(2011) 12 KAR CK 0288

In the Karnataka High Court

Case No : Writ Petition No. 41442 of 2011 (GM-DRT)

M/s. Lumbini Gardens Ltd. APPELLANT

Vs

Debt Recovery Tribunal and Others RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 18

Citation : (2011) 12 KAR CK 0288

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : H.C. Muddappa, for the Appellant; M. Mohan Rao . Advocate for C/ R2, Sri. A. Kumarvel and Sri. P. Chandrashekar Choety for R2, for the Respondent

Judgement

B.S. Patil

1. Statement of objections filed by the 2nd respondent-Bank is taken on record.

2. In this writ petition, petitioners are calling in question the order dated 30.06.2011 passed in S.A.No.257/2011 by the Debts Recovery Tribunal, Bangalore. By the said order, the Tribunal has directed the petitioners to pay a sum of Rs. 50.00 lakhs towards the loan amount due to the respondent-Bank. The 1st installment of Rs. 10.00 lakhs was directed to be paid on or before 07.07.2011 and the 2nd installment of Rs. 40.00 lakhs within a month''s time thereafter, that is to say, on or before 08.08.2011. The respondent-Bank was directed to defer all further proceedings till further orders. In the event of default in complying with the conditional order, the Tribunal has made it clear that the interim order granted will stand automatically vacated and it would be open to the respondent-Bank to decide the future course of action as they deemed fit.

3. Learned Senior counsel appearing for the petitioners submits that pursuant to the interim order passed, the 1st installment was deposited within the time granted by the Tribunal and towards the 2nd installment, the petitioners have

already deposited a sum of Rs.32.50 lakhs by September 2011 but the rest of the mount could not be deposited within the time granted due to financial crisis faced by the petitioners and that the petitioners will deposit the remaining" amount of Rs. 17.50 lakhs within a period of six weeks from today. He submits that the interim order granted by the Tribunal may be continued by imposing such condition. He further contends that the impugned order deals with certain aspects touching upon the merits of the matter including the jurisdictional issue and therefore this Court may interfere with the order to that extent making it clear that the questions on merits could be urged at a later stage before the Tribunal. He also points out that though an appeal is filed against the interim order passed by the Tribunal before the Appellate Authority, petitioner is prepared to withdraw the said appeal, if reasonable time is granted to pay the amount as directed by the Tribunal.

4. The respondent-Bank refutes the contention urged by the learned Senior counsel appearing for the petitioners.

5. Upon hearing the learned counsel for the parties, it is clear that the petitioners have approached the Appellate Authority by filing an appeal u/s 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. 2002. It is open to the petitioners to bring to the notice of the Appellate Authority the very contentions that are canvassed before this Court.

6. It is not appropriate for this Court to interfere in exercise of the writ jurisdiction when an alternative remedy of appeal is provided and particularly when the petitioners have availed such a remedy. Reserving liberty to the petitioner to urge these contentions in the pending appeal, this writ, petition is disposed of.