(2009) 08 KL CK 0082

In the High Court Of Kerala

Case No : WA. No. 1506 of 2009

Maria Thomas — APPELLANT

Vs

Chairman and Managing Director, Chief Manager and Authorised Officer and Branch Manager, Union Bank of India — RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2009) 08 KL CK 0082

Hon'ble Judges : S.R. Bannurmath, C.J;A.K. Basheer, J

Bench : Division Bench

Advocate : K.S. Madhusoodanan, for the Appellant; A.S.P. Kurup, SC, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Basheer, J.—The appellant who had availed of a loan of Rupees fifteen lakhs from respondent No. 1 Bank in the year 1999, faced recovery proceedings because of her default in repayment. The appellant approached this Court under Article 226 of the Constitution of India when proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Rules were initiated for taking possession and sale of the two immovable properties which were mortgaged to the Bank.

2. The learned Single Judge noticed that the Debt Recovery Tribunal had passed a decree against the appellant for a total sum of Rs. 31,52,840/- and as on the date of the judgment, the total liability of the appellant/petitioner was to the tune of Rs. 45,64,850/-. Two items of properties belonging to the appellant, one of which is a residential building (item No. 1), are proposed to be sold in auction.

3. After considering the entire facts and circumstances of the case, the learned Single Judge declined to grant any relief to the appellant. However, it was made clear that the Bank shall sell item No. 2 first, and if the sale proceeds did not

satisfy the decree debt, then only the Bank shall proceed against item No. 1. The said judgment is impugned in this writ appeal.

4. When this writ appeal came up for consideration on July 15, 2009, it was submitted on behalf of the appellant that she was prepared to make an attempt to find out a prospective buyer for item No. 2 so as to enable her to discharge the decree debt. Accordingly an opportunity was given to the appellant to bring on record the intending purchaser.

5. When this matter came up for further consideration today, the willing purchaser has appeared through counsel. He submits that he is prepared to offer a total sum of Rs. 13.80 lakhs for item No. 2.

6. Sri. A.S.P. Kurup, learned Standing Counsel appearing for the Bank points out that in Ext.P7 sale notice the reserve price fixed for item No. 2 is Rs. 16 lakhs. He further points out that the offer now made by the so called prospective purchaser is too inadequate and insufficient to wipe off the decree debt. He has a further contention that the property has been grossly undervalued in order to defeat the interest of the Bank/decree holder. In this context, he has raised a contention that the attempt of the appellant/judgment debtor is only to frustrate the Bank from getting the fruits of the decree. The appellant had filed the writ petition on the eve of the sale, though notice was issued one month prior to the sale.

7. Having heard learned Counsel for the parties and having perused the materials available on record, we do not find any illegality or infirmity in the order passed by the learned Single Judge. There is no merit in the writ appeal and it is accordingly dismissed.

However, we make it clear that we have not disturbed the direction issued by the learned Single Judge in paragraph 5 of the impugned judgment.