
(2014) 12 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No. 21402 of 2013 (GM-RES)

S. Amudha

APPELLANT

Vs

IDBI Bank Limited

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4), 14, 17

Citation : (2014) 12 KAR CK 0006

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : R. Ashok Kumar, Advocate for the Appellant; R.V. Naik, Advocate for the Respondent

Judgement

S. Abdul Nazeer, J.—Though this matter is posted for orders, by the consent of the learned counsel for the parties, it is taken up for final hearing, heard and disposed of by this order.

2. In this case, petitioner has called in question the validity of the order at Annexure-C dated 15-06-2013 whereby the XI Additional Chief Metropolitan Magistrate, Bangalore has directed the first respondent - Bank to take possession of the property.

3. Petitioner contends that she is a tenant of the premises more fully described in the agreement of lease at Annexure-A dated 9-2-2010. The second respondent being the owner of the said property has put her in possession of the property as a tenant under the aforesaid agreement. The first respondent has initiated proceedings under the provision of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the "Act") for taking possession of the property, since the second respondent failed to pay the amount borrowed by him from the first respondent. The aforesaid premises was mortgaged to the first respondent as a security for the aforesaid loan transaction by deposit of title deeds. It is further contended that the

petitioner is in possession of the premises as a tenant. She is not a party before the Magistrate.

4. On the other hand, learned Advocate appearing for the first respondent - Bank has sought to justify the impugned order. It is his contention that notice under Section 13(4) of the Act has been issued for taking possession of the property. This notice was challenged by the petitioner by filing an appeal under Section 17 of the Act before the Debt Recovery Tribunal, Bangalore in Case No. IR 1405/2012. The Debt Recovery Tribunal has held that petitioner is not a bonafide tenant. The Debt Recovery Tribunal has dismissed the appeal on 25-04-2012. This order has attained finality. In furtherance of the said order, the Bank has sought to recover possession of the property by Police help under Section 14 of the Act, which has been allowed by the Jurisdictional Magistrate. He prays for dismissal of the writ petition.

5. I have carefully considered the arguments of the learned counsel made at the Bar and perused the materials placed on record.

6. The contention of the petitioner is that she is a bonafide tenant of the premises in question having taken the property on lease from its owner - second respondent under the agreement dated 09-02-2010. It is not in dispute that the petitioner has challenged the possession notice issued under Section 13(4) of the Act before the Debt Recovery Tribunal, Bangalore in Case No. IR 1405/2012. In the said case, the petitioner has put forth all her contentions. After contest, the Debt Recovery Tribunal has come to the conclusion that petitioner is not a bonafide tenant. The appeal was dismissed by the Debt Recovery Tribunal as per the order at Annexure "R1" dated 25-04-2012. This order has not been challenged by the petitioner. The findings in the said case has attained finality and binding on the parties. In furtherance of the said order, the Bank sought possession of the property through Police help before the Magistrate and Magistrate has directed Police help for recovery of the premises in question. The contentions urged by the petitioner in this case have been considered by the Debt Recovery Tribunal in its order at Annexure-R1. Therefore, re-agitating the same questions in this writ petition does not arise. If the petitioner is aggrieved by the order at Annexure-R1, she has to challenge the same in accordance with law. Therefore, I decline to entertain this writ petition. It is accordingly dismissed. No costs.

7. In view of the dismissal of the writ petition as above, I.A. No. 1/2014 does not survive for consideration and it is accordingly dismissed.