
(2014) 11 KAR CK 0151

In the Karnataka High Court

Case No : Company Application No. 900 of 2014 in Company Application No. 1293 of 2012 in Company Petition No. 50 of 2000

Karnataka State Financial Corporation

APPELLANT

Vs

Shimoga Castings Private Limited

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Citation : (2014) 11 KAR CK 0151

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Gururaj Joshi, Advocate for the Appellant; V. Jayaram and C.K. Nanda Kumar, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—The applicant herein is the Karnataka State Financial Corporation, (Hereinafter referred to as the "KSFC, for brevity), a Government of Karnataka undertaking, established under the State Financial Corporations Act, 1951 (Hereinafter referred to as "the SFC Act", for brevity)

2. It is the case of the applicant that M/s. Shimoga Castings Private Limited (now in Liquidation) is said to have availed financial assistance from the applicant and that M/s. Shimoga Steels Limited had furnished a guarantee for the due discharge of the said loan, by the deposit of title deeds pertaining to properties belonging to it, bearing Plot No. 279, measuring about 3 acres, in land bearing Survey No. 355, 356, 358 and 359 of Industrial Area, Hebbal village, Hootagalli, Mysore.

It transpires that at the instance of the Official Liquidator (Hereinafter referred to as the "OL" for brevity), this court had, by its order dated 5.4.2011, passed on OLR 572/2003 in Co.P.50/2000 had permitted the OL to bring certain properties of M/s. Shimoga Castings Pvt. Ltd., to sale by public auction, including the above said Plot No. 279, as was disclosed in the notification issued by the OL. It was KSFC, which had filed an application in CA 894/2011, bringing it to the attention of this court that the said property did not belong to M/s. Shimoga Castings

Private Limited and on an examination of the material available, it was found that the property actually belonged to M/s. Shimoga Steels Ltd.. Accordingly, the earlier Order dated 5.4.2011 was modified and Plot No. 279 was directed to be deleted from the list of properties brought to sale, in terms of an Order dated 16.12.2011.

Further, the machinery and items that were brought to sale by the OL, were identified as Lot No. 1, 2 and 3. M/s. Shimoga Steels Limited and another had approached this court in application No. CA 1293/2012, contending that the machinery and items shown as Lot No. 2, could not be sold as the same belonged to it. The KSFC had resisted that application, but later did concede that it had no claim over items shown in a list furnished to this Court by KSFC, in the course of the hearing. It was accordingly recorded vide order dated 4.4.2014. It was further recorded that certain other machinery on the premises was being claimed by one M/s. Maharashtra Apex Corporation, over which M/s. Shimoga Steels Limited had no claim. The OL was aware of the claim of Maharashtra Apex Corporation and was not averse to the said machinery being removed from the premises. It was also evident that the OL was apparently exercising possession over the said Plot No. 279, as it was inadvertently sought to be brought to sale earlier. Therefore, the counsel appearing for the applicant, M/s. Shimoga Steels Limited, had made an oral request that there be a direction to the OL, to formally hand over the premises, over which the OL had no claim. It was accordingly recorded as a tail piece to the Order dated 4.4.2014. This was in the presence of the counsel representing the KSFC.

3. The present application is filed taking exception to the said formal direction to the OL to hand over the land to M/s. Shimoga Steels Limited. It is claimed that the land in question had been taken into possession of the applicant, KSFC as on 19.4.2011, by recourse to the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Hereinafter referred to as "the SARFAESI Act", for brevity). Now by virtue of the direction issued by this court, as above, it is claimed that M/s. Shimoga Steels Limited is claiming that possession is with the said company. It is contended that the land was not the subject matter of the application in CA 1293/2012 and hence such a direction was not warranted.

4. The respondents No. 2 and 3 have resisted the application and have filed common objections to contend as follows:

That M/s. Shimoga Steels Limited is the absolute owner of the property bearing Plot No. 279, Industrial Area, Hootagalli, Mysore and that the applicant has itself admitted the same. Further, that the order of this court dated 4.4.2014 has been complied with and therefore, the present application is infructuous.

It is pointed out that the OL had taken possession of the land, building, plant and machinery of M/s. Shimoga Castings Private Limited, including the aforesaid land, as on 19.1.2001, as stated by the OL, in the statement of objections filed in

CA 1293/2012, and hence the applicant company could not have taken over possession of the said property in the year 2011, without notice to the OL.

It is stated that M/s. Shimoga Steels Limited was declared as a "Sick Industrial Undertaking" by the BIFR and that a Rehabilitation Scheme was said to have been sanctioned in the year 2007. In the said Scheme, the third respondent was said to have been inducted as a co-promoter. Under the Scheme, it was envisaged to settle the dues of Karnataka State Industrial Investment Development Corporation and KSFC, both of whom were said to be *pari passu*, first charge holders on the assets of the company, which included the land in question. It is further stated that the entire dues were paid under a One Time Settlement (OTS) as early as in the year 2008. In terms of the Scheme, all charges, guarantees as against the second respondent were assigned in favour of the third respondent on the fixed assets of the company including the subject land. It was also contemplated handing over of the assets along with the land by the OL to the second respondent.

Pursuant to the Orders of the Board for Industrial and Financial Reconstruction (BIFR), the KSIIDC, which held the title deeds in deposit, for itself and on behalf of KSFC, is said to have handed over the original documents in respect of the property to the third respondent - company on 19.7.2012 and 3.6.2013. This appears to have been challenged by the applicant -KSFC before the BIFR and an application in that regard having been dismissed as not maintainable, by an Order dated 25.2.2013, the same is said to be the subject matter of an appeal before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR), and the matter has been remanded to the BIFR, on the ground that no reasons are forthcoming in having rejected the application of KSFC. The same is said to be pending consideration.

Incidentally, the second respondent further elaborates on the background thus:

"KSFC had taken over the property, funded jointly by KSIIDC and KSFC from a defaulting borrower called M/s. ENN EN Castings Private Limited and had sold the same to M/s. Shimoga Steels Limited, the second respondent. Apart from sanctioning a loan of Rs. 134.40 lakh, which was again secured by way of *pari passu* first charge on the fixed assets of the land, jointly by KSIIDC and KSFC. KSIIDC, as the lead banker was in possession of the title deeds that were kept in deposit to secure the due repayment of the loan. The possession of the land was handed over to M/s. Shimoga Steels Limited."

Notwithstanding the above position, KSFC is said to have sanctioned another loan of Rs. 150 lakh on the strength of the security of the same property, to M/s. Shimoga Castings Private Limited on a purported collateral security charge basis, but without the consent of KSIIDC, the co-lender. There is also no indication of a memorandum of charge duly filed with the Registrar of Companies, in this regard.

It is contended that as there was no reference to the Deferred Payment Term Loan (DPTL) in the Scheme sanctioned by BIFR, it was said to have been agreed

by KSFC and the second and third respondents to assess the full market value of the property, which was in turn considered as the One time settlement (OTS). It is claimed that though the respondents were not liable, had with a view to give a quietus to the transaction, made an additional payment of Rs. 46 lakh to KSFC, in addition to the amount envisaged under the Scheme, to top-up the same to the market value of the property in question. It is thus claimed that in any event, KSFC has extracted the entire value of the irregular security that was sought to be created on the very same property, twice.

It is further contended that insofar as the proceedings initiated by KSFC under the SARFAESI Act, during the year 2011, immediately after the assignment of the charge in favour of the third respondent, unconditionally, the proceedings were rendered a nullity. The second respondent had hence approached the Debt Recovery Tribunal (DRT), challenging the initiation of the proceedings under the SARFAESI Act, in IR No. 1630/2011 and by an Order dated 21.10.2013, the DRT is said to have closed the proceedings, while recording that the matter has been settled. Hence, the KSFC was never enabled to invoke the SARFAESI Act, without possessing the documents of title as security, and it is not even the case of KSFC that it has registered a collateral charge on the property, in the books of the Registrar of Companies (ROC). The only charge on the property is the one assigned in favour of the third respondent.

Incidentally, the KSFC having moved the application in CA 894/2011, to state that the land could not be brought to sale and that it was subject to a charge created in favour of KSFC, was an assertion made therein, without the respondents being made parties to the application. The issue was addressed only to the limited question of whether the property could be brought to sale as one belonging to M/s. Shimoga Castings Private Limited, which was in liquidation, and the same was answered in the negative. This did not imply that the KSFC could thereby claim a vested right.

Though the KSFC has sought to produce certain additional documents to bolster its application, the learned counsel for the KSFC had candidly admitted that there were several incidental documents to demonstrate that M/s. Shimoga Steels Limited has admitted the existence of an additional charge created on the same property, however, there was no formal document in this regard, nor was there a charge registered with the Registrar of Companies. The several assertions made by the respondents as to the sequence of events are not seriously disputed, nor is any rejoinder filed to refute the detailed objections filed by the respondents.

5. As rightly pointed out by the learned counsel for the respondents 2 and 3, the OL had, on the winding up of the company in liquidation, taken over possession of the land, building, plant and machinery of the first respondent company, including the aforesaid land as early as in the year 2001. The KSFC was hence not in a position to have taken over possession of the same land in the year 2011, without notice to the OL, or the leave of this court. Any mahazar evidencing such a fact of having taken possession is a nullity.

6. Therefore, irrespective of other contentions on merits, the claim of KSFC that it was exercising possession over the land in question and that this court had inadvertently directed the OL to hand over possession of the same to the second respondent, etc., is not tenable. There is no irregularity or illegality in the OL having handed over possession of the land to the owner thereof. If the KSFC claims to have any charge over the same, it may be enforced in the manner known to law.

The application of KSFC is dismissed with costs of Rs. 10,000/- payable to the second respondent.