(2009) 09 MAD CK 0310

In the Madras High Court

Case No : C.R.P. (PD) No. 1663 of 2009 and M.P. No. 1 of 2009

P.R. Rajesh and Archana Rajesh — APPELLANT

Vs

State Bank of India — RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2)

Citation : (2009) 09 MAD CK 0310

Hon'ble Judges : M. Venugopal, J;Elipe Dharma Rao, J

Bench : Division Bench

Advocate : G. Jeremiah, for the Appellant; Om Prakash, for Ramalingam Associates, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—This Civil Revision Petition is directed against the order of the Debts Recovery Appellate Tribunal, Chennai in IN(SA) No. 137 of 2009 dated 05.05.2009.

2. It is the case of the petitioners that they along with the parents of the first petitioner availed loan of Rs. 15 lakhs each i.e. totally Rs. 60 lakhs from the respondent Bank during March, 2006 from its Kayamkulam branch, for which, they have given two landed properties as security. Since the business was not profitable as expected by them, the loan amounts were due and the Bank issued notice u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter referred to as ''SARFEASI Act''). Possession notice was published in news papers viz., ''The New Indian Express'' and vernacular daily ''Mathrubhoomi'' in respect of the loans at Kayamkulam Branch on 30.05.2007. Questioning the proceedings under the SARFEASI Act, the petitioners filed W.P.(C) No. 5917 of 2008 before the Kerala High Court and the same was dismissed on 23.06.2008 with liberty to the petitioners to approach the Debts Recovery Tribunal. Thereafter, sale notice in respect of three properties

issued on 10.11.2008 and published in ''The New Indian Express'' and vernacular daily ''Malayala Manorama''. The petitioners filed S.A. No. 192 of 2008 before the Debts Recovery Tribunal, Ernakulam for setting aside the proceedings initiated by the Bank as against the scheduled property under the provisions of the SARFEASI Act and other reliefs.

3. Pending the application before the Tribunal, the petitioners filed W.P.(C) Nos. 32048 and 32428 of 2008 before the Kerala High Court and interim stay was granted on 06.11.2008. On 14.11.2008, stay was further extended with a direction to deposit Rs. 50 lakhs within one week. By order dated 20.11.2008, the Kerala High Court allowed the petitioners to remit Rs. 15 lakhs(since it is represented that they heard Rs. 50 lakhs as Rs. 15 lakhs) and the same was deposited by one Ashraf. On 24.11.2008, the Kerala High Court extended the stay for a period of two weeks and directed the petitioners to deposit the balance Rs. 35 lakhs by accepting the counter foil of the remittance made by the said Ashraf and also authorised the Bank to appropriate Rs. 15 lakhs in the name of the petitioners. On the same day, the said Ashraf submitted a letter not to appropriate the amount to the petitioners'' account. Therefore, the writ petition was dismissed on 09.12.2008 for non-compliance of the conditional order. Thereafter, the petitioners filed an application in I.A. No. 275 of 2008 in Consumer Complaint No. 305 of 2008 before Consumer Disputes Redressal Forum, Alapuzha and obtained stay, prohibiting the recovery proceedings by the respondent Bank. The respondent Bank filed W.P.(C) No. 927 of 2009 before the Kerala High Court and obtained interim stay of the order passed by the Consumer Disputes Redressal Forum and by order dated 19.03.2009, the prohibitory order was quashed.

4. Thereafter, the petitioners filed W.P. No. 104 of 2009 before the Kerala High Court and by order dated 14.01.2009, the High Court directed the Debts Recovery Tribunal, Ernakulam to dispose of S.A. No. 192 of 2008 within one month and also prohibited the respondent Bank from proceeding further for one month. By order dated 12.02.2009, the Debts Recovery Tribunal, Ernakulam granted interim stay till 27.02.2009 on condition to deposit a sum of Rs. 50,00,000/- on or before 26.02.2009. As the conditional order was not complied with by the petitioners, the Debts Recovery Tribunal, Ernakulam rejected the prayer of the petitioners for extension of stay. Therefore, the petitioners filed I.N. (SA) No. 137 of 2009 before the Debts Recovery Appellate Tribunal, Chennai against the order passed by the Debts Recovery Tribunal, Ernakulam on 12.02.2009. By order dated 01.04.2009, the Debts Recovery Appellate Tribunal, Chennai directed the petitioners to deposit a sum of Rs. 25 lakhs in two equal instalments in the gap of one month each and granted interim stay. As the petitioners have failed to pay even the first instalment, the stay granted was vacated by order dated 05.05.2009.

5. On 04.05.2009, the first petitioner''s mother filed W.P.(C) No. 13263 of 2009 before the Kerala High Court stating that the respondent Bank was not given

reasonable opportunity to her and to the petitioners to clear out the liability. When the matter was taken up on 26.05.2009, the writ petitioner and the petitioners herein have given an undertaking that they would vacate and hand over vacant possession of the premises in three days. Based on their undertaking, the writ petition was dismissed with a direction that the petitioners herein and the mother and father of the first petitioner shall execute an affidavit to that effect. On 27.05.2009, they have executed an affidavit of undertaking to give vacant possession of the premises on 30.05.2009. The mother of the first petitioner filed W.A. No. 1227 of 2009 before the Kerala High Court against the order dated 26.05.2009 passed in W.P.(C) No. 13623 of 2009. On 16.06.2009, the Division Bench of the Kerala High Court dismissed the writ appeal by observing that "this is a classic example of abuse of the process of the Court" and also imposed a cost of Rs. 25,000/-.

6. One Dinesh Pai, claiming to be a tenant in the property, filed a suit for ad-interim injunction before the Additional Munsif Court, Alappuzha and injunction was also granted on 28.05.2009. But by order dated 16.06.2009, the injunction suit filed by the alleged tenant was rejected. Thereafter, the petitioners filed the present Civil Revision Petition contending that the order of the Appellate Tribunal is contrary to law and facts of the case. It is contended that the Tribunal below has exhibited a total non-application of mind by imposing a condition which was in excess of the demand made by the respondent in Section 13(2) notice dated 14.03.2007 and the possession notice dated 30.05.2007. It is further contended that the Tribunals below failed to appreciate that in the Section 13(2) notice, a sum of Rs. 15,60,594/- had been claimed as due as on 28.02.2007 and the very same amount was also mentioned in the possession notice. It is stated that the Tribunal erred in dismissing the stay petition on 05.05.2006 even prior to the expiry of the time for complying with the second instalment, which was due only on 03.06.2009 and prayed to set aside the order of the Appellate Tribunal.

7. When the matter was taken up on 29.06.2009, interim stay was granted subject to the condition the petitioners deposit a sum of Rs. 12,50,000/- on or before 20.07.2009. On the subsequent date of hearing, it was reported that the conditional order has been complied with. But if we go to the root of the matter, once the conditional order passed by the DRAT, Chennai on 01.04.2009 is not complied with, as per the decision of the Supreme Court in Prestige Lights Ltd. Vs. State Bank of India, , it amounts to violation of the order of the Tribunal.

8. Counter affidavit has been filed by the respondent stating that the petitioners have not come before this Court with clean hands and this Civil Revision Petition is nothing but an abuse of process of law. It is further stated that the petitioners are not only chronic defaulters but also chronic litigants. It is stated that out of the secured assets, the respondent Bank had taken physical possession of two items which are lying as a compact plot measuring 45 cents in Survey No. 18/2A2, 18/2A3 of Mullakkal Village with all structures/building and developments standing therein through the Advocate Commissioner appointed by

the learned Chief Judicial Magistrate, Alappuzha in C.M.P. No. 1673 of 2009 and the said asset has been sold under the provisions of the SARFAESI Act. It is also stated that the petitioners have defrauded a sum of Rs. 4.63 crores and by running from one Court to another, they are successfully evading the payment. Therefore, the respondent Bank prayed for dismissal of the Civil Revision Petition.

9. We have heard the learned Counsel for both sides and perused the materials available on record.

10. From the events cited above, it is imminent clear that the petitioners and the parents of the first petitioner have abused the process of the Court by approaching the Kerala High Court, thereafter Debts Recovery Tribunal, Ernakulam, Consumer Disputes Redressal Forum, Kerala, Debts Recovery Appellate Tribunal, Chennai and finally this Court, without complying the conditional order passed by the Debts Recovery Tribunal, Ernakulam.

11. Considering the above facts and circumstances and also considering the attitude of the petitioners, we are of the view that the petitioners have not approached this Court with clean hands and we consider it appropriate to dismiss the Civil Revision Petition. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected M.P. is dismissed.

12. The amount said to have been deposited by the petitioners as per the direction given in the writ petition by the Kerala High Court, is directed to be adjusted towards the loan amount payable by the petitioners.