(2010) 02 MP CK 0060

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9074 of 2009

Mid India Power and Steel Ltd. APPELLANT

Vs

M.P. Audyogik Kendra Vikas Nigam (Indore) Ltd. RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 17, 17(1), 17(2)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(4)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2004 — Rule 2, 6, 8, 9, 9(7)
Transfer of Property Act, 1882 — Section 69, 69A

Citation : AIR 2010 MP 201

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—By this petition under Article 226 of the Constitution of India the Petitioner company is seeking direction to the Respondent M.P. Audyogik Kendra Vikas Nigam to execute the lease deed in its favour in respect of Plot Nos. 153-A, 153-B, 153-C and 153-D situated at Industrial Area, Village Pithampur, District Dhar without insisting for registration of the sale certificate dated (Annexure P-2) 29-5-2007 issued in its favour by the Authorized Officer of the Industrial Development Bank of India (for short ''IDBF Bank). The Petitioner is also praying for issuance of a writ of certiorari for quashing the letters dated 25-3-2009 (Annexure P-8) and 21-8-2009 (Annexure P-10) issued by the Respondent informing the Petitioner that the lease deed shall be executed in its favour only on getting the sale certificate registered from the office of a Sub-Registrar, Dhar.

2. Briefly stated a Company Kusum Ingots and Alloys Limited having its registered office at Mumbai was extended financial assistance by the secured

creditors namely Industrial Finance Corporation of India Limited, Industrial Investment Bank of India Limited, Standard Chartered Bank (assignee of ICICI Bank Limited), State Bank of India, Punjab National Bank and Deutsche Bank (assignee of State Bank of Hyderabad). On making default in repayment and on failing to discharge its liability the Authorized Officer of the IDBI Bank on its behalf and on behalf of all the secured creditors sold for consideration of Rs. 805.81 lakhs the secured assets of the borrower Kusum Ingots & Alloys Limited in a public auction in exercise of powers conferred u/s 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act) read with Rules 6, 8 & 9 of the Security of Interest (Enforcement) Rules, 2002 (for short Rules of 2002) in favour of the Petitioner. In pursuance of the said auction sale a sale certificate (Annexure P-2) in respect of Plot Nos. 153-A, 153-B, 153-C and 153-D, Industrial Area, Pithampur Distt. Dhar was issued by the Authorized Officer of the IDBI Bank in favour of the Petitioner.

3. On the basis of the said sale-certificate the Petitioner purchaser approached to the Respondent for execution of the lease-deed in its favour in respect of the said plots. However, the Respondent vide letters dated 25-3-2009 (Annexure P-8) and 21-8-2009 (Annexure P-10) informed the Petitioner to first get the sale-certificate registered from the Sub-Registrar of the Documents under the provisions of Registration Act, 1908 and deposit the amount of lease rent and other charges then only the lease deed will be executed. Aggrieved by the insistence of the Respondent to get the sale-certificate registered, the Petitioner has filed this petition.

4. According to the Petitioner the sale-certificate (Annexure P-2) which was issued after a public auction by the Authorized Officer of the IDBI Bank in exercise of powers conferred upon him under the SARFAESI Act and Rules of 2002 needs no registration in view of the provision contained in Section 17(2)(xii) of the Registration Act. Reliance has been placed on the judgments of the Supreme Court in the case of B. Arvind Kumar Vs. Government of India and Others, and of Division Bench of the Madras High Court in the case of K. Chidambara Manickam Vs. Shakeena and Others,

5. The Respondent has filed reply and has stated that the sale-certificate issued by the Authorized Officer of the IDBI Bank, is not covered u/s 17(2)(xii) of the Registration Act but is a document falling u/s 17(1)(b) of the Registration Act and as such its registration is compulsory. It is the case of the Respondent that the Supreme Court in the case of B. Arvind Kumar v. Govt. of India and Ors. (supra) had occasion to consider the question in respect to the sale certificate issued on the basis of order of the Court and has not dealt with the question in regard to the sale certificate issued by the Authorized Officer of Bank under SARFAESI Act. It is also the case of the Respondent that the Division Bench of Madras High Court in the case of K. Chidambara Manickam v. Shakeena and Ors. (supra) has not gone into the question as to whether the term ''Civil or Revenue Officer''

referred in Section 17(2)(xii) of the Registration Act includes Authorised Officer of Bank exercising powers of the SARFAESI Act and Rules of 2002, therefore, the judgment of Madras High Court is not applicable to the present case and cannot be said to be having even a persuasive value.

6. Having considered the averments of the petition and the reply and also the submissions made by learned Counsel for the parties, I find that the only question involved in this petition is as to whether the Sale-Certificate issued by the Authorized Officer of the Bank in exercise of his powers u/s 13 of the SARFAESI Act and Rules of 2002 is covered u/s 17(2)(xii) of the Registration Act and therefore its registration is not compulsory.

7. In the case of B. Arvind Kumar Vs. Government of India and Others, which has been relied by the Petitioner the Supreme Court has held as under:

When a property is sold by public auction in pursuance of an order of the Court and the bid is accepted and the sale is confirmed by the Court in favour of the purchaser, the sale becomes absolute and the title vests in purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction-purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the Court is contemplated or required. In this case, the sale certificate itself was registered, though such a sale certificate issued by a Court or an officer authorised by the Court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which require registration under Sub-sections (b) and (c) of Section 17(1) of the said Act. We therefore, hold that the High Court committed a serious error in holding that the sale certificate did not convey any right, title or interest to Plaintiff''s father for want of registered deed of transfer.

8. In the case of K. Chidambara Manickam Vs. Shakeena and Others, on which strong reliance has been placed by the Petitioner the Madras High Court has held that the sale of the secured asset in public auction as per Section 13(4) of the SARFAESI Act which ended in issuance of sale-certificate as per Rule 9(7) of the Rules, 2002 is a complete and absolute sale for the purpose of SARFAESI Act and the same need not be registered under the provisions of the Registration Act.

9. Before dealing with the ratio of the judgment of the Supreme Court and the Madras High Court it would be appropriate to consider the relevant portion of Section 17 of the Registration Act which reads as under

17. Documents of which registration is compulsory - (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No. XVI of 1864, or Indian Registration Act, 1866 or the Indian Registration Act, 1871, or

the Indian Registration Act, 1877 or this Act came or comes into force, namely:

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creating, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare,, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property :]

Provided that the [State Government] may, by order published in the [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

[(1A). ...(not relevant)].

(2) Nothing in Clauses (b) and (c) of Sub-section (I) applies to:

(i) to (xi) not relevant.

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Rgvenue Officer.

(Emphasis supplied)

10. The relevant portion of Section 13 of the SARFAESI Act reads as under:

Enforcement of security interest - (1) Notwithstanding anything contained in Section 69 or Section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the Court or Tribunal, by such creditor in accordance with the provisions of this Act.

(2)

(3)

[(3A). ... (not relevant).

(4) In case the borrower fails to discharge his liability in full within the period

specified in Sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured assets; [(b)to (d) (5) (6) (7). ..(not relevant).

(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor to any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.

(9) In the case or financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to Sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than three-fourth in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

(Proviso not relevant.)

(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) ...(not relevant).

11. On going through the aforesaid provisions of the Registration Act and the SARFAESI Act according to me in order to wriggle out from the requirement of compulsory registration of the sale certificate u/s 17(1) of the Registration Act and in order to avail the benefit of Section 17(2)(xii) of the Registration Act it is necessary to establish that the sale-certificate has been granted to the purchaser of any property which is sold by public auction by a Civil or Revenue Officer (Emphasis supplied.) The term Civil Officer has been defined in Advanced Law Lexicon 3rd Edition by P. Ramanattha Aiyer Book I at page 809. It says that ''Civil Officer'' means any Officer holding appointment under the Government, except in the Military or Naval Service, whether the duties are executive or judicial, or in the highest or lowest departments. The term ''Revenue Officer'' has also been defined in the Book 4 at page 4130 of the Advanced Law Lexicon. It says ''Revenue Officer'' means an officer employed in or about the business of any branch of public revenue and will include such officers of Income Tax, Sales Tax and Irrigation Department. The term Authorised Officer has been defined under Rule 2(a) of the Rules of 2002. It says "authorised officer" means an officer not less than a chief manager of a public sector bank or equivalent, as specified by the Board of Directors or Board of Trustees of the secured creditor or any other person or authority exercising powers of superintendence, direction and control

of the business or affairs of the secured creditor, as the case may be, to exercise the rights of a secured creditor under the Ordinance. From these definition it is clear that even if the Authorised Officer of Bank in his statutory powers has issued the sale-certificate he will not be covered under the term Civil or Revenue Officer so that one can claim benefit of Section 17(2)(xii) of the Registration Act. Admittedly, the sale conducted by the Authorised Officer of the Bank is not on the basis of order or decree of any Court and, therefore, the benefit of Section 2(d) of the Transfer of Property Act also can not be extended to such sale certificate.

12. In the circumstances when the property of a borrower is sold by public auction by the Authorised Officer of the Bank who is neither a Civil nor a Revenue Officer, one cannot claim that the sale-certificate issued on the basis of such sale will be covered u/s 17(2)(xii) of the Registration Act and its registration is not compulsory. The term ''Authorized Officer'' has not been included in Section 17(2)(xii) of the Registration Act by way of amendment after coming into force of SARFAESI Act. The definition of term Authorized Officer under the Rules of 2002 also does not give it a meaning of Civil or Revenue Officer the terms which find place in Section 17(2)(xii) of the Registration Act. In the circumstances, the sale-certificate issued by the Authorized Officer cannot be construed so as to hold that it is by a Civil or Revenue Officer and, therefore, its registration is not compulsory. Hon''ble Shri Justice G. P. Singh in his book Principles of Statutory Interpretation Volume II at page 65 while dealing with the topic ''casus omissus'' has observed that a matter which should have been, but has not been provided for in a statute - cannot be supplied by Courts as to do so will be legislation and not construction. In this view of the matter the term Authorised Officer cannot be read in Section 17(2)(xii) of the Registration Act.

13. The Supreme Court in the case of B. Arvind Kumar Vs. Government of India and Others, was dealing with a case in which property was sold by public auction in pursuance of an order of the Court whereas in the present case the sale certificate (Annexure P-2) has been issued by the Authorized Officer of the IDBI Bank who is neither a Court nor a Civil or Revenue Officer. Thus, the judgment of the Supreme Court has got no application to the present case. The Division Bench of Madras High Court has not dealt with this aspect of the matter as to whether the Authorized Officer of the Bank while conducting the sale under the SARFAESI Act and Rules of 2002 can be said to be a Civil or Revenue Officer as per the requirement of Section 17(2)(xii) of the Registration Act. Having regard to this, I find myself unable to agree with the view taken by the Madras High Court.

14. In the circumstances for the reasons as aforesaid it is held that the sale-certificate (Annexure P-2) issued in favour of the Petitioner by the Authorised Officer of the IDBI Bank will not be covered u/s 17(2)(xii) of the Registration Act as the same has not been issued by a Civil or Revenue Officer. In the circumstances no direction can be issued to the Respondent to execute the lease

deed in favour of the Petitioner in the absence of registration of the sale-certificate (Annexure P-2).

15. Accordingly, it is held that the sale-certificate issued in favour of the Petitioner requires registration and in the absence of it the refusal of the Respondent to execute the lease deed cannot be said to be illegal. In the circumstances, the petition fails and is hereby dismissed. No orders as to the costs.

