(2024) 02 KL CK 0211

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22355 Of 2023

K.C. Sabu APPELLANT

Vs

Chief Judicial Magistrate RESPONDENT

Date of Decision : 23-02-2024

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 14

Citation : (2024) 02 KL CK 0211

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : Liji.J.Vadakedom, Tom E. Jacob, Rexy Elizabeth Thomas, Athul V. Vadakkedom, Sheeja C.S., P.A.Augustine

Final Decision : Dismissed

Judgement

N. Nagaresh, J.

1. The petitioner is before this Court challenging Exts.P7 and P8 orders passed by the 1st respondent-Chief Judicial Magistrate, Kottayam.

2. The petitioner states that the 3rd respondent, who is a close friend of the petitioner, has been running a financial institution along with respondents 4 and 5. The 3rd respondent is the husband of the 4th respondent and the 5th respondent is the sister-in-law of the 3rd respondent. The 3rd respondent has been borrowing money for business, from the petitioner.

3. In May, 2011, the 3rd respondent wanted ☐ 35 lakhs urgently and suggested the petitioner to deposit title deed of the property of the petitioner with the 2nd respondent-Bank to secure a loan. Later, the 3rd respondent wanted the petitioner to execute a conveyance deed with respect to the first plot in favour of respondents 3 to 5 so as to mortgage the same. The 3rd respondent assured the petitioner that the property will be reconveyed to the petitioner. Therefore, the petitioner executed Ext.P1 sale deed dated 24.05.2011 in favour of the 3rd

respondent. The Bank advanced ☐ 45 lakhs on 05.03.2011 to the respondents.

4. In the year 2014, when the petitioner requested the 3rd respondent to reconvey the property by executing a sale deed, the 3rd respondent refused to do so. The petitioner therefore filed OS No.24/2015 against respondents 3 to 5. In the meanwhile, the Bank has initiated proceedings invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to take over the petitioner's property and sell the same.

5. By Ext.P7 order, the Chief Judicial Magistrate, Kottayam permitted appointment of Taluk Surveyor to identify, measure out and demarcate the property. By Ext.P8 order, the Chief Judicial Magistrate, Kottayam issued notice to the Tahsildar. The petitioner is challenging Exts.P7 and P8.

6. The counsel for the petitioner argued that the title deed executed in favour of the 3rd respondent by the petitioner is a sham document. OS No.24/2015 is pending in the civil court in this regard. By Ext.P6, the Advocate Commissioner has stated that he cannot identify the property. The Chief Judicial Magistrate has appointed Taluk Surveyor.

7. The petitioner submitted that the Bank has to go to Taluk Surveyor for demarcation of property. The Bank has a remedy for fixation of boundary. A Magistrate exercising powers under Section 14 has no such powers.

8. The petitioner cannot be said to be a person aggrieved by any action of the Bank under Section 13 or Section 14 of the SARFAESI Act, 2002. The petitioner submitted that in view of the judgment of the Apex Court in Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and another [2012 KHC 4653], the petitioner cannot approach the Debts Recovery Tribunal.

9. The 2nd respondent resisted the writ petition. On behalf of the 2nd respondent, it is submitted that respondents 3 to 5 are the owners of the plot in question. The property has well demarcated boundary walls on all sides. Respondents 3 to 5 have mortgaged the property for availing loan. When the Advocate Commissioner tried to take possession of the secured asset, the petitioner disputed the identity of the property and unlawfully obstructed the process of taking possession. The writ petition is without any force and it is liable to be dismissed.

10. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the 2nd respondent. I have also heard the learned Senior Government Pleader representing the 1st respondent.

11. The petitioner challenges Exts.P7 and P8 proceedings of the Chief Judicial Magistrate, Kottayam. By Ext.P7 order, the Chief Judicial Magistrate allowed the application filed by the Bank to appoint Taluk Surveyor to identify, measure out and demarcate the property mortgaged by the 3rd respondent. By Ext.P8, the Chief Judicial Magistrate issued letter to the Tahsildar. Exts.P7 and P8 orders

would not affect any claim of the petitioner nor it will substantially interfere with any rights of the petitioner. Respondents 3 to 5 have mortgaged a property to the Bank to avail financial advance. Respondents 3 to 5 hold the property under a title deed. According to the petitioner, the petitioner had conveyed property to respondents 3 to 5 by way of a sham document. In effect, the argument of the petitioner is that the title deed of the property has not conveyed the property to respondents 3 to 5.

12. The petitioner cannot advance such arguments when admittedly there is a registered deed of conveyance of the petitioner's property in favour of respondents 3 to 5. If the petitioner is challenging the legality or genuineness of a registered document, the petitioner has to approach competent civil court and obtain orders to that effect. The petitioner has, in fact, filed a civil suit in this regard. But, the civil court has not passed any order or judgment in favour of the petitioner so far.

13. Respondents 3 to 5 have mortgaged the property in question by deposit of title deed, which is a registered title deed. When respondents 3 to 5 failed to maintain the loan account, the Bank has initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The petitioner cannot aspire to stop the proceedings initiated by the Bank by merely making a statement or allegation that the title deed held by the 2nd respondent is a sham document.

In the circumstances, I do not find any merit in the writ petition. The writ petition is therefore dismissed.