(2013) 01 MAD CK 0067

In the Madras High Court

Case No : Writ Petition No. 21344 of 2012 and M.P. No. 1 of 2012

M/s. Kaya Infratech Projects — APPELLANT

Vs

Authorised Officer, UCO Bank, Mid Corporate Unit, T. Nagar, No. 67, Burkit Road, T. Nagar, Chennai-600017 — RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17, 31(1)

Citation : (2013) 01 MAD CK 0067

Hon'ble Judges : R. Karuppiah, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : Vijay Narayanan, S.C. for M/s. Rathina Asohan, for the Appellant; V. Suthakar, for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—The petitioner has come before this Court challenging the notice issued u/s 13(4) of the SARFAESI Act,

whereby the respondent had sought to take possession of the land for the amount due and payable to the respondent-bank. The petitioner does

not deny the fact that it had availed of financial facilities from the respondent-bank. At the time of taking financial facilities, the petitioner had

deposited the title deeds and revenue documents on the properties owned by the firm measuring to an extent of 42.5 acres as collateral security.

According to the petitioner, the original deeds and the revenue records including patta, chitta and adangal reveal that the property in question are

agricultural dry lands, a fact, which the bank itself was fully aware. In the circumstances, the petitioner states that the notice dated 7.7.2012 issued u/s 13(4) of the SARFAESI Act, as against the agricultural property is hit by Section 31(1) of the SARFAESI Act. In the circumstances, the

notice calling upon the petitioner to pay a sum of Rs. 10,93,98,151.28 as on 31.3.2012, failing which to take possession of the property, is totally

illegal and contrary to the provisions of the Act. Learned Senior counsel appearing for the petitioner placed heavy reliance on the decision reported

in (2012) 5 MLJ 571 (Eshwar Purushothaman Gardens V. Authorised Officer, Indian Bank zonal Office, Coimbatore), and submitted that on the

face of the clear bar u/s 31(1) of the SARFAESI Act to proceed against the agricultural lands, the proceedings initiated against the petitioner is

void ab initio. He further relied on paragraph No. 27 of the decision, wherein it was held that if the available materials are sufficient to arrive at a

clear finding that the secured asset is an agricultural property, there is no inhibition in the defaulter approaching this Court challenging the notice

issued u/s 13(4) of the SARFAESI Act without exhausting the statutory remedy under the Act. In the face of the observation by this Court in

paragraph Nos. 27 and 28, learned senior counsel appearing for the petitioner submits that the petitioner''s rights be protected.

2. Per contra, learned counsel appearing for the respondent-bank placed before us the copies of the valuation report prepared by the petitioner

and filed before the Bank at the time of availing of the loan, which clearly point out that the lands in question are converted to industrial use. In the

circumstances, it is no longer open to the petitioner to say that the lands in question are agricultural lands and hence, protected by Section 31(1) of

the SARFAESI Act. Considering the default committed by the petitioner herein, no indulgence be shown to the petitioner. In any event, on the

admitted fact by the petitioner that the lands in question are converted for industrial use, the writ Petition has to be rejected.

3. Learned senior counsel appearing for the petitioner, however, pointed out that if the petitioner is to be driven to the Debts Recovery Tribunal as

by way of exhausting the statutory remedy, then there would be an onerous condition u/s 17 of the SARFAESI Act of complying with the payment

of not less than 25% of the demanded amount. In the circumstances, considering the prima facie case made by the petitioner, this Court may

exercise its discretion to interfere with the proceedings.

4. We do not agree with this line of reasoning. It may be of relevance to point out that time and again the Apex Court pointed out that in matters of

notice issued u/s 13(2) and 13(4) of the SARFAESI Act, the High Court should not normally interfere with such notices, unless there are palpable

illegality in the proceedings vide Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, . Considering the fact that the

remedy under Article 226 of the Constitution of India is a discretionary remedy, the Court should not interfere in matters where there is an effective

alternative remedy available to an aggrieved party.

5. As far as the present case is concerned, even though learned senior counsel appearing for the petitioner placed heavy reliance on the decision

reported in (2012) 5 MLJ 571 (Eshwar Purushothaman Gardens v. Authorised Officer, Indian Bank zonal Office, Coimbatore), particularly to

paragraph Nos. 27 and 28, yet, this Court cautioned that in cases where the matter involves disputed questions of fact, the same cannot be

decided in a Writ Petition on the basis of affidavits and counter affidavits. This Court further pointed out that however the dispute should be a bona

fide one and not one raised for the sake of dispute. In case the available materials are sufficient to arrive at a clear finding that the secured asset is

an agricultural property, it cannot be said that still a party should be directed to approach the Debts Recovery Tribunal. This Court further pointed

out that in view of the voluminous documents produced by the petitioner therein to show that security was created in their agricultural land, a mere

denial in the counter affidavit unaccompanied by documents to prove such defence would not result in raising a disputed question, so as to direct

the parties to approach the Debts Recovery Tribunal.

6. It may be of relevance to note herein that in the typed set produced by the respondent, we find the valuation report by Suvela Associates,

submitted by the petitioner itself at the time of securing loan, which clearly points out in S. No. 8 that even though as per the sale deeds, the lands

in question were agricultural lands, yet, as per the local enquiry, the said lands are converted to industrial use. The valuation report has also

referred to the manner by which the value had been arrived at and that the properties were inspected by the approved valuer. In the face of such

documents available, that too furnished by the petitioner itself, we do not find any justifiable ground to interfere with the proceedings now initiated

and under challenge in this Writ Petition. In the circumstances, we do not find that the decision referred to above would, in any manner, help the

petitioner to sustain its contention before this Court. On the other hand, the judgment, in fact, is totally against them and it is open to the petitioner

to exhaust the remedies, which are available under the Act, if they choose so. It may be noted that when the matter was listed earlier, this Court

directed the petitioner to make a deposit of at least a portion of the admitted liability, so that there could be an attempt on settlement of the dues

payable by the petitioner. However, learned senior counsel appearing for the petitioner submitted that it is not possible for the petitioner to deposit

any amount. Leaving that aspect aside, on the ground that we had already narrated, this Writ Petition is liable to be dismissed and accordingly, the

same is dismissed. No costs. Consequently, M.P. No. 1 of 2012 is also dismissed.