

(2011) 11 KAR CK 0298

In the Karnataka High Court

Case No : Writ Petition No. 40082 of 2011 (GM-RES)

Shekar

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13 (2), 17

Citation : (2011) 11 KAR CK 0298

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : N. Suresha, for the Appellant; Y.V. Parthasarathy, for R 1, for the Respondent

Judgement

B.S. Patil

1. In this writ petition, petitioner is challenging the order dated 01.10.2011 passed by the 7th Additional Chief Metropolitan Magistrate, Bangalore in C.Misc.No.6473/2011 vide Annexure-D, thereby permitting the 1st respondent-Bank to take over possession of the property with police help. The property is the secured asset mortgaged in favour of the 1st respondent-Bank by the 2nd respondent-owner.

2. According to the petitioner, he is a bonafide tenant in actual occupation of the premises with effect from 27.07.2011 as per the rent agreement produced at Annexure-B. Learned counsel for the petitioner submits that since the petitioner is in occupation of the premises, the respondent-Bank can only take symbolic possession and cannot dispossess the petitioner without recourse to law.

3. Learned counsel for the respondent-Bank who has filed statement of objections contends by referring to the demand notice dated 08.03.2011 issued u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. 2002 (for short "the Act), produced at

Annexure-R2 that the petitioner has been inducted into the premises after the demand notice was issued by the 1st respondent-Bank to the 2nd respondent.

4. Upon hearing the learned counsel for the parties and on perusal of the materials on record. I find that the question raised by the petitioner in this writ petition is to be agitated before the Tribunal by availing the alternative remedy provided u/s 17 of the Act. particularly, because of the competing claims made by the petitioner and the respondents regarding the fact that the petitioner has been inducted into the premises after the demand notice was issued only in order to deprive the 1st respondent-Bank of its right to realise the amount by resorting to the provisions of the Act.

5. Therefore, without expressing any opinion on the merits of the matter, the writ petition is disposed of with liberty to approach the Tribunal. However, as the counsel for the petitioner submits that the Tribunal is not sitting regularly and that some breathing time may be granted to the petitioner to approach the Tribunal to move the case, I am persuaded to grant ten days time to approach the Tribunal. Until then, both the parties shall maintain status-quo regarding the possession.