda, J.—Petitioner availed loan from respondent -- Corporation on equitable mortgage by deposit of title deeds of immovable property & became a defaulter. Corporation initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the Act) and filed application before the 1st respondent under S. 14 of the Act for taking possession of the secured assets. 1st respondent allowed the said application and directed the Tahsildar to take possession of the mortgaged property. Questioning the order passed under S. 14 of the Act, this writ petition has been filed to quash the said order. Learned Government Advocate contended that the writ petition is not maintainable since petitioner has statutory and adequate remedy under S. 17 of the Act, which has not been exhausted. Reliance was placed on the decision in the case of Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, and also a Judgment dated 16.02.2012 passed in W.A. 10188/2011.

2. Perused the writ petition record.

 

3. The grievance of the petitioner is that the action of the 1st respondent authorising the Tahsildar to take decision of the secured asset, shown in Annexure-B is unauthorised and illegal. The contention has no merit, in view of the Judgment dated 16.02.2012 passed in W.A. 10188/2011, wherein, it has been held as follows:

5. In our opinion, in view of sub-section (2) of Section 14 of the Act, it is perfectly permissible for the Chief Metropolitan Magistrate or the District Magistrate to take such steps himself, or may cause to be taken such steps, as may, in his opinion, be necessary for the purpose of securing compliance with the provisions of sub-section (1) of Section 14 of the Act. The language employed in sub-section (2) would clearly permit the District Magistrate to direct any other officer to take possession of any secured asset. Accordingly, we hold that it is open to the District Magistrate to delegate the power conferred on him u/s 14(1) of the Act to take possession of any secured asset, to any other officer.

4. In the case of KANAIYALAL (supra), it has been held that, ordinarily, relief under Articles 226 /227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. In the said case, Bank had advanced loan to appellant No. 6 on equitable mortgage by deposit of title deeds of certain property. Appellants 1 to 5 were personal guarantors to the said loan. On default in the matter of repayment of loan amount, a notice under the Act was issued and appellants were dispossessed of the secured property. A writ petition was filed contending that the notice issued was illegal and no action could be taken in pursuance thereof and if at all, respondent wanted to take any action, it was required to approach the Chief Metropolitan Magistrate, under S. 14 of the Act. Thereupon, notice was withdrawn without prejudice to the right to take action in accordance with law. Consequently, writ petition was dismissed. Thereafter, an application was made under S. 14 of the Act for taking possession of the secured asset, before the Chief Metropolitan Magistrate, who allowed the application and directed the Assistant Registrar to take possession of the mortgaged property after issuing notice to the appellants. A writ petition filed thereafter, was dismissed on the ground of availability of alternative remedy under S. 17 of the Act. Upon examination of the provisions of Ss. 13, 14 and 17 of the Act and the decision in the case of Authorized Officer, Indian Overseas Bank and Another Vs. Ashok Saw Mill, it was held as follows:

20. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action u/s 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action u/s 13(4) of the Act, by providing for an appeal before the DRT.

21. XXXX XXXX XXXX

 

22. In the instant case, apart from the fact that admittedly certain disputed questions of fact viz., non-receipt of notice u/s 13(2) of the Act, non-communication of the order'' of the Chief Judicial Magistrate etc. are involved, an efficacious statutory remedy of appeal u/s 17 of the Act was available to the appellants, who ultimately availed of the same. Therefore having regard to the facts obtaining in the case, the High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution.

In view of the ratio of law in the decisions noticed supra, the contention urged on behalf of the respondents is sound. Writ petition is not maintainable. The petitioner can avail statutory remedy under S. 17 of the Act against the impugned order. Reserving liberty to the petitioner to avail the remedy, the writ petition being not maintainable, is dismissed with no order as to costs.

If the petitioner were to approach the statutory forum within a period of two weeks from today, the time spent in prosecuting this writ petition from 27.07.2011 till date shall stand excluded on an application seeking condonation of delay being filed by the petitioner.

I.A. I/2011 has been filed seeking extension of interim order passed in this writ petition, on 03.08.2011. Office has raised objections on I.A.1/2011, which is hereby over-ruled. The interim order passed on 03.08.2011 is hereby extended and the same would enure to the benefit of the petitioner, for a period of two weeks from today.

 