
(2014) 06 KL CK 0122
In the High Court Of Kerala
Case No : Crl.M.C. No. 2258 of 2014

Koshy George

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(8), 14, 17

Citation : (2014) 06 KL CK 0122

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : L. Ram Mohan, and Sri. M. Aubrey Abraham Isaac, Advocate for the Appellant; S. Hyma, Public Prosecutor for R1 and Sri. N. Rajendran, SC., Advocate for R2, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

K. Ramakrishnan, J.—It is an application filed by the petitioners seeking a direction by the Chief Judicial Magistrate, Kottayam u/s 482 of the code of Criminal Procedure (hereinafter referred as the "Code").

2. Petitioners herein are husband and wife and they were shown as respondents 1 and 2 in CMP 132/2014 on the files of Chief Judicial Magistrate's Court, Kottayam That petition was filed by the second respondent u/s 14 of the of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (in short called as "SARFAESI Act") and if any order is passed without issuing notice to the petitioners, it will cause irreparable injury and miscarriage of justice and there will be denial of an opportunity to make their representation before the court. Ex parte proceedings is not known to criminal law. So the petitioners have moved this application seeking the following relief.

to direct the Chief Judicial Magistrate Court, Kottayam to issue notice in CMP No.132/2014 pending on the it files of Chief Judicial Magistrate Court Kottayam

there by affording an opportunity of being heard to the petitioners.

3. Heard the counsel for the petitioner, the counsel for the second respondent and the learned Public Prosecutor.

4. Called for a report from the Chief Judicial Magistrate, regarding the present stage of the case. The learned Magistrate had sent a report which reads as follows:

C.M.P.132/2014 is filed by the Syndicate Bank as petitioner u/s. 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002, against two Respondents on 16.1.2014. The court has ordered notice to the Respondents and the petition was posted to 13.2.14. On that day when the case is called my learned Predecessor in office has adjourned the case for objection to 18.3.2014. On that day there was no sitting and the case stood adjourned to 22.4.14. On that day also there was no sitting and the case stands posted to 5.6.2014. It may submit that on verification of the case records, it is seen that notice to the Respondents were not sent by the office as the Pin Code of the Respondents is not furnished by the petitioner. Though the said defect is noted by the concerned Clerk on the proceedings paper, my learned Predecessor in office instead of giving any direction to the petitioner to cure the defect has adjourned the case for objection. Actually no vakalath is filed by the Respondent and no notice is served on them. Now the case stands posted to 5.6.2014.

The above report is humbly submitted as directed vide reference cited supra.

5. When the application came for hearing on the previous occasion, this Court has directed counsel for the petitioners to come with the concrete proposal for effecting the payment of the amount in instalments and he took time for that purpose. Even today he had not come with any concrete proposal but only stated that only now he has received the copy of the Statement of Accounts which shows the existence huge amount as arrears and he now wants to make representation to the bank for which purpose he wants time.

6. Counsel for the second respondent submitted that the attempt of the petitioners only to protect the proceedings and no valid ground has been made out for the relief claimed.

7. It is an admitted fact that the petitioners borrowed amounts from the 2nd respondent by mortgaging their properties and they have committed default in payment of amount. It is also in a way admitted that before initiating proceeding u/s 14 of the SARFAESI Act, second respondent bank had issued notice u/s 13(2) of the Act calling upon the petitioners to clear the arrears and expressing their intention to proceed against them u/s 14 of the Act if the amount is not paid. But no effective steps have been taken by the petitioners to clear the entire arrears. No notice is contemplated in a proceeding u/s 14 of the SARFAESI Act prior to passing of an order directing to take possession of the secured property. If the

court is satisfied that the procedure contemplated u/s 13 is complied with and the bank has filed an affidavit as provided u/s 14 stating the procedures adopted by them and the amount due as per the accounts, then Magistrate has no other option except to assist the bank to get possession of the secured property by deputing some person as provided under the Act.

8. But in the decision reported in Housing Development Finance Corporation Ltd. Vs. Government of Kerala, Single Bench of this Court has held that if the Chief Judicial Magistrate feels that a notice has to be issued before ordering possession, he may issue notice. So there also this Court has not said that notice is mandatory. Though they received the notice u/s 13(2) of the Act they did not clear the arrears immediately. But however on going through the report, it is seen that the learned Chief Judicial Magistrate had decided to issue notice to the petitioners who are respondents in that petition. So infact, the petitioner is not entitled to get any relief in the petition as for some defect in the notice, the office of the Magistrate's Court has not sent the notice. Now it is posted to 05/06/2014 as there was no sitting in that court for some time.

9. Since the grievance of the petitioner is only that without issuing notice the Magistrate should not proceed and having come to know now that notice has already been ordered and he was now aware of the date of posting, the petitioners are directed to appear before the court below on 05/06/2014 without waiting for any notice to be issued by the Chief Judicial Magistrate in this regard as from the conduct it appears that it is only to protect the proceedings and nothing more and the purpose of the Act is to expedite the recovery of the amount from the defaulters without the intervention of regular procedure of going to court and getting a decree leaving open the remedy of the borrowers either to pay off the amount within one month of taking possession as provided u/s 13(8) of the Act or to challenge the same after dispossession before the Debt Recovery Tribunal invoking Section 17 of the Act by filing appeal.

10. If the petitioners appear before the court below on 05/06/2014, then they are directed to file objections within two days from 05/06/2014 and within one week from that day, the learned Magistrate is directed to pass appropriate orders in the matter as contemplated u/s 14 of the Act after considering the objection raised by the petitioners. If the petitioners did not appear on 05/06/2014 and did not file any objection as directed by this Court then, the learned Magistrate is directed to proceed with the case in accordance with law as provided u/s 14 of the Act without delay.

With the above observation and direction, the petition is disposed of.

Office is directed to communicate this order to the court below by fax immediately so as to reach there before 05/06/2014.