(2015) 11 KAR CK 0277

In the Karnataka High Court

Case No : C.C.C. No. 314/2015 (Civil)

Pankaj L. Kothari APPELLANT

Vs

D.C. Srivathsa RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 14, 17

Citation : (2015) 11 KAR CK 0277

Hon'ble Judges : N. Kumar and B. Manohar, JJ.

Bench : Division Bench

Advocate : Jayna Kothari, Advocate, for the Appellant; Ashok HaranahalliAdvocateAdvocate for Y.V. Parthasarathy, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This Contempt Petition is filed complaining of disobedience of the order dated 16.05.2013 passed in W.P.20870/2013 wherein Annexure - ''H'' to the writ petition, a sale notice was stayed subject to deposit of Rs. 20 Lakhs within two weeks from 16.05.2013.

2. The case of the complainant is, he is engaged in the catering business in Bengaluru for the last 20 years. He entered into an Agreement of Sale with the third respondent, who is the wife of Sri. Prakash Karia, the partner of the second respondent M/s. Krishna Creations. The third respondent is the sole and absolute owner of the residential apartment bearing No. 2, situated on the first floor of the apartment known as "Divya Manor", admeasuring 933 sq.ft. and constructed on property bearing Corporation No. 29/1, V.S. Raju Road, Palace Guttahalli, Bengaluru. The Agreement of Sale is dated 03.03.2010. The consideration for which sale was agreed was Rs. 40 Lakhs and the case of the complainant is that he paid Rs. 20 Lakhs. Possession of the property was handed over to him. M/s. Krishna Creations had taken a loan from the Indian Overseas Bank and Mrs. Arthi

P. Karia stood as a Guarantor and without informing the complainant, handed over the title deeds of the property to the Bank. The property was mortgaged by executing a Memorandum of Deposit of Title Deeds dated 30.09.2011, which was registered in the office of the Sub- Registrar, Gandhinagar, Bengaluru. As the loan was not repaid, the Bank issued a demand notice to the second respondent firm, in the newspapers on 28.07.2012. Possession notice was issued on 19.11.2012 and was duly published in the Indian Express newspaper. M/s. Krishna Creations challenged the possession notice under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal in I.R. No. 1218/2013 on 03.04.2013. The Bank on 29.03.2013 obtained an ex-parte order from the 8th Additional Chief Metropolitan Magistrate, Bengaluru under Section 14 of the SARFAESI Act and put a seal of the Bank outside the door of the property. E-Auction sale notice was also issued by the Bank which is dated 20.04.2013 and the auction was proposed to be held on 24.05.2013. The complainant preferred W.P.20870/2013 challenging the said e-auction sale notice dated 20.04.2013 and sought for an interim order of stay. This Court after hearing the complainant granted an interim order of stay on 16.05.2013 subject to payment of Rs. 20 Lakhs within two weeks from the date of order. The order was also intimated to the accused by letter dated 20.05.2013 which has been acknowledged by the Bank. The case of the complainant is, the said order was complied with by paying the said amount by Demand Draft dated 30.05.2013 in favour o the Registrar General, High Court of Karnataka. The stay order has been extended. On 28.10.2013, the Bank for the first time, took up objections that the interim order granted by this Court had not been complied with. The complainant submits that it was pointed out to them that the amount has been deposited in terms of the Court order and the same was also noted in the order-sheet of writ proceedings. Subsequently, the Bank served an application for bringing new facts on record in the writ proceedings in which the accused has issued a fresh auction notice and sold the property to a third party in utter violation of the interim order granted by this Court. The e-auction fresh notice was issued as early as 02.09.2013. Sale was confirmed on 20.09.2013 and 27.09.2013 respectively. It is only after a month and a half, these facts are brought on record on 21.11.2013. Therefore, the complainant was constrained to file a contempt petition before this Court in CCC No. 3536/2013 on 16.12.2013, well within the period of one year. The Bank appeared through counsel, filed their objections contesting the matter. After hearing both the parties, this Court was pleased to pass an order dated 18.02.2014 recording a finding that there was utter disobedience of the interim order dated 16.05.2013 of this Hon''ble Court by the Bank and posted the case for framing of charges. Challenging the said order, the Bank preferred a Special Leave Petition before the Hon''ble Supreme Court in Civil Appeal No. 5584/2014. After service of notice to the complainant, the Hon''ble Supreme Court held that the complainant has not made any allegation against Bank or any employee nor has any allegation made with regard to willful disobedience of the Court''s order. Therefore, they were of the view that the contempt application was not maintainable. They further observed that the High Court should have rejected the contempt application at the threshold. Therefore, they set aside the order dated 18.02.2014 passed by this Court and allowed the appeal. However, they reserved the liberty to the complainant to file a proper petition for contempt against the Appellant Bank or any concerned individual, if there is any willful disobedience or violation of the Court''s order. In fact, the complainant sought for review of the said order, which came to be dismissed by the Hon''ble Supreme Court. It is after that order, the present contempt petition is filed only against the accused - Mr. D.C. Srivathsa, the Chief Manager of the Indian Overseas Bank.

3. After service of notice, the accused has entered appearance and has filed a detailed counter. He contends that the second contempt petition is not maintainable as already the first contempt petition is dismissed by the Hon''ble Supreme Court. Secondly, it was contended that this contempt petition is barred by law of limitation. On merits, it is contended that the interim order was not complied with within two weeks from 16.05.2013, which came to an end on 30.05.2013 and therefore, the interim order did not continue thereafter, as such, there is no contempt. The complainant did not serve a copy of the memo, which was filed before this Court enclosing the demand draft for the purpose of depositing Rs. 20 Lakhs. Therefore, the Bank and its officials were completely ignorant about the same. In fact, after service of notice, the Bank entered appearance, filed objections on 26.07.2013 where they categorically stated that no such deposit is made, which is not controverted. Subsequently they filed an application on 14.08.2013 for dismissal of the writ petition on the ground of non-compliance of the interim order, for which also no objections were filed. It is thereafter they have taken steps to bring the property to sale. Sale notice was issued on 02.09.2013, which was duly published in the newspaper on 04.09.2013. Sale was conducted. Sale Certificate was issued on 27.09.2013. It is only on 28.10.2013 for the first time, the complainant submitted to the Court that they have deposited Rs. 20 Lakhs which is recorded in the order-sheet. Under these circumstances, he submits that there is no willful disobedience of the interim order passed by this Court and therefore, there is no contempt. Incidentally, the accused has retired from service on 28.02.2015.

4. The fact, which is not in dispute is that the accused has filed an affidavit by way of objections, where he has been described as a retired Chief Manager.

5. We have heard the learned counsel for both the parties.

6. The learned counsel for the complainant contended that the interim order was passed on 16.05.2013, Rs. 20 Lakhs was deposited on 30.05.2013 within two weeks from the said date and therefore, the order is complied with. The complainant was under no obligation in law to intimate the said deposit to the accused. It is for the accused to verify from the Court record. If only he had seen the order-sheet, where a note is made, the factum of deposit would have been known to him. They did not make any application either for vacating the interim order nor sought for permission from the Court to proceed to sell the property. Though the writ petition was pending, interim order was passed, deposit was

made within the time, willfully in disobedience of the Court''s order, they brought the property to sale and sold the property behind the back of the complainant. Therefore, a clear case of contempt is made out.

7. Per contra, learned Senior Counsel appearing for the accused submits, the deposit ought to have been made on or before 30.05.2013, but the same was not made. Once deposit was not made within 14 days, there is no interim order restraining the Bank proceeding further with the sale of the property. In fact, when objections were filed on 26.07.2013 categorically stating that amount is not deposited, no effort was made by the complainant either to bring it to the notice of the Court or to the accused, such deposit. On 14.08.2013, an application is filed seeking for dismissal of the writ petition for which no objections were filed, where also, the said allegation was reiterated. It is under those circumstances, they proceeded to issue fresh notification and bring the property to sale. Therefore, there is no contempt muchless willful disobedience of the order passed by this Court. Now, the purchaser has been impleaded as a party to the writ petition. An application is filed for setting aside the same and the same is being heard by the learned single Judge. In these circumstances, the question of proceeding further with the contempt petition when already the Supreme Court has dismissed the earlier petition would not arise.

8. In the light of the aforesaid facts and rival contentions, the point that would arise for our consideration is:

"Whether the complainant has made out a case of willful disobedience of the order dated 16.05.2013?"

9. From the facts set out above, the complainant is an agreement holder agreeing to purchase the schedule property from its owner. The owner has stood as a guarantor for repayment of loan to a Nationalized Bank and has mortgaged the property, handed over the original title deeds and the equitable mortgage is also registered. It is in this background, the Bank initiated proceedings under the provisions of the SARFAESI Act and tried to bring the property to sale. The owner has also filed a petition before the DRT and the matter was pending, on that date, the writ petition was filed. It is submitted that the said petition now stands dismissed. When the learned Additional Chief Metropolitan Magistrate of Bengaluru passed an order for delivery of possession, at that stage, this agreement holder has preferred this writ petition challenging the possession notice and the order passed by the Magistrate. In this context, when we look into the order dated 16.05.2013 passed by this Court, the disobedience, which is complained of reads as hereunder:

"Stay of Annexure - ''H'' subject to deposit of Rs. 20 Lakhs within two weeks from today. Call after service of notice."

10. Therefore, an obligation was cast on the complainant to deposit the amount within 14 days from the said order, which take us to the date, 30.05.2013. The learned counsel for the complainant has produced a Xerox copy of the demand

draft showing the payment of Rs. 20 Lakhs, which is at Annexure - ''J'', which shows the Corporation Bank, Sadashivnagar, Bengaluru has issued a demand draft in the name of the Registrar General, High Court of Karnataka, Bengaluru for a sum of Rs. 20 Lakhs, which is dated 30.05.2013. The question is, when this amount was deposited in the Court. The learned counsel for the complainant has made available to us the order-sheet. The noting in the order-sheet on which the reliance is placed by the learned counsel for the complainant shows that after the interim order, the note in the order-sheet reads as under:

"The advocate for petitioner has filed demand draft bearing No. 231952 dated 30.05.2013 amount of Rs. 20,00,000/- (Rupees Twenty Lakhs only) in favour of the Registrar General, High Court of Karnataka, Bengaluru. The entire records along with demand draft sent to Accounts Branch for taking further steps."

11. This note is dated 01.06.2013. The memo, which is said to have been filed enclosing the said demand draft is dated 31.05.2013, which reads as under:

"The Hon''ble Court vide order dated 16.05.2013 was pleased to grant a stay of the order for the above mentioned matter, and had directed the petitioner herein to deposit Rs. 20,00,000/- (Rupees Twenty Lakhs only) within two weeks from the date of order by this Hon''ble High Court.

Hence a demand draft bearing No. 231952 dated 30.05.2013 amounting to Rs. 20,00,000/- (Rupees Twenty Lakhs only) has hereby been deposited with this Hon''ble Court. It is prayed that compliance of the above order may be taken on record, in the interest of justice and equity.

(A copy of the demand draft bearing No. 231952 is annexed herein and is marked as Annexure - A)."

12. This memo is dated 31.05.2013 whereas the note in the order-sheet refers to 01.06.2013. Though immediately after passing of the interim order, the complainant communicated the said order to the Bank as per Annexure - ''H'' dated 20.05.2013, the same anxiety was not demonstrated by intimating the Bank about the deposit made in terms of the interim order. On the contrary, the contention is that the complainant was under no obligation to intimate the deposit and the accused being a party to the proceedings was expected to verify from the Court records. As set out above, the Court record shows that the memo is dated 31.05.2013. It was filed into Court on 01.06.2013 and thereafter, the Accounts Branch received a demand draft for Rs. 20 Lakhs only on 03.06.2013. So, it is only on deposit of the said demand draft into the Accounts of Registrar General, High Court of Karnataka, Bengaluru, it can be said that it was deposited in the High Court. It is in this background, it was noted in the order-sheet on 27.05.2013 that the interim order is not obeyed. Again, an application is filed on 14.08.2015 for dismissal of the writ petition on the ground of non-deposit of the said amount. No objections were filed for this contention. As could be seen from the order-sheet, writ petition was filed on 14.05.2013, interim order was granted on 16.05.2013 and demand draft was deposited before the Court on 01.06.2013

and received by Accounts Branch on 03.06.2013.

13. It is only on 28.10.2013, the submission of the learned counsel for the petitioner that amount has been deposited before this Court through a demand draft dated 30.05.2013, which was recorded in the order-sheet. It is also observed that the order-sheet would indicate that the Accounts Branch has received the demand draft on 03.06.2013 and respondent No. 1 is permitted to withdraw the amount in deposit before this Court and the Registry shall disburse the same on proper identification. It is taking note of this submission, it was observed that in view of compliance of the earlier order, the interim stay granted earlier stands extended till the next date of hearing. This order was passed on 28.10.2013. Thus, till that day the interim order granted earlier was not extended. In other words, there was no order between 31.5.2013 till 28.10.2013. The facts set out above are very clear. Though a demand draft was obtained in the name of the Registrar General, High Court of Karnataka on 30.05.2013, the same was filed before the Court either on 31.05.2013 or 01.06.2013 and the said demand draft was sent to the Accounts Branch only on 03.06.2013. Therefore, it cannot be said that the contention of the respondent that the amount was not deposited within the time stipulated and the order of stay stood vacated after the expiry of 30.05.2013. In the interest of recovery of public money, sale was duly published in the newspaper. Even at that stage, no effort was made by the petitioner to bring to the notice of the Bank or bring to the notice of the Court to stay the said proceedings and therefore, there is no willful disobedience of the order. The accused has acted in his official capacity in accordance with law. Moreover, now he has retired from service on 28.02.2015. He cannot be found fault with. We find substance in the said contention. In that view of the matter, we do not find any justification to proceed with the matter and the contempt petition is accordingly dismissed.

14. However, as the matter is now pending before the learned single Judge, an application is filed for setting aside the sale on the ground that the sale has taken place during the pendency of the interim order granted by this Court, it is for the learned single Judge to consider the case of the petitioner on its merits and in accordance with law and pass appropriate order regarding the validity of the sale.