
(2012) 02 AHC CK 0023
In the Allahabad High Court
Case No : C.M.P. No. 28018 of 2008

Madhu Shukla

APPELLANT

Vs

Bank of Baroda

RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13

Citation : (2013) 1 BC 431

Hon'ble Judges : Yogesh Chandra Gupta, J; Satya Poot Mehrotra, J

Bench : Division Bench

Advocate : Sandeep Kumar Srivastava and Mr. Anirudh Chaturvedi, for the Appellant; Abhay Saxena, Abhay Singh, Mrs. Archana Singh, C.S.C. and Mr. Ram Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

1. Supplementary Affidavit filed today on behalf of petitioner, is taken on record. We have heard Mr. Anirudh Chaturvedi holding brief for Mr. Sandeep Kumar Srivastava, learned Counsel for the petitioner, and Mrs. Archana Singh, learned Counsel for the respondent Nos. 1 and 2, and perused the record.

2. With the consent of the learned Counsel for the parties, the writ petition is being disposed of at this stage.

3. The present writ petition has been filed by the petitioner making the following prayers:

(a) To issue writ, order or direction in the nature of mandamus commanding and directing the respondent Nos. 1 and 2 not to evict the petitioner and take the possession of petitioner's House No. 37-D situated at Daheli Sujapur (Shyam Nagar), Kanpur Nagar.

(b) To issue any such other and further suitable writ, order or direction, which

this Hon''ble Court may deem fit and proper in the circumstances of the case.

(c) To award the cost of the petition to the petitioner.

4. It appears that the proceedings have been initiated by the respondent No. 2 (Bank of Baroda) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "the Securitisation Act") on account of the default committed by the respondent No. 3 (M/s Akansha Enterprises) in respect of the Cash-Credit facility given to the said respondent by the respondent No. 2- Bank. Smt. Shail Kumar Pandey (respondent No. 4) was stated to be guarantor in respect of the said facility.

5. It further appears that the petitioner filed a suit being Original Suit No. 476 of 2007, in the Court of Civil Judge (Senior Division), Kanpur Nagar, inter alia, praying for a decree of permanent prohibitory injunction restraining the defendants, etc. in the said suit from evicting the petitioner from the property detailed at the foot of the plaint of the said suit. The case of the petitioner was that the property mentioned in the suit was never mortgaged with the respondent No. 2- Bank for the aforesaid cash credit facility given to the respondent No. 3, and therefore, no proceedings could be taken against the said property. The respondent No. 2- Bank filed its written statement in the said suit on 17.1.2008.

6. While the said suit is still pending, the petitioner filed the present writ petition before this Court during Summer Vacation on the ground that the respondent Nos. 1 and 2 were threatening to auction and sell the property of the petitioner mentioned in the aforesaid suit.

7. By the order dated 10.6.2008, this Court stayed the operation of the notice dated 29.1.2007 (Annexure No. 4 to the writ petition) issued to the respondent No. 4, under Sub-section (2) of Section 13 of the Securitisation Act. The said stay order has since been continuing in the present writ petition. The suit filed by the petitioner, as noted above, is still pending.

8. From the narration of the facts above and from the perusal of the writ petition and the supplementary affidavit filed on behalf of petitioner and also counter affidavit filed on behalf of respondent No. 2-Bank, it is evident that the subject-matter of the present writ petition is the same as involved in the aforesaid suit namely, Original Suit No. 476 of 2007 filed by the petitioner in the Court of Civil Judge (Senior Division), Kanpur Nagar, which is still pending. The present writ petition was entertained by this Court, as the petitioner showed urgency in the matter on account of on-going summer vacation. The said circumstance, no longer subsists.

9. As before approaching this Court by the present writ petition under Article 226 of the Constitution of India, the petitioner had filed suit in respect of the same subject-matter, and the said suit is still pending, we are not inclined to exercise our writ jurisdiction under Article 226 of the Constitution of India in the present

case. The writ petition is liable to be dismissed on the ground that the petitioner has already been availing the remedy of suit.

10. The writ petition is, accordingly, dismissed on the said ground. However, on the facts and in the circumstances of the case, there will be no order as to costs.