(2014) 12 KAR CK 0064

In the Karnataka High Court

Case No : Writ Appeal Nos. 30042 and 30111 of 2013 (CS-DAS)

Gururaj Seetaram Pallegaddle APPELLANT

Vs

Chanabasayya Kottrayya Durgadamath RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:
Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (2014) 12 KAR CK 0064

Hon'ble Judges : Mohan M. Shantana Goudar, J;K.N. Phaneendra, J

Bench : Division Bench

Advocate : Aravind D. Kulkarni and R.K. Hatti, Advocate for the Appellant; R.M. Kulkarni, Adv., C.S. Patil, AGA and R.K. Hatti and Aravind D. Kulkarni, Advocate for the Respondent

Judgement

Mohan M. Shantana Goudar, J.—Respondent No. 1 herein was the writ petitioner. He raised the loan of Rs. 4,00,000/- in two installments. The agreed rate of interest is 18% per annum and in default 2% as penal interest, as against the amount in default.

2. Respondent No. 1/writ petitioner created charge over the lands bearing Sy. No. 243, 794/A/5A+5B1 and Sy. No. 62 of Kajari village at Ranebennur Taluka; those lands are standing in the name of Mr. Kotrayya Chanabasayya Durgadmath, who is the father of respondent No. 1 herein; since the amounts with interest were not paid by the writ petitioner/respondent No. 1, proceedings were initiated against him under Section 70 of the Karnataka Co-operative Societies Act, 1959 (for short the Act) before the Arbitrator; the award came to be passed for Rs. 6,73,382/- with 20% p.a. interest thereon; copy of the award specifies that the properties bearing Sy. No. 243 and Sy. No. 794/A/5A+5B1 shall be sold at the first instance; and only if the amount so generated is not sufficient to discharge the liability, then it is open for the decree-holder/Bank to execute the award by selling other properties secured or belonging to the borrower/ respondent No. 1 herein. The said award dated 31.08.2002 has attained finality.

3. Even after passing of the award, no amount was paid by the borrower. Consequently, execution proceedings were initiated; application came to be filed by the decree-holder before the Recovery Officer in Form No. 1, as prescribed under the Act and the Rules framed thereunder; in the said application, the decree-holder sought for selling properties bearing Sy. No. 243 and Sy. No. 794/A/5A+5B1 only. However, the sale proclamation was issued only in respect of Sy. No. 62 measuring 35 guntas situated at Hulihalli village. The appellant herein/respondent No. 6 in the writ petition was the highest bidder. The bid amount (highest) was a sum of Rs. 1,28,000/-; the Sale Certificate was issued; the order confirming the sale is confirmed by the Joint Registrar of Cooperative Societies by the order dated 09.11.2004. The order relating to the sale confirmation as well as the order passed by the Joint Registrar of Cooperative Societies were questioned by the Judgment-debtor before this Court in W.P. No. 62482/2011 (CS-DAS), which came to be allowed by the impugned order on 23.11.2012.

4. Writ Appeal No. 30042/2013 is filed by the auction purchaser, whereas Writ Appeal No. 30111/2013 is filed by the Bank/decree-holder. Both are aggrieved by the order of the learned Single Judge setting aside the auction sale.

5. It is relevant to note here itself that the auction purchaser has deposited a sum of Rs. 1,28,000/- to the Bank after getting the Sale Certificate in his favour. The remaining amount of liability is already discharged by the judgment-debtor and consequently, No Due Certificate was issued by the Bank on 03.10.2012 to the judgment-debtor. Thus, as of now, the Bank is not aggrieved, since its entire liability is satisfied.

6. Sri. Aravind D. Kulkarni, learned advocate for the appellant in W.A. No. 30042/2013, submits that the auction purchaser is in possession of the property from the date of proclamation of sale and issuance of Sale Certificate; the property bearing Sy. No. 62 is sold by giving wide publicity; the sale proclamation was issued with wide publicity; number of bidders had participated; the auction purchaser herein was the higher bidder, that the property in question was fetching Rs. 1,28,000/- as on the relevant date and therefore, the Joint Registrar of Co-operative Societies is justified in confirming the Sale Certificate issued in favour of the auction purchaser. According to him, no illegality can be found in the auction process. He draws attention of the Court that the sale proclamation was issued in respect of Sy. No. 62 and the very property was sold.

7. Sri. R.K. Hatti, learned advocate appearing on behalf of the Bank, also supports the arguments of Sri. Aravind D. Kulkarni, by contending that the sale proceedings were held in accordance with law.

8. Per contra, Sri. R.M. Kulkarni, learned advocate for the judgment-debtor, argued in support of the judgment of the learned Single Judge.

9. As aforementioned, the award was passed on 31.8.2002 by the Arbitrator. In the award, it is specifically directed by the Arbitrator that the two properties viz. Sy. No. 243 and Sy. No. 794/A/5A+5B1 shall be sold at the first instance; those

two properties are nonagricultural sites; Sy. No. 794/A/5A+5B1 measuring 2 guntas is situated at Ranebennur Town; only if the amount of sale consideration relating to these two properties do not satisfy the liability of the judgment-debtor, the other secured and unsecured properties of the judgment-debtor will have to be sold. Thus, it is clear from the award that it is incumbent on the part of the Recovery Officer to sell the said two properties belonging to the judgment-debtor (i.e., Sy. No. 243 and Sy. No. 794/A/5A+5B1 should have been sold at the first instance).

10. It is relevant to note that the Bank, in fact, filed an application in Form No. 1 before the Recovery Officer praying for execution of the Award by selling only those two properties and not Sy. No. 62. Despite the same, the recovery officer suo motu and strangely, for the reasons best known to him, has chosen to sell Sy. No. 62 at the first instance. Absolutely, no valid reasons are forthcoming as to why the recovery officer has suo motu chosen to sell Sy. No. 62, instead of selling lands bearing Sy. Nos. 243 and 794/A/5A+5B1 as directed by the Arbitrator. As aforementioned, even the prayer of the Bank was to sell those two properties at the first instance. Hence, learned Single Judge is justified in observing that it was not open for the Recovery Officer to sell Sy. No. 62 in derogation of the direction issued by the Arbitrator in the award dated 31.08.2002.

11. It is, no doubt true that Sy. No. 62 was also secured property. But, that should not have been sold at the first instance. It could have been sold only if the liability still remained after selling Sy. Nos. 243 and 794/A/5A+5B1. In view of the same, we do not find any ground to interfere with the order passed by the learned Single Judge. Learned Single Judge has also assigned certain other reasons for coming to the conclusion. Learned Single Judge has pointed out certain other loopholes also in the auction process. In view of the same, no interference is called for in the impugned order.

12. However, before parting with the judgment, we may mention here itself that the auction purchaser has deposited a sum of Rs. 1,28,000/- (the bid amount) with the Bank as back as on 21.09.2004. The said amount is lying with the Bank. The judgment-debtor has deposited the rest of the liability. So far as the liability to the extent of Rs. 1,28,000/- is concerned, the auction purchaser has deposited the said amount and consequently, the No Due Certificate issued in favour of the judgment-debtor. Thus, the amount of Rs. 1,28,000/- is to be returned by the judgment-debtor/respondent No. 1 herein to the auction purchaser/appellant herein with interest at 20% thereon from the date of deposit till the date of payment, apart from heavy cost of the litigation.

It is also relevant to note that (see paragraph No. 13 of the order of learned Single Judge) that the judgment-debtor had made an offer to pay Rs. 3,00,000/- to the auction purchaser during the pendency of the writ petition. But, such an offer was not accepted by the appellant herein/auction purchaser. The learned Single Judge has disposed of the writ petition on 23.11.2012. Hence, it is clear that already two years have elapsed after making such an offer.

13. Having regard to the totality of the facts and circumstances of the case, interest of justice would be met if we direct the judgment-debtor/respondent No. 1 herein to pay a sum of Rs. 5,00,000/- (Rupees Five Lakhs only) to the auction purchaser within six weeks from this day.

14. In case, if the amount of Rs. 5,00,000/- is not paid by respondent No. 1 herein to the appellant herein within six weeks as directed, the said amount of Rs. 5,00,000/- will carry interest at 20% per annum and it is open for the appellant to recover the same as arrears of land revenue.

The appeals stand disposed of with the said directions.

It is made clear that if the amount of Rs. 5,00,000/- is paid to the auction purchaser by the judgment-debtor as directed, all the documents will have to be rectified in the name of judgment-debtor.

