

(2023) 06 KL CK 0349

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30142 Of 2022

Phoenix Arc Private Limited

APPELLANT

Vs

Sub Registrar Sub Registrar Office, Thrithala, Palakkad, Pin
679354

RESPONDENT

Date of Decision : 22-06-2023

Acts Referred:

Transfer of Property Act, 1882 — Section 55
Securitization and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 3

Citation : (2023) 06 KL CK 0349

Hon'ble Judges : C. S. Dias, J

Bench : Single Bench

Advocate : Mansoor.B.H., Sakeena Beegum, Sreejith V S

Final Decision : Disposed Of

Judgement

C.S.Dias, J

1. The writ petition is filed, inter alia, to direct the respondents 1 and 2 to efface the attachment that is reflected in Ext.P3 encumbrance certificate.

2. The petitioner's case is that they are an Asset Reconstruction Company as defined under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'Act'). As per an assignment deed, the South Indian Bank Ltd. (Assignor Bank) had assigned its rights, in respect of the loan transaction of the 4th respondent, in favour of the petitioner. The respondents 5 to 12 are the partners of the 4th respondent and the respondents 9 to 13 are the guarantors of the loan. The borrower had failed to repay the loan, and the bank proceeded against the secured asset under the Act. The bank has also preferred O.A. No.251/2016 before the Debt Recovery Tribunal-II, Ernakulam. During the pendency of the above application, the bank assigned its rights in favour of the petitioner. Subsequently, in the auction that was conducted, the sale was confirmed in favour of successful bidder. However,

when the petitioner obtained Ext.P3 encumbrance certificate, it is seen that there are several attachments over the property. One of the attachments is on the basis of Ext.P4 order passed by the Court of the Principal Subordinate Judge, Thrissur, which is a suit filed at the instance of the 3rd respondent. The petitioner apprehends that the 1st respondent would refuse to register the sale deed. On an earlier occasion, the petitioner had filed WP(C) No.16067/2021 before this Court, which was disposed of by Ext.P5 judgment, directing the 1st respondent to register the sale certificate in favour of the petitioner. The attachment shown in Ext.P3 was effected subsequent to the mortgage and is, therefore, not binding on the petitioner. Therefore, the petitioner is entitled to get the encumbrance effaced. Hence, the writ petition.

3. The 1st respondent has filed a statement, inter-alia, contenting that in view of Section 55 of the Transfer of Property Act, the seller is bound to disclose all the liabilities on the property as per the circular issued by the Inspector General of Registration. Hence, the writ petition is only to be dismissed.

4. Heard, Sri. Mansoor B.H., the learned Counsel appearing for the petitioner, the learned Government Pleader appearing for the respondents 1 and 2 and Sri. Sreehari R., the learned Counsel appearing for the 3rd respondent.

5. The petitioners' case is that an equitable mortgage was created by the 4th respondent in favour of the Assignor Bank, prior to the suit instituted by the 3rd respondent. Therefore, the Assignor Bank has the first charge over the property. Consequently, the attachment made by the 3rd respondent has no effect over the Bank and now the petitioner. The petitioner relies on Ext.P5 judgment of this Court to substantiate that the petitioner has the right to get the encumbrance effaced from Ext.P3.

6. Having considered the pleadings and materials on record, I am of the definite view that the above contentions have to be reconsidered by the 1st respondent, after affording the petitioner and the 3rd respondent an opportunity of being heard. It would be up to the petitioner and the 3rd respondent to address their contentions before the 1st respondent.

Resultantly, I dispose of the writ petition as follows:

(i) The 1st respondent is directed to reconsider and decide, whether the attachment reflected in Ext.P3 encumbrance certificate is to be effaced or not, after affording the petitioner and the 3rd respondent, an opportunity of being heard.

(ii) The above exercise shall be carried out in accordance with law and as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a certified copy of this judgment.