

(2011) 03 MP CK 0080

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1419 of 2011

R.K. Traders (M/s.)

APPELLANT

Vs

The Chief Engineer, M.P. Paschim Kshetra Vidyut Vitran Co.
Ltd., Ujjain and Others

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Companies Act, 1956 — Section 457
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13, 17, 2

Citation : (2012) 1 JLJ 428 : (2011) 5 MPHT 356

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

Bench : Single Bench

**Advocate : Lokesh Mehta, for the Appellant; Sudha Shrivastava For respondents
No. 1 to 4, for the Respondent**

Final Decision : Allowed

Judgement

S.C. Sharma, J.—Petitioner before this Court has filed this present petition, being aggrieved by the action of the respondents No. 1, 2, 3 and 4 in not permitting the petitioner to take out the plant and machinery, which the petitioner has purchased by way of auction conducted by Canara Bank, Branch Indore. The contention of the petitioner is that he is a scrap dealer and a notice was issued under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "SARFAESI Act, 2002") for sale of plant and machinery in respect of factory i.e. M/s. Devkripa Steels Pvt. Ltd., Khategaon. The bid was knocked down in the favour of the petitioner and the petitioner's contention is that a sale certificate was issued in favour of the petitioner on 17.1.2011. Petitioner further stated that he started removing the plant and machinery, after receiving a letter from Canara Bank and while he was transporting the machinery on 20.1.2011, the premises of the factory was sealed by respondents No. 1 to 4 and it was stated by the respondents that they are exercising their powers under the provisions of M.P. Land Revenue Code, 1959 by

seizing the property in question. Petitioner's grievance is that once he has purchased the plant and machinery through an open auction the respondents No. 1 to 4 cannot restrain him from removing the same.

2. Reply has been filed on behalf of the respondents No. 1 to 4 and the contention of the respondents Madhya Pradesh Paschim Kshetra Vidyut Vitaran Co. Ltd., is that the petitioner is having a remedy under the M.P. Land Revenue Code, 1959, before reviewing authority and the present petition is not maintainable. It is also been stated in the return that the respondents No. 1 to 4 have to recover an amount of Rs. 25,04,249/- from M/s. Devkripa Steel Pvt. Ltd. and, therefore, they have rightly initiated action against M/s. Devkripa Steel Pvt. Ltd., under the provisions M.P. Land Revenue Code, 1959. Respondents have prayed for dismissal of the present writ petition.

3. Heard learned counsel appearing for respondent No. 5 Canara Bank. He has submitted before this Court that the Bank has disposed of the plant and machinery by holding an auction proceedings and a sale certificate was issued, keeping in view the provisions of SARFAESI Act, 2002, and the respondents No. 1 to 4 cannot be permitted to interfere in the matter. Respondent Bank has supported the contention of the petitioner.

4. Heard learned counsel for the parties and perused the record. The matter is being disposed of at motion hearing stage itself with the consent of the parties.

5. In the present case, it is not disputed that under the provisions of SARFAESI Act, 2002, action was initiated against M/s. Devkripa Steels Pvt. Ltd., Khategaon and plant and machinery has been auctioned by respondent No. 5, Canara Bank. A sale certificate was also issued in favour of the petitioner and petitioner has also partly removed the plant and machinery from the premises in question. Madhya Pradesh Paschim Kshetra Vidyut Vitaran Co. Ltd. on account of the fact that they have to recover electricity dues from M/s. Devkripa Steels Pvt. Ltd., have attached the entire plant and machinery after it was auctioned by the Bank on 20.1.2011. A Division Bench of this Court in the case of M.P. Paschim Kshetra Vidyut Vitran Company Ltd. Vs. Electricity Consumer Grievances Redressal Forum and Another, , in case of recovery of dues of earlier consumer from the occupant of premises in paragraphs 11, 12, 13, 14, 15 and 19 has held as under :

11. The word "consumer", in our considered opinion, is to be read in juxtaposition with the word "earlier agreement" so executed and the association of the demanding consumer should be shown with the erstwhile firm or company as a Partner, Director or Managing Director or as occupier and or owner of the premises.

12. We would be justified in reading the agreement by saying that if the present consumer in relation to the earlier agreement was associated with the firm or company either as a Partner Director or Managing Director or as occupier and or owner of the premises then he would not be entitled to a new connection unless the earlier liability is discharged. The word "with which he was associated" are

not ornamental words. The said words qualify a Partner, Director or Managing Director or an occupier or owner of the premises of the firm or company which earlier had the agreement in its name. The reason behind putting clause 4.17 is to put a check on the dishonesty which may be exhibited by the Partner, Director or Managing Director who after finding that the a great amount of money is to be paid refuse to pay the money and thereafter transfer the property in favour of some Director, Managing Director or Partner. Clause 4.17 would also show that if a person was occupying the premises or was owning the premises had some association with the earlier firm or company and again makes an application for grant of a fresh connection, then such person would not be entitled to get a fresh connection because at that point of time the company can always ask him that he being an associate of the defaulter firm or company, he would not be entitled to a fresh connection.

13. So far as five sub-clauses are concerned, in our considered opinion, the said clauses are simple examples which issue a mandate against the Electricity Supply Licensee. Clause (i) simply refers to a situation where a lease deed is cancelled by the State Government on account of any reason and the property is allocated to a new party. The reason behind that is that if the lease deed is cancelled and the property is transferred to a third party who is not associated with the defaulter then the new party/consumer shall not be required to pay the energy dues. In fact, clause (i) is in accordance with the earlier judgments of this Court and the judgments of the Supreme Court. Clause (ii) provides that connection would not be refused if property is attached and sold by Income Tax Department/Commercial Tax Department or such other Government Departments for recovery of their dues then the new purchaser shall not be required to pay the energy dues of erstwhile consumer. In the present matter, though the Income Tax Department or Commercial Tax Department or other Government Departments have not sold or auctioned the property but the question would be simple that protection flowing from clauses (i) and (ii) so also from clause (iii) which relates to sale and auction by financial institutions created under the State Act/Central Act would provide a protection to a sale by the Court. Undisputedly, the property has been auctioned and sold by the High Court under its powers, as conferred upon every Company Court. When the Court transfers the property free from all encumbrances then irrespective of any clause contained in 4.17 of the Supply Code, the property would stand transferred free from all encumbrances.

14. True it is, that in accordance with section 457 of the Companies Act, the Official Liquidator is an Officer of the Court but it is not to be forgotten that every Official Liquidator works under the directions and dictates of the High Court. The Official Liquidator can invite the bids, but ultimately he has to place everything before the Court for confirmation. Once the bid is accepted and sale is confirmed by the High Court in its Company Jurisdiction and the property is transferred free from all encumbrances, then the principle flowing from sub-clause (i), (ii) and (iii) would certainly provide a solace and extend protection in favour of the

purchaser who purchases the property under an assurance from the Court that the property is being sold to him free from all encumbrances.

15. So far as the question that sub-clause (i) to sub-clause (v) appended to clause 4.17 are exceptions or examples is concerned, a fair reading of these sub-clauses would make it clear that those are not conclusive but are only in form of examples to issue a mandate against the Electricity Company that at least in such cases they should not impress upon recovery of the dues which were to be recovered from the erstwhile owner. The mandate issued for some of the cases are not to be understood as final and conclusive nor all other cases which do not come under such mandate can be rejected. A fair appreciation of said clauses would make it clear that Madhya Pradesh Electricity Supply Code, 2004 proposes to protect the actions taken by the Government, its Departments and the Financial Institutions. If a protection is provided to an action and/or auction by the Government, Tax Department and the Financial Institutions then the principles providing such protection have to be applied to the Court sales also. In our opinion, the learned Single Judge was not unjustified in holding that the protection which is applicable to the sales made by Income Tax Department, Commercial Tax Department or other Government Department or by Financial Institutions or in case of cancellation of the lease deed and allocation of the property to a third party, should be applied in full force to a sale effected by the Court.

16. So far as the judgment in the matter of Paschimanchal Vidyut Vitaran Nigam Limited and others (supra), is concerned, paragraphs 11, 12 and 13 read as under:

11. The supply of electricity by a distributor to a consumer is "sale of goods". The distributor as the supplier, and the owner/occupier of a premises with whom it enters into a contract for supply of electricity are the parties to the contract. A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor in title or possession, as the amount payable towards supply of electricity does not constitute (charge) on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The supplier can, therefore, neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises in the absence of any contract to the contrary.

12. But the above legal position is not of any practical help to a purchaser of a premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears dues in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is

restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfilment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, Courts will not interfere with them.

13. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity and when the electricity supply is disconnected for non-payment may, sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to clause 43(g) and (h) of the Electricity Supply Code are necessary to safeguard the interests of the distributor.

17. The Supreme Court in the said matter clearly observed that a transferee of the premises or a subsequent occupant of premises with whom the supplier has no privity of contract, cannot obviously be asked to pay the dues of his predecessor in-title for possession, as the amount payable towards supply of electricity does not constitute "charge" on the premises. According to the Supreme Court, a purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The Supreme Court was of the opinion that the supplier can, therefore, neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises in the absence of any contract to the contrary. In paragraph 12, the Supreme Court in no ambiguous terms observed that if there are any statutory rules governing the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfilment of the requirement of such rules and regulations. According to the Supreme Court, if the Rules are silent, the supplier can stipulate such terms and conditions as it deems fit and proper to regulate its transaction and the rules. However, according to the Supreme Court, so long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, Courts will not interfere with them. We have already held that clause 4.17 does not gag the mouth of a subsequent purchaser. According to us, he would always be entitled to say before a supplier company that he having been purchased the property in a Court sale or auction, he would not be liable to pay the dues which were recoverable against the erstwhile owner because he has purchased the property free from all encumbrances and is/was never associated with the earlier consumer.

18. The Supreme Court in the matter of Ahmedabad Electricity Co. Ltd. (supra), following the judgment in Isha Marbles (supra), a judgment by Three Judges and observed that if the purchaser has no connection with the erstwhile owner and he applies for the grant of connection for supply of the electricity then such connections are to be deemed as fresh connections. Clause 4.17, in fact, is a translated action of the judgment of the Supreme Court.

19. In our opinion, the learned Single Judge was not unjustified in providing a protection to the purchaser who had purchased the property in the Court sale/ Court auction and had shown that he was never associated with the earlier consumer and in holding that the electricity company would not be entitled to recover the dues which were recoverable from the erstwhile owner/the company which is now under liquidation.

6. In the aforesaid case, Division Bench of this case relying upon the judgment delivered by the apex Court in the case of Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, , has held that in case if the purchaser had shown that he was never associated with earlier consumer then such a purchaser cannot be liable to pay the electricity dues recoverable from the earlier consumer.

7. In the present case, the petitioner was never associated at any point of time with M/s. Devkripa Steels Pvt. Ltd., Khategaon and he has purchased the property in an open auction by Canara Bank, under the provisions of SARFAESI Act, 2002, and therefore, the action of the respondents No. 1 to 4 in restraining the petitioner to take out the plant and machinery is certainly bad in law and the respondents are directed to permit the petitioner to remove the plant and machinery forthwith. However, it is made clear that in case respondents No. 1 to 4 are aggrieved by the auction proceedings or with the proceedings conducted by the respondent Bank u/s 13 of the SARFAESI Act, 2002, respondents No. 1 to 4 are certainly free to file an appeal before the Debt Recovery Tribunal as section 17 provides for a remedy of appeal to any person including the borrower who is aggrieved by any of the measures referred u/s 2 sub-section (4) of section 13 or his authorized officer. Resultantly, the writ petition is allowed. No statutory provisions of law has been brought to the notice of this Court by respondents No. 1 to 4 justifying their action of restraining the petitioner to remove the plant and machinery which he has purchased in an open auction and therefore, in absence of any statutory provisions brought to the notice of this Court, the action of the respondent is bad in law as it is not supported by any statutory provisions of law. The respondents No. 1 to 4 are directed to permit the petitioner to remove the plant and machinery purchased by him in the auction.

No order as to costs. C.C. as per rules.