(2017) 03 MAD CK 0140

In the Madras High Court

Case No : 24758 of 2016 and W M P (MD) No 17896 and 17897 of 2016

M/s.Selvi Traders, rep.by its Proprietorix M.Tamilselvi, & Ors. APPELLANT

Vs

The Authorised Officer, Karur Vysya Bank, & Ors. RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 13(2) - Enforcement of security interest
<a href=6973>Security Interest (Enforcement) Rules, 200

Citation : (2017) 03 MAD CK 0140

Hon'ble Judges : R.Subbiah, J.Nisha Banu

Bench : DIVISION BENCH

Advocate : R.Subbiah, J.Nisha Banu

Judgement

1. By consent, this Writ Petition is taken up for final disposal at the state of admission itself.

2. The petitioner in the affidavit would aver among other things that the first petitioner herein is running a proprietary concern and its properiextrix is "M/s.Selvi Traders" and the petitioners 2 to 5 are all guarantors to the loan transaction availed by the first petitioner from the respondents and the property given in security for the above loan transaction is claimed to be an agricultural land by the petitioners and therefore, the respondents cannot invoke the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short ''Act''). It is the further case of the petitioner that they were regular in payment until 2015 and as there was loss in their business, there was default in repaying the loan availed by the petitioners and therefore, the account of the petitioners was classified as Non-performing Assets (in short ''NPA'') on 28.11.2015. While so, the respondent bank issued notice under Section 13(2) of the Act claiming a sum of Rs.2,03,40,083.66 with interest at the rate of 17% per annum from 01.12.2015.

3. It is the further case of the petitioners that they have taken all the efforts to settle the dues to the respondent bank and requested them to recall the demand notice and reschedule the loan account. Though the respondent bank had orally agreed for the same, the respondent bank published the possession notice in the New Indian Express on 11.02.2016 under Rule 8(1) of Security Interest (Enforcement) Rules, 2002. (in short ''the Rules'')

4. It is further stated that the respondent bank did not serve any possession notice personally to the petitioners, but it had only published in the newspaper which is against the provisions of the Act and the Rules framed thereunder and the same was challenged by the petitioner in S.A.No.127 of 2016 before the Debts Recovery Tribunal, Madurai, on the ground that the land was an agricultural land. It is also the case of the petitioners that pending disposal of the above S.A.No.127 of 2016, sale notice was issued on 11.04.2016 and the same was challenged by the petitioner by filing an amendment petition to amend the SARFAESI application and the Debts Recovery Tribunal granted conditional stay order directing the petitioners to deposit Rs.54 Lakhs in two installments.

5. It is the further case of the petitioners that they were not able to mobilise the funds due to the loss in the business and therefore, the conditional order was not complied with. As the sale was not taken place on that day, a subsequent sale notice was issued on 06.09.2016 and the petitioners have filed an amendment application in I.A.No.1887 of 2016 in S.A.No.127 of 2016 to amend the prayer and the tribunal passed the following order on 06.09.2016:- "It is already pointed out that the present petition is arising out of new set of circumstances which have to be challenged by way of filing a separate SARFAESI application. It is also admitted that earlier conditional order has not been complied with. According to the learned Counsel for the respondent bank the secured asset is only a dry land. Therefore, under the said circumstances, this tribunal is not inclined to consider the prayer for amendment. Hence, I.A.No. 1897 of 2016 is dismissed."

6. The afore-said order was challenged in this Writ Petition. In support of his contention, he relied on the following judgments:-

1. (2009) 2 SCC 630, Committee of Management and another Vs. Vice Chancellor and others

2. (2014) 15 SCC 652 Walchandnagar Industries Ltd Vs Municipal Corporation city of Pune and others

3. (2007) 9 SCC 593 Popcorn Entertainment and another Vs. City Industrial Development Corporation

4. (2008) 14 SCC 220 Shanthi Devi Vs State of Sikkim

5. (2009) 14 SCC 338 Godrej Sara Lee Limited Vs. Assistant Commissioner (AA) and another

6. (2007) 10 SCC 88, M.P.State Agro Industries Development Corporation Ltd and another Vs. Jahan Khan

7. (2011) 5 SCC 697, Union of India Vs Tantia Construction (P) Ltd

8. AIR 2006 SCC 1647, Rajesh Kumar Aggarwal and others Vs. K.K.Modi and others

9. (2010) 8 SCC 660, Venture Global Engineering Vs Satyam Computer Services Ltd

10. (2001) 2 SCC 472, Rahu Thilak D.John Vs. S.Rayappan and others

11. (2008) 6 SCC 415, Pankaja Vs. Yellappa

12. (2003) 6 SCC 79, Punjab National Bank Vs Indian Bank and another.

7. Per contra, learned Counsel appearing for the respondent bank would submit that the Writ Petition is not maintainable since an alternative remedy is available in the Debts Recovery Tribunal. He also stated that the second appeal No.127 of 2016 is also pending before the Debts Recovery Tribunal and the petitioner ought to have filed a fresh SARFAESI application challenging the present sale notice and in order to avoid, the payment of Court fee and the conditional order, the amendment application was filed the total dues approximately Rs.2.5 crores and the demand notice was issued on 04.12.2015 ; the possession notice was ordered on 08.02.2016 ; the first sale notice was issued on 20.02.2016; the second sale notice was issued on 11.04.2016; the third sale notice was issued on 30.07.2016 and the fourth sale notice was issued on 23.11.2016. It is also contended by the respondent bank that the properties are not an agricultural property and the property in question is situated adjacent to Salem to Chennai bye-pass road and at the time of taking possession of the property, it was a vacant land and it was also mentioned in the sanction letter and the classification by Government for guideline value is referred to as "dry abutting national highway roads type-I". The Debts Recovery Tribunal, in its interim order, stated that the property in question is not an agricultural property, as the petitioner had not proved the same by filing the documents at the time of mortgaging the property and he has also not produced the adangal receipt for the past ten years. The property was not assessed under the profit and loss account and income and expenditure account was not submitted by the petitioner to substantiate the same.

8. Heard the submissions of the learned Counsel for the petitioners as well as the learned Counsel for the respondent and perused the materials available on record.

9. Though the petitioners have produced as many as judgments possible to make their submission with regard to the maintainability of the Writ Petition, even when there is an alternative remedy available, in all those cases, the Courts have held that only on three occasions, the Court can exercise its discretionary

jurisdiction, namely, (i) where the Writ Petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. However, the case of the petitioners would not fall within the parameters of the cases relied on by them and therefore, those judgments relied on by them would not in any way come to the rescue of the petitioners.

10. Further, with regard to the amendment, the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by the high courts and this Court. It is also equally true that the amendment cannot be claimed as a matter of right but under certain circumstances, it has been stated that the Courts while deciding the prayer for amendment, it should not adopt hypertechnical approach and liberal approach should be the general rule particularly in cases where the other side can be compensated with costs.

11. From the above and the judgments relied on by the petitioners, it has been held that the jurisdiction to allow or not to allow an amendment petition is being discretionary and the same will have to be exercised on the judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserve the ultimate cause of justice and avoids further litigation the same should be allowed. However, in the case on hand, already an amendment petition was allowed in the earlier sale notice and a conditional order has been granted by the tribunal, which was not admittedly complied with by the petitioners and therefore, the attitude of the petitioner, in our opinion, is only an abuse process of law.

12. It is also seen from the records that the present sale is the fourth sale according to the bank and as rightly pointed out by the respondent bank, it is a separate cause of action and the petitioner cannot be allowed to evade payment by one way or the other.

13. Also, in our considered opinion, the second sale notice is a separate cause of action and therefore, the only remedy available to the petitioners is to file a separate SARFAESI application before the Debts Recovery Tribunal concerned where it is always open to the petitioners agitate the issue including the ground that the subject land is an agricultural land.

14. In any view of the matter, we are not inclined to interfere with the orders of the Debts Recovery Tribunal and order of the Debts Recovery Tribunal concerned stands confirmed and this Writ Petition stands dismissed. It is always open to the petitioners to approach the Debts Recovery Tribunal and work out their remedy in the manner known to law, if they so desire. No costs. Consequently, connected miscellaneous petitions are closed.