(2014) 02 MAD CK 0155

In the Madras High Court

Case No : Writ Petition Nos. 6986 and 22475 of 2013

S. Martin APPELLANT

Vs

Debt Recovery Appellate Tribunal RESPONDENT

Date of Decision : 27-02-2014

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 31(i)

Citation : (2014) 5 MLJ 72

Hon'ble Judges : M. Jaichandren, J;K. Kalyanasundaram, J

Bench : Division Bench

Judgement

M. Jaichandren, J.—Since the issues involved in both the writ petitions are similar in nature, they have been taken up together and a common order is being passed. Both the writ petitions, in W.P. No. 6986 of 2013 and W.P. No. 22475 of 2013, had been filed praying that this Court may be pleased to issue writs of Certiorari to call for and quash the order of the first respondent, dated 20.7.2012, made in R.A.(SA).38/2011.

2. The writ petitions, in W.P. No. 6986 of 2013 and W.P. No. 22475 of 2013, had been filed by the petitioners stating that an extent of 72.06 acres of land situated at Mahabalipuram, had belonged to Parson Holiday Resorts Private Limited and Coconut Groves Holiday Resorts Private Limited, the second and the third respondents in the said writ petitions. The said properties had been mortgaged to the Indian Bank, the fourth respondent in the writ petition, in W.P. No. 6986 of 2013 and the petitioner in W.P. No. 22475 of 2013, (hereinafter referred to as "the bank") for the loan availed by Sujatha Films Limited, on 8.2.1989. An agreement of guarantee had also been executed by the second and the third respondents. As such, the second and the third respondents are included in the definition of ''borrowers'', under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. It has been further stated that Sujatha Films Limited had failed to repay the loan amount borrowed from the bank. Therefore, the bank had filed an application, in O.A. No. 552 of 1997, before the Debts Recovery Tribunal-II, Chennai. The said application had been subsequently renumbered as O.A. No. 2018 of 2001, and thereafter, renumbered as O.A. No. 81 of 2007, pending disposal before the Debts Recovery Tribunal-III, Chennai.

4. While so, on 30.6.2004, the bank had issued a demand notice, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to the principal borrower, namely, Sujatha Films Limited and the guarantors, the second and the third respondents in the writ petition. They had been called upon to pay a sum of Rs. 32,47,05,634.76/-, together with further interest at the rate of 20.75% per annum, from 30.6.2004, till the date of payment. As the principal borrower and the guarantors had failed to pay the amount demanded by the bank, within the time stipulated, the bank was constrained to take possession of the immovable properties as secured assets by issuing a notice, dated 4.12.2004, under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Thereafter, a sale notice had been issued bringing the properties in question for sale, by way of a public auction.

5. Following the action of the bank, a number of litigations had been initiated and the matter had been taken to the Supreme Court, eventually, in Civil Appeal Nos. 2074-2078 of 2011. The Supreme Court had passed an order, dated 25.2.2011, which reads as follows:

Our attention has been drawn to a letter dated 13.12.2010 sent by the Chief Manager, Indian Bank to the Director of the appellant Company, the relevant portion of which reads as under:

As regards the liabilities, we wish to state that the amount due as on 30.11.2010 is Rs. 3467.89 lakhs after appropriation of a sum of Rs. 410.00 lakhs collected after filing of suit and Rs. 5525.00 lakhs being the sale proceeds of property said above.

Learned Solicitor General submits that if the Bank is allowed to appropriate this amount, then he has no objection to the appeal of the appellant being heard on merit by the DRAT. We direct that the Indian Bank would be at liberty to appropriate the amount which is already with the Bank, however, this would be subject to the final decision of the appeal by the DRAT.

In the fact and circumstances of this case, we direct the DRAT to hear and dispose of the appeal on all questions of law, as expeditiously as possible, in any event, within two months from the date of the communication of this order.

These appeals are accordingly disposed of, leaving the parties to bear their own respective costs.

6. Later, the matter had been taken up on the file of the Debts Recovery

Appellate Tribunal, Chennai, as RA (SA).38/2011 (against RA. No. 1/2008 in S.A. No. 23/2006), by the first respondent. The Appellate Tribunal had passed the following order, after hearing the parties concerned.

1. The Ld. Presiding Officer has framed the following points for consideration in the Review Application:

a. Whether the Review Petition is maintainable?

b. Whether the secured assets are agricultural lands and are exempted under Section 31(i) of the Act from enforcement of security interest as provided under Chapter III of the Act?

c. Whether the claim of the Bank is barred by limitation?

d. Whether the Review Petition is filed within limitation?

2. In answer to point No. (i) the Ld. Presiding officer has come to the conclusion that there is an error apparent on the face of the record in dismissing I.A. No. 374 and 375 of 2006 without passing a speaking order event in the SA and he has proceeded to answer the point raised in IA No. 375 of 2006 and has discussed in detail about the said IA in answer to point (ii). A perusal of the findings of the Ld. Presiding Officer on this point clearly reveals that he has come to the conclusion that the final order in the SA has to be reviewed and when such a conclusion has been arrived at the Ld. Presiding officer ought to have set aside the final order passed in the SA and ought to have afforded the Review Petitioners to put forth their case in the IA Nos. 374 and 375 of 2006 which in this case has not been done.

3. In answer to point No. (iii) the Ld. Presiding Officer has stated that the proceedings taken up by the Authorised Officer is well within time. A reading of the averments made in SA does no depict any challenge on the question of limitation and therefore the conclusion arrived at in this point are clearly out of the scope of the review.

4. In answer to point No. (iv) it is seen that the Presiding officer has issued orders for numbering the Review Application based on the endorsement made by the Ld. Counsel for the Petitioner and after taking up the Review Application for hearing has proceeded to answer this point against the Review Petitioners to the effect that the Review Application is time barred.

5. Therefore from the fact that the Ld. Presiding Officer has come to the conclusion that the matter has to be reviewed, from the fact that the Presiding Officer has come to the conclusion that no speaking orders have been passed I IA Nos. 374 and 375 of 2006, from the fact that the Ld. Presiding Officer has decided that the land is used for horticultural purposes, from the fact that the Ld. Presiding Officer has come to the conclusion that the word agriculture does not include horticulture, from the fact that the petitioners have to be afforded an opportunity to put forth their case in the said IA Nos. 374 and 375 of 2006, from

the fact that the Ld. Presiding Officer cannot dismiss the Review Petition when in fact he has allowed the Review Petition while answering point No. (i) this Tribunal is driven to conclude that the order passed in the Review Petition is liable to be set aside and the matter remitted back to the Tribunal below for a fresh consideration.

6. Accordingly the order of the Ld. Presiding Officer dated 26.02.2009 in RA No. 1/2008 on the file of DRT-II, Chennai is hereby set aside. The Ld. Presiding Officer, DRT-II, Chennai is directed to take up RA 1/2008 afresh and dispose of the same in accordance with law. The Ld. Presiding Officer is further directed to afford an opportunity to both sides to put forth their case and dispose of the RA 1/2008 as expeditiously as possible.

7. This appeal is disposed of accordingly.

7. Aggrieved by the order passed by the first respondent Tribunal, the petitioners had preferred the present writ petitions before this Court.

8. The petitioners had challenged the order of the first respondent Tribunal stating that it is arbitrary, perverse and contrary to law. It has been further stated that the order of the first respondent Tribunal had been passed without proper application of mind and without considering the facts circumstances and the legal provisions relating to the matter. It had also been stated that the first respondent Tribunal had failed to consider the objections filed by the petitioner, in W.P. No. 6986 of 2013, and the arguments advanced on his behalf. The first respondent Tribunal had failed to note that the review application, in R.A. No. 1/2008 had been dismissed by a detailed and well considered order passed by the Debts Recovery Tribunal-II, Chennai, by its order dated 26.2.2009.

9. Even though the Debts Recovery Tribunal-II, Chennai, had passed a well considered and a detailed order giving numerous reasons for dismissing RA No. 1/2008, the first respondent had passed the impugned order, mechanically, without considering the merits of the matter. Proper reasons had not been given, while passing the impugned order, dated 20.7.2012.

10. A number of other grounds had also been raised in the present writ petitions, challenging the order passed by the first respondent, dated 20.7.2012. It had been pointed out that the impugned order of the first respondent is vitiated, as the Supreme Court had directed the first respondent to pass appropriate orders, on merits and in accordance with law, leaving all questions open to be agitated before the first respondent.

11. It had also been stated that the first respondent had committed a serious error in setting aside the order, dated 26.2.2009, made in R.A. No. 1/2008, directing the Debts Recovery Tribunal-II, Chennai, to take up the review application, in RA No. 1/2008, and to dispose of the same in accordance with law. Thus, the first respondent had clearly abdicated its duty vested in it by the order of the Supreme Court. Thus, it is clear that the first respondent had acted

contrary to the directions issued by the Supreme Court, in its order, dated 25.2.2011. Instead of considering the matter, afresh, and disposing of the same, on merits and in accordance with law, as directed by the Supreme Court, the first respondent had remitted the matter back to the Debts Recovery Tribunal-II, Chennai, to dispose of RA No. 1/2008.

12. It had also been submitted that there was no necessity for the first respondent to remit the matter back to the Debts Recovery Tribunal-II, Chennai, as the order passed by the said Tribunal, in R.A. No. 1/2008, had taken into account all the issues, that had arisen for consideration and it had rendered its conclusion considering the merits of the case, giving proper reasons for the same.

13. It has been further stated that the first respondent had acted in a manner contrary to the letter and spirit of the order passed by the Supreme court, dated 25.2.2011. Even though the Supreme Court was aware of the facts and circumstances of the case, it had specifically directed the first respondent to dispose of the appeal, on merits and in accordance with law, leaving open all the questions to be agitated before the first respondent. The first respondent had passed the impugned order, dated 20.7.2012, contrary to the order passed by the Supreme Court, by remitting the matter to Debts Recovery Tribunal-II, Chennai, for a fresh consideration of the Review Petition, in RA. No. 1/2008. Therefore, this Court may be pleased to set aside the order, dated 20.7.2012, made in RA(SA) No. 38/2011, and pass appropriate orders as this Court may deem fit and proper in the facts and circumstances of the case.

14. In view of the submissions made by the learned counsels appearing for the petitioners in the above writ petitions and in view of the submissions made by the learned counsels appearing for the respondents concerned, and on a perusal of the records available, we are of the considered view that the Debts Recovery Appellate Tribunal, Chennai, had committed an error in remitting the matter back to Debts Recovery Tribunal-II, Chennai, to consider RA 1/2008, afresh, and to dispose of the same, in accordance with law, after giving an opportunity of hearing to both sides, to put forth their case.

15. From the order passed by the Supreme Court, dated 25.2.2011, in Civil Appeal Nos. 2074-2078 of 2011, it is clear that the Supreme Court had directed the first respondent to pass orders in the Appeal, in R.A.(SA)38/2011, leaving all questions open to be agitated before it. In our view it is not open to the first respondent to remit the matter back to the Debts Recovery Tribunal-II, Chennai, for a fresh consideration of the RA. 1/2008, especially, as the issues, that had arisen for the decision of the Debts Recovery Tribunal Chennai, had already been dealt with, substantially. Therefore, the first respondent ought to have considered all the issues, that had arisen for its consideration in the said appeal and it should have passed appropriate orders thereon, on merits and in accordance with law, after giving sufficient opportunity of hearing to the parties concerned, as per the directions issued by the Supreme Court, in Civil Appeal Nos. 2074-2078 of 2011. In such view of the matter, we find it appropriate to set

aside the order of the first respondent, dated 20.7.2012, made in RA (SA) 38/2011 and to remit the matter back to the first respondent, for passing appropriate orders, as directed by the Supreme Court, by its order, dated 25.2.2011. We make it clear that all issues available to the parties concerned could be raised before the first respondent, including the issue relating to the maintainability of the appeal, as per the directions issued by the Supreme Court, by its order, dated 25.2.2011. The first respondent is directed to pass appropriate orders as per the directions issued by this court, by this order, within a period of twelve weeks from the date of receipt of a copy of this order. The writ petitions are ordered accordingly. No costs. Connected M.P. Nos. 1 and 2 of 2013 are closed.