(2016) 03 KAR CK 0094

In the Karnataka High Court

Case No : Writ Petition Nos. 8365 and 8556 of 2016 (GM-RES)

Madhusudhan APPELLANT

Vs

v. Bharath Co-Operative Bank RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 14

Citation : (2016) 165 AIC 681 : (2017) 1 DRTC 409 : (2016) 3 KantLJ 456

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : Premesha, Advocate, for the Petitioner; Pundikai Ishwara Bhat, Advocate, for the Respondent No. 1; Served and Unrepresented, for the Respondent Nos. 2 and 3

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court seeking issue of mandamus to direct the first respondent not to take physical possession of the petition schedule property.

2. The petitioner claims to be in possession of the petition schedule property as a tenant under the owner of the premises namely the third respondent. The third respondent had availed financial assistance from the first respondent. Since the account had been treated as NPA, proceedings under the SARFAESI Act (?the Act? for short) was initiated. By the order dated 11.1.2016, the learned Magistrate has exercised the power under section 14 of the Act and permitted the first respondent to take possession of the secured property as mentioned in the schedule therein. Notwithstanding the said order, the petitioner is before this Court seeking that the possession of the petitioner is required to be protected since it is contended by the petitioner that the petitioner has entered into a lease agreement and he is a bona fide lessee in respect of the petition schedule property which is a portion of the property which forms the schedule to the order

passed by the learned Magistrate under section 14 of the SARFAESI Act. The documents at Annexures-A to C2 are relied on to contend that a lease agreement has been entered and the petitioner is running a small shop in the said premises. The receipt for having paid the rent is also relied on.

3. Learned Counsel for the respondent would however contend that the said documents are got up in connivance with the second respondent and the petitioner cannot be considered as a bona fide lessee. Reference is made to the very document relied on by the petitioner i.e., the lease agreement dated 1.8.2014 to point out that though the rental advance has been referred to therein, it has been kept blank and therefore, in such circumstance, the document cannot be considered as complete. It is also pointed out that the second respondent who is the borrower had in fact approached this Court in W.P.No. 5454/2016 and despite the interim order being granted subject to the condition, the condition has not been complied.

4. In the light of the contentions put forth, though reliance is placed on the lease agreement to contend that the petitioner is a bona fide lessee and the same is disputed by the first respondent, the validity of the said document in my opinion, need not be adjudicated in the instant petition. All that is required to be noticed herein is as to whether the right as claimed by the petitioner as a lessee under the second respondent, who is a borrower and has defaulted for payment, could be accepted for the purpose of protecting the possession. The said aspect has been considered by the Hon''ble Supreme Court in the case of Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd., (2014) 6 SCC 1, wherein the Hon''ble Supreme Court has categorized the lessees into three classes. The Class-I being the lessees who have entered into lease agreements prior to creation of mortgage; the Class-II being lessees who have entered into lease subsequent to creation of mortgage, but prior to issue of notice under section 13 (2) of the SARFAESI Act and Class - III of lessees are persons who have entered into lease subsequent to issue of notice under section 13 (2) of the SARFAESI Act. The nature of right available to each class of lessees has been discussed in detail.

5. In the instant case, there is no dispute to the fact that loan was disbursed and the mortgage was created on 12.1.2012. The loan was treated as NPA and section 13 (2) SARFAESI notice was issued on 10.4.2015. The lease as claimed by the respondent is on 1.8.2014. If the said factual aspect is kept in view and the decision of the Hon?ble Supreme Court is applied, the petitioner herein would fall under Class II as stated therein. It is no doubt true that the position was explained and the right of the tenant was considered in the case of Vishal N. Kalsaria v. Bank of India and others, AIR 2016 SC 530. But, the same cannot be made applicable since the right was attempted to be created a little earlier to section 14 proceedings being initiated and in companion matters it is held against the petitioner. If that be the position, the lease agreement cannot offer any benefit to the petitioner insofar as the eviction under section 14 of the

SARFAESI Act is concerned. Hence the prayer in the petition cannot be accepted.

6. Learned Counsel for the petitioner would however submit that since there is running establishment in the premises, he be granted three months time to make alternate arrangement and voluntarily vacate from the premises. I am of the opinion that the said request is reasonable and the time as sought is to be granted. In that view, the third respondent is directed not to execute the order dated 11.1.2016 for a period of three months from this date. If the petitioner does not voluntarily vacate from the premises within three months, the first respondent may execute the order and obtain possession of the premises in accordance with law.

7. The petitions stand disposed of accordingly.