(2010) 03 KAR CK 0170

In the Karnataka High Court

Case No : Writ Petition No''s. 2782 and 2992-93 of 2010

Nitco Roadways Private Limited and Others — APPELLANT

Vs

Punjab National Bank — RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 14

Citation : AIR 2011 Kar 27 : (2010) 2 KCCR 1402

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : S.B. Krishna, for the Appellant; A. Ravishankar, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar, J.—Petitioners have sought for quashing the communications dated 21.1.2010 at Annexures-A to C and have also sought for a direction to the respondent not to dispossess them from the property without due process of law.

At the time of issuing notice, this Court granted the order of stay. Now an application is filed by the respondent-Bank to vacate the interim order.

By the consent of both the Advocates, the matter is finally heard.

2. Petitioners are the tenants under the borrowers Smt. Jamunadevi, Sri Vimal Raj and Smt. J. Shakila Devi. The aforesaid three persons in turn mortgaged the property in favour of the respondent-Bank as security for the credit facilities given to one M/s. Bhavani Agencies. Since the amounts are not paid, the respondent-Bank claims to have taken symbolic possession of the property on 1.7.2007. Impugned notices are issued to the petitioners calling upon them to vacate the premises immediately to avoid any unpleasantness. Which means that the petitioners are directed to give vacant possession to the respondent-Bank.

The petitioners are the tenants who are continuing in possession in their own right as lessees. They cannot be evicted without due process of law.

3. If the secured asset is in the possession of the borrower, its possession can be taken in accordance with the provisions contained in Sections 13 and 14 of the Securatisation and Act. In this matter, the secured asset is in possession of the bona fide lessees or tenants. They cannot be thrown out by invoking Sections 13 and 14 of the Securatisation Act. The secured creditor/Bank can only take symbolic possession from the bona fide tenants invoking Sections 13 and 14 of the Securatisation Act. The secured creditor/Bank or purchaser has to take recourse to the appropriate legal proceedings for taking actual possession of the petition properties from the tenants or lessees. This is clear from the judgment of this Court in the case of Hutchison Essar South Ltd. Vs. Union Bank of India and Aditya Automation, .

In view of the same, the impugned notices issued to the petitioners as per Annexures-A, B, and C directing the petitioners to vacate the premises cannot be sustained and are liable to be quashed. Accordingly, Annexures-A, B and C, dated 21.1.2010 are quashed. It is open for the respondent-Bank to take the symbolic possession of the premises from the petitioners, who are the tenants. It is also open for the respondent to take such steps as are open to it in law for recovery of actual and physical possession of the property.

Writ petitions are disposed of accordingly.

Consequently, Misc.W. No. 2537/2010 for vacating stay is dismissed.