

(2011) 02 DEL CK 0309

In the Delhi High Court

Case No : Writ Petition (C) No. 711 of 2011

Rakesh Kumar Khandelwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(3), 13(3A), 14
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2004 — Rule 2

Citation : AIR 2011 Delhi 98 : (2011) 122 DRJ 403

Hon'ble Judges : Dipak Misra, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Mathews J. Nedumpara and R. Majumdar, for the Appellant; Ruchir Mishra, for respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—In spite of the judgment of the Supreme Court in *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, upholding the constitutional validity of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, the Petitioner Rakesh Kumar Khandelwal has filed the present writ petition praying for following relief:

"(a) That the Hon'ble Court be graciously pleased to issue a writ in the nature of certiorari on any other appropriate writ or order quashing and setting aside the Notice dated 8th November, 2010 (Annexure P-1) issued by Respondent No. 3, as null and void;

(b) That this Hon'ble Court be graciously pleased to issue a writ in the nature of prohibition or any other appropriate writ or order prohibiting and restraining the Respondents from proceeding any further in pursuance of the Notice dated 8th November, 2010 (Annexure P-1) issued by Respondent No. 3, particularly from dispossessing the Petitioner of his factory premises situate at:

(c) That this Hon''ble Court be graciously pleased to issue a declaration or an appropriate writ or order, declaring that Sections 13(2), 13(3) and 13(3A) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 are unconstitutional on the ground that they are in violation of the second principle of natural justice namely, *nemo potest esse simul actor et iudex* or *nemo iudex in sua causa* or *nemo debet esse iudex in propria causa* - no one can be judge in his own cause - and the issue remains *res integra*;

(d) That this Hon''ble Court be graciously pleased to issue an appropriate writ or order or declaration, declaring that Rule 2(a) of the Security Interest (Enforcement) Rules 2002 is unconstitutional, void and in violation of the first principle of natural justice, namely, *nemo debet esse iudex in propria causa*, inasmuch as it permits an officer of a secured creditor/ Bank or any other person or authority exercising powers of superintendence, direction and control of business or affairs of the secured credit to act as an arbiter to determine the lis between the secured debtor and the secured creditor;

(e) That this Hon''ble Court be graciously pleased to issue a writ in the nature of prohibition or any other appropriate writ or order restraining the Respondent Bank from acting as a law unto themselves and forcefully dispossess the Petitioner of his properties which are claimed to be the secured assets at the hands of the Bank not to pass any ex-parte orders on an application at the hands of the Respondent Bank u/s 14 of the Securitization of Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002;

(f) That this Hon''ble Court be graciously pleased to issue an appropriate writ or order or declaration, declaring that Section 14 of the Securitization of Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 is unconstitutional and void inasmuch as it permits the learned Chief Metropolitan Magistrate/ District Magistrate to order dispossession of the property of a borrower/tenant or third party, whatsoever be his right, on a mere application at the hands of a Bank or Financial Institution, often a simple mortgage, without notice and without hearing him, and thus in violation of Articles 14, 19 and 21 of the Constitution of India or, in the alternative, and may be more appropriately, to read into the said Section an obligation to issue a notice and afford a hearing to the borrower/tenant or third party;

(g) to issue a declaration or an appropriate writ or order, declaring that Sub-section (3) of Section 14 of the Securitization of Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 is unconstitutional and void inasmuch as the said Section enables a secured creditor/Bank/financial institution to take possession of the property of a citizen, thereafter sell the same and liquidate the amount allegedly due to the Bank or financial institution without providing for an appeal against the order of the District Magistrate or Chief Judicial Magistrate;

(h) award to the Petitioner from the Respondent Bank compensation and damages of 5 crores for the breach of contract and tortuous act at the hands of the Respondent bank and more particularly Respondent No. 3.;"

2. Annexure P-1, notice dated 8th November, 2010 which is subject matter of prayer Clauses (a) and (b) has been issued by Indian Overseas Bank, Branch Bani Park, Jaipur 302 016. They are addressed to Petitioner at Jaipur. As per the writ petition also, the Petitioner is a resident of Jaipur. As per the memo of parties filed with the present writ petition, the Respondents are as under:

"1. The Union of India Represented by the Secretary to the Government, Department of Banking, Ministry of Finance, Jeevan Deep Building, Parliament Street, New Delhi 110 001.

2. The Governor, Reserve Bank of India, Central Office Building, Shahid Bhagat Singh Road, Mumbai 400 001.

3. Shri Har Prasad, Authorized Officer, Indian Overseas Bank, Bani Park Branch, Jaipur 302 006 (Rajasthan)

4. The Chairman & Managing Director, Indian Overseas Bank, 763, Anna Salai, Chennai 600002.

3. We do not think, this Court has territorial jurisdiction entertain the present writ petition even if the Petitioner has challenged the constitutional validity of Securitization of Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 and Rule 2(a) of the Security Interest (Enforcement) Rules, 2002. As noticed above, the entire "cause of action" as alleged in the petition arises out of notice dated 8th November, 2010 written by Respondent No. 4 Bank from Jaipur to the Petitioner at Jaipur. Notice also states that the property in question is located at Sanganer, Jaipur. These are undisputed facts. The question of territorial jurisdiction is clearly covered by the judgment held by Supreme Court in Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, . The relevant portions of the said judgment read:

Cause of action

6. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted *inter alia* to mean that every fact which would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the Defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

7. Clause (2) of Article 226 of the Constitution of India reads thus:

226. (2) The power conferred by Clause (1) to issue directions, orders or writs to

any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

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18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

19. Passing of a legislation by itself in our opinion does not confer any such right to file a writ petition unless a cause of action arises therefor.

20. A distinction between a legislation and executive action should be borne in mind while determining the said question.

21. A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the Petitioner. A writ court, it is well settled, would not determine a constitutional question in a vacuum.

22. The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.

Situs of office of the Respondents - whether relevant

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23. A writ petition, however, questioning the constitutionality of a parliamentary Act shall not be maintainable in the High Court of Delhi only because the seat of the Union of India is in Delhi. (See Abdul Kafi Khan v. Union of India.)

24. Learned Counsel for the Appellant in support of his argument would contend that the situs of framing law or rule would give jurisdiction to the Delhi High Court and in support of the said contention relied upon the decisions of this Court in Nasiruddin v. STAT and U.P. Rashtriya Chini Mill Adhikari Parishad v. State of

U.P. So far as the decision of this Court in *Nasiruddin v. STAT* is concerned, it is not an authority for the proposition that the situs of legislature of a State or the authority in power to make subordinate legislation or issue a notification would confer power or jurisdiction on the High Court or a Bench of the High Court to entertain a petition under Article 226 of the Constitution. In fact this Court while construing the provisions of the United Provinces High Courts (Amalgamation) Order, 1948 stated the law thus: (SCC p. 683, para 37)

37. The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action" is well known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular court. The choice is by reason of the jurisdiction of the court being attracted by part of cause of action arising within the jurisdiction of the court. Similarly, if the cause of action can be said to have arisen part within specified areas in Oudh and part outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The court will find out in each case whether the jurisdiction of the court is rightly attracted by the alleged cause of action."

4. In view of the aforesaid position, we are not inclined to entertain the writ petition for lack of territorial jurisdiction. No costs.