(2012) 03 KL CK 0298

In the High Court Of Kerala

Case No : W.A. No''s. 337 and 476 of 2012

K.S. Kadar Pillai — APPELLANT

Vs

Rosebud Projects Pvt. Ltd. and Others — RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Citation : (2013) 1 BC 489

Hon'ble Judges : Manjula Chellur, Acting C.J.;V. Chitambaresh, J

Bench : Division Bench

Advocate : Vakkom N. Vijayan, Mr. V. Renju, Mr. Aniyan P. and Mr. Ramitha M.A, for the Appellant; P.A. Augustian, Leo George (Standing Counsel) and Mr. P.V. George (Puthiyidam), for the Respondent

Judgement

Manjula Chellur, A.C.J.

1. Heard the learned Counsel for the appellants in both the appeals as well as the debtor and secured creditor. Judgment in W.P. (C) No. 30840 of 2011 is the common impugned judgment in both the appeals. The writ petition came to be filed by the borrower before the learned Single Judge. The brief facts that led to the filing of the writ petition are as under.

The writ petitioner borrowed money by pledging his properties from the respondent No. 1-Bank, There were several rounds of litigation seeking time for payment of overdue amounts to the Bank. However, when the borrower failed to discharge the loan, the Bank had brought one of the properties for sale. It is not in dispute that the public sale took place on 18.11.2011. The appellant in W.A. No. 476 of 2012 was the successful bidder in the public auction, who offered Rs. 3,81,50,000/- for the property in question. In terms of the procedure 25% of the bid amount also came to be deposited on 18.11.2011. Subsequently at the instance of the writ petitioner/borrower on 21.11.2011, an interim order came to be passed which reads as under:

The petitioner shall see that the respondent No. 2 enters appearance and files an affidavit undertaking to pay the agreement amount. Further proceedings in respect of the same shall be kept in abeyance till the next posting date.

Subsequently, the respondent No. 2 before the learned Single Judge who is the appellant in W.A. No. 337 of 2012 filed an affidavit. Subsequently, this Court passed an order dated 1.12.2011 which reads as follows:

Admit. Standing Counsel takes notice for the respondent No. 1. Adv. Mr. Vakkom N. Vijayan takes notice for the respondent No. 2.

2. The respondent No. 2 undertakes to pay Rs. 4.21 Crores directly to the Bank towards sale consideration for the property, in accordance with the agreement for sale entered into by him with the petitioner, which property is the subject matter of the securitisation proceedings now and has been sold to a purchaser, who has deposited 25% of the amount.

3. The learned Counsel for the respondent No. 1 submits that since an intending purchaser has already deposited 25%, the respondent No. 2 should also deposit 25% of Rs. 4.21 crores.

4. The petitioner undertakes to deposit 25% of Rs. 4.21 crores with the Bank within one week. The respondent No. 2 seeks two months'' time to deposit the sale price of Rs. 4.21 crores with the respondent No. 1-Bank.

Accordingly, the petitioner is directed to deposit 25% of Rs. 4.21 crores with the Bank within one week. The respondent No. 2 shall deposit Rs. 4.2 J Crores with the respondent No. 1-Bank within two months from today. If the petitioner and the respondent No. 2 comply with the above directions the sale conducted by the respondent No. 1 shall not be confirmed. If the respondent No. 2 and the petitioner do not deposit the said amounts as undertaken by them before me, the respondent No. 1 can continue with further proceedings pursuant to the sale and the petitioner and the respondent No. 2 would also be liable for contempt proceedings as well for violating the undertaking. This interim order is in modification of the order dated 2.11.2011.

Post after two months.

2. Subsequently in pursuance of the interim order dated 21.11.2011 no further amount whatsoever was received by the secured creditor and the third party purchaser had deposited the entire sale proceeds of Rs. 4.21 crores with the secured creditor/Bank as undertaken by him in the affidavit dated 2.2.2012.

3. Then the question that arose before the learned Single Judge was whether the auction purchaser should get confirmation of sale and whether he should be permitted to deposit the balance bid amount or whether the borrower and the third party purchaser could proceed with the sale transaction which was entered into between them. In that context, the secured creditor submitted that they have not received the balance bid amount and they had received the entire sale price agreed between the borrower and third party purchaser i.e. Rs. 4.21 crores.

4. The main argument of the learned Counsel for the auction purchaser was by virtue of Sub-rule (3) of Rule 9 of the Security Interest (Enforcement) Rules, 2002, there was automatic confirmation of sale once he deposits 25% of the bid amount and therefore there was no scope for any other interpretation and the secured creditor Bank had to receive the balance bid amount and execute a sale certificate in his favour as contemplated under Rule 9. We have gone through Rules 9(3), 9(4) and 9(6) of the above rules which read as under:

9. Time of sale, issues of sale certificate and delivery of possession etc- (3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent, of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the form given in Appendix V to these rules.

5. By reading of the above rules no one it can infer an opinion that there is automatic confirmation of sale with deposit of 25% of bid amount. In the present case there was intervention of the Court by interim order dated 21.11.2011, therefore, the secured creditor was prevented from receiving the balance bid amount and the third party purchaser was allowed to deposit the entire sale proceeds towards the loan due by the borrower.

6. As there was compliance of the interim direction of the Court, there cannot be any confirmation of sale and even otherwise we cannot accept the contention of the auction purchaser''s Counsel that there is automatic confirmation of sale as there is no such happening by the operation of law by reading any of the sub-rules of Rule 9.

7. In that view of the matter, the learned Single Judge was justified in saying, there cannot be execution of a sale certificate by the secured creditor in favour of the auction purchaser and oh the other hand, all the relevant documents pertaining to the property in question have to be returned to the borrower so as to allow him to execute the document for conveyance or transferring the right, title and interest in the property in question in favour of the third party purchaser.

8. The fact remains that the auction purchaser deposited 25% of the bid amount as on 18.11.2011. The said amount was lying with the secured creditor. On account of the writ petition filed by the borrower, the Court had to interfere and pass an interim order which prevented the auction purchaser to deposit the

balance amount and get execution of sale certificate in his favour by the secured creditor, who has to bear the compensation part which came to be awarded by the learned Single Judge. The learned Single Judge was justified in saying that 25% of the bid amount deposited by the auction purchaser has to carry interest at 10% from the date of deposit till the date of refund made to the auction purchaser.

9. The argument of the learned Counsel for the appellant that the rate of interest at 10% is too low is not acceptable to us as the Banks are paying 9% interest if a deposit is made for more than 3 years. The deposit is less than six months in the present case. In that view of the matter, we are of the opinion, there need not be any enhancement so far as the rate of interest to be paid on 25% of the bid amount.

10. Then the question would be who has to bear this extra burden. As the auction purchaser was prevented from getting the benefit out of auction being the highest bidder, and in the light of the third party purchaser having discharged his duty by depositing the entire sale proceeds of Rs. 4.21 crores to the secured creditor, we are of the opinion, the borrower alone has to bear the extra burden of paying interest at 10% on Rs. 95,37,500/-. In order to postpone the sale of the property in question admittedly the borrower approached this Court. In that view of the matter, we direct the secured creditor Bank to refund Rs. 95,37,500/- and also 10% interest on the said deposit from 18.11.2011 till date of refund to the auction purchaser by debiting the said interest to the account of the borrower, within 15 days from the date of receipt of a copy of this judgment. So far the return of title deeds pertaining to the property in question and execution of sale deed by the borrower in favour of the third party purchaser was also to be completed within one month from the date of return of title deeds by the Bank to the borrower. Accordingly both the writ appeals are disposed of.

