(2015) 10 KAR CK 0063

In the Karnataka High Court

Case No : Writ Petition Nos. 30933-30935 of 2014 (GM-DRT)

K. Manjunath and Others APPELLANT

Vs

IDBI Bank Ltd. and Others RESPONDENT

Date of Decision : 16-10-2015

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

Citation : (2015) 10 KAR CK 0063

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : A. Keshava Bhat, Advocate, for the Appellant; P. Hemavathi, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J.—The petitions though coming on for orders, are considered for final disposal.

2. The petitioners are said to have taken the properties described in schedule A to D to the petition, under a lease agreement from the second respondent. The petitioners are said to be living there with their families. The first respondent is said to have obtained an order from the court of Magistrate, Bengaluru pursuant to proceedings initiated under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ''the SARFAESI Act'', for brevity) and that on the strength of the said order the respondent bank is seeking to evict the petitioners and their families and at that stage the petitioners had filed a writ petition before this court in WP Nos. 33492-33494/2013. That petition having run its course, this court has disposed of the writ petition giving permission to the petitioner to approach the Debt Recovery Tribunal. The petitioners accordingly having approached the Tribunal, the Tribunal has summarily rejected the application holding that there is no jurisdiction which could be invoked by the persons such

as the petitioners who have no connection with the loan transaction in respect of which the provisions of the SARFAESI Act have been invoked.

3. The Learned counsel for the petitioner places reliance on the decision in Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Ltd. and Others, and wherein the Supreme Court has decided whether the provisions of SARFAESI Act protect the secured assets during the period of the lease and has been answered in the affirmative to hold that if they are bona fide tenants in occupation of the premises their interest should be protected. Thus, so long as a lease of immovable property does not get determined, the lessee has a right to enjoy the property and this right is a right to property and this right cannot be taken away without authority of law. The court has further observed that there is no provision in Section 13 of the SARFAESI Act that a lease in respect of a secured asset shall stand determined when the secured creditor decides to take the measures mentioned in Section 13 of the said Act. Without the determination of a valid lease, the possession of the lessee is lawful and such lawful possession of a lessee has to be protected by all courts and tribunals. It is in this vein that the Supreme Court has sought to protect persons in possession of properties which are subject matter of the proceedings under SARFAESI Act.

4. The Learned counsel for the respondent, however, would vehemently dispute the bona fides of the petitioner and would contend that it is apparently a ruse to thwart the proceedings under the SARFAESI Act and it is a matter of fact that the property has been sold at an auction and the stage is where the bank would have to hand over possession to the bona fide auction purchasers and hence it is too late in the day to claim that the possession of the so called tenant should be protected, contrary to the provisions of the law. Notwithstanding the judgment of the Supreme Court the learned counsel would point out that the petitioners are apparently claiming under unregistered lease deeds. The lease deed being for a term exceeding one year, it was compulsorily registerable and therefore no reliance could be placed on the said lease deeds before any court of law in asserting the term of lease and in that view of the matter, it would not be possible to draw sustenance from the judgment of the Supreme Court which protects only bona fide tenants and not any person claiming as a tenant. Hence, the petitions be summarily dismissed as they are obviously brought to prevent the bank from proceeding against the securities offered and would defeat the provisions of the SARFAESI Act. The present petition is thus an abuse of process of law and that the petitions be rejected.

5. While it is also seen that the Supreme Court in the case of Jagdish Singh Vs. Heeralal and Others, which has not been referred to in Harshad Govardhan Sondagar''s case (supra), the Supreme Court has also interpreted the scope of Section 17 of the Securitization Act and has held that if a person is aggrieved by any of the measures referred to are taken by the secured creditors the expression ''any person'' contained in Section 17 would also cover such persons as the petitioners herein, who are claiming to be in possession of the property

under one or the other right set up and hence it is for the persons such as the petitioners to approach the very Debt Recovery Tribunal in order to seek protection of their interest. Therefore, the rejection of the application by the Debt Recovery Tribunal without addressing the claim of the petitioners results in a miscarriage of justice and would run counter to the law laid down by the Supreme Court. Accordingly even if the petitioners are said to be claiming under unregistered lease deeds it would yet be for the Tribunal to address the said circumstances in either deciding to protect their interest or otherwise to treat them as persons who are making a false claim to prevent the proceedings under the SARFAESI Act being taken to its logical conclusion. Consequently, the petitions are disposed of with liberty to the petitioners to approach the Debt Recovery Tribunal with an appropriate application seeking protection of their interest and the modality and manner in which such protection could be granted. It is for the petitioners to approach the tribunal at the earliest in their own interest and hence they are granted one week''s time to approach the Debt Recovery Tribunal if they so choose.

6. The registry is directed to return the originals to the petitioners.