(2014) 07 KL CK 0048

In the High Court Of Kerala

Case No : WP (C). No. 14978 of 2014 (V)

Manu K. Pillai APPELLANT

Vs

State Bank of Travancore RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Citation : (2014) 07 KL CK 0048

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : A. Shafeek (Kayamkulam), Advocate for the Appellant; Sathish Ninan, Santhosh Mathew and B. Renjithkumar, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner along with his wife had availed a housing loan from the 1st respondent-Bank and constructed a residential building in Re-survey No. 47/4 (old Survey No. 164/8A) in Block No. 8 in Thekkakara Village of Mavelikkara Taluk. The petitioner''s wife expired on 19.02.2011. After the death, it was revealed that the wife had executed a Will in the name of her mother, who is impleaded as additional 3rd respondent. The bequest was with respect to the one-half share, the wife had over the property, on which the residential house was constructed. Disputes arose between the petitioner and the additional 3rd respondent as to the possession and title over the property.

2. Default was committed in the housing loan and, hence, the respondent-Bank took over the property and dispossessed the petitioner''s father, mother and minor child residing in the property. The petitioner, admittedly, is employed abroad. The Bank also filed a suit, O.S.No.399 of 2012 before the Sub Court, Mavelikkara for recovery of money, which is pending.

3. The learned counsel for the petitioner contends that, in fact, the petitioner was in possession of the property and that if at all a claim has to be raised by the additional 3rd respondent, it has to be adjudicated before an appropriate civil forum, especially when the petitioner is challenging the genuineness of the Will

executed by his wife. The petitioner as also the additional 3rd respondent, expresses willingness to pay off the dues in the account, provided they are given possession of the residential building. The respondent-Bank, however, does not commend regularisation or the continuation of the loan, since a third party interest has been created in the property. The respondent-Bank has also enforced the security interest created to secure the loan under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "SARFAESI Act") and taken possession of the mortgaged properties.

4. What is primarily to be considered is, the possession of the property as at this point of time. Admittedly the default occurred only because of the dispute between the petitioner and the additional 3rd respondent. The Bank submits that an amount of about Rs.3,50,000/- is in default in the loan account. The petitioner contends, he had expressed his willingness to pay Rs.2,50,000/-, which, though accepted by the Bank, was transferred back to the Savings Bank account of the petitioner''s father. So much is admitted by the Bank also.

5. The respondent-Bank, as per the direction of this Court, has filed a statement, in which it has been categorically stated that the Bank has taken possession of the subject residential building from the parents of the petitioner. Hence, admittedly, the petitioner was in possession of the residential building before the Bank took it over. This Court does not see any compelling circumstance to disturb the possession of the petitioner and hand it over to the additional 3rd respondent.

6. The writ petition also need not be kept pending. Definitely, there should be an arrangement as to the possession and the servicing of the loan, pending consideration of the disputes between the petitioner and the additional 3rd respondent. This Court would endeavour to make such an exercise, only in the circumstance of the Bank having specifically asserted its right to proceed against the property, due to the aforesaid disputes.

7. It is trite that the mortgage created to the Bank is not effaced nor affected by the bequest, by the wife of the petitioner to her mother. The liability runs with the property. It is also evident that the additional 3rd respondent has not, till this point of time, raised any dispute before an appropriate forum, with respect to the tile, ownership or possession of the subject property. It is also admitted that the Bank took over possession of the property from the petitioner. In such circumstance, the property shall be resumed to the petitioner or his father, who is the power of attorney, who has filed the above writ petition, on payment of Rs.2,50,000/- [Rupees two lakhs and fifty thousand only] within a period of two weeks from today. The balance arrears in default, remaining in the account, shall be paid in six equal monthly instalments, along with the regular Equated Monthly Instalments [EMIs], on the respective due dates, as provided in the original agreement. The 1st instalment for payment of the defaulted arrears shall commence on 18.08.2014, followed up with on the 18th of every succeeding month. Two consecutive default in payment of the instalments granted by this

Court would enable the Bank to take possession of the property. It is made clear that the possession so granted to the petitioner herein is only subject to the above directions being complied with as also subject to any adjudication with respect to the rival claims of the additional 3rd respondent and the petitioner.

8. The further EMIs shall also be satisfied, for the present, by the petitioner herein. The satisfaction of amounts, after the demise of the petitioner''s wife, though undertaken by the petitioner; shall also be subject to any proceedings initiated, to settle the disputes between the additional 3rd respondent and the petitioner. Reiterating that such dispute shall not affect the mortgage created on the Bank, the writ petition is disposed of. If two consecutive defaults are committed, the respondent-Bank would be entitled to resume the recovery proceedings from the stage at which it has been kept in abeyance and the petitioner would surrender the property to the Bank without demur. The petitioner or his power of attorney, on the demand of the Bank, shall execute documents to continue the aforesaid loan. In the context of the above directions, the suit filed by the respondent-Bank need not be kept pending and on an application being filed by the Bank for withdrawal of the same, with leave to initiate proceedings at the appropriate time, the same shall also be considered favourably by the concerned civil Court.

Writ petition is disposed of as above. Parties are left to suffer their respective costs.