(2005) 04 KAR CK 0012

In the Karnataka High Court

Case No : Criminal Petition No. 1395 of 2005

Punjab and Sind Bank APPELLANT

Vs

Gemini Fashions (P.) Ltd. RESPONDENT

Date of Decision : 11-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 13 (2), 14

Citation : (2007) 137 CompCas 426 : (2007) 78 SCL 422

Hon'ble Judges : A.C. Kabbin, J

Bench : Single Bench

Advocate : H.V. Nagaraja Rao, for the Appellant;

Final Decision : Allowed

Judgement

A.C. Kabbin, J.—In this petition filed u/s 482 of the Criminal Procedure Code the petitioner before the First Additional Chief Metropolitan Magistrate., Bangalore, in Crl. Misc. No. 228 of 2005 is questioning the direction of the learned Additional Chief Metropolitan Magistrate for issuance of notice to the respondents with regard to the assistance sought for by the petitioner-secured creditor under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (''the Act'') in taking possession of the assets and documents relating to the transaction.

2. In the petition filed u/s 14 of the above-mentioned Act before the First Additional Chief Metropolitan Magistrate, Bangalore, the petitioner-bank stated that it being a secured creditor, had issued notice u/s 13(2) of the Act on 28-10-2004, demanding the respondents to repay the entire amount due to the petitioner within 60 days from the date of receipt of the notice and that in the said notice a specific averment had been made that despite service of notice, if the respondents failed to make the payment within 60 days from the date of receipt of the notice, further steps for taking possession of the assets and

documents relating to the transaction would be taken.

3. After considering the matter, the learned Additional Chief Metropolitan Magistrate observed that no document had been produced by the petitioner-bank to show that it had been registered under the Companies Act and that in that regard he directed notice to be issued to respondent Nos. 1 to 5. It is only that portion of the order which referred to the non-production of the registration certificate under the Companies Act and issuance of notice to respondent Nos. 1 to 5 that have been challenged in the present petition.

4. Sri H.V. Nagaraja Rao, learned Counsel for the petitioner reads out Sections 13 and 14 of the Act and submits that the secured creditor is entitled under Sections 13 and 14 of the Act to enforce security interest without the intervention of the Court or the Tribunal under the provisions of the said section and that when he seeks the assistance of the Court u/s 14 of the Act, there is no need for issuance of notice.

5. On going through the provisions of Sections 13 and 14 of the Act, it is seen that the said provision of Section 14 of the Act has been made to supplement Section 13 under which a secured creditor is entitled to enforce security interest and for seeking the assistance of the Court in this regard, notice of the same need not be issued to the debtor or the borrower. In this regard learned Counsel for the petitioner has also referred to the decision of the Madras High Court in the case of Sundaram Home Finance Ltd. v. K. Raja [CRP No. 1559 of 2004, dated 30-8-2004], wherein under similar circumstances, it was held by the Madras High Court that even notice of a petition u/s 482 of the Criminal Procedure Code is not required in view of the specific provisions of Sections 13 and 14 of the Act. In the light of the above-mentioned decision, the requirement directed by the learned Additional Chief Metropolitan Magistrate to the petitioner to produce the document to show that it is a company is also redundant for the decision of the matter and therefore that requirement also has to be quashed.

6. For the abovesaid reasons, the petition is allowed and setting aside the direction of the learned Additional Chief Metropolitan Magistrate for issuance of notice to respondent Nos. 1 to 5 and the requirement regarding production of the document to show that the petitioner is a company, the matter is remanded to the trial court to proceed in accordance with the provisions of Sections 13 and 14 of the Act.