
(2023) 07 KL CK 0138
In the High Court Of Kerala
Case No : Writ Petition (C) No.23518 Of 2023

Sisi

APPELLANT

Vs

Authorized Officer/Chief Manager, The South Indian Bank Ltd

RESPONDENT

Date of Decision : 19-07-2023

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2023) 07 KL CK 0138

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

Bench : Single Bench

Advocate : B.Krishna Mani, N.V.Sandhya, Dhanuja M.S, Sunil Shanker

Final Decision : Dismissed

Judgement

C.S.Dias, J

1. The writ petition is filed, inter alia, to direct the respondents 1 & 2, not to take physical possession of the property that is scheduled in Ext P1 plaint.

2. The petitioner's case is that she and the third respondent were living together. They have a child born in the relationship. The third respondent has abandoned the petitioner and the child. The petitioner has instituted O.S.No.295/2023 before the Court of the Munsiff, Punalur, as against the third respondent and has sought for half share of the plaint scheduled property. The second respondent is also a party to Ext P1 proceedings. Now, the third respondent has fraudulently executed a sale deed. Thereafter, he has availed a loan from the second respondent. The second respondent has initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(in short, 'Act') and is threatening to evict the petitioner from her half share in the plaint scheduled property. The entire transaction between the respondents is collusive and fraudulent. They have been done to defeat the right of the petitioner in the plaint scheduled property. The entire transaction between the petitioner and the respondents may be set aside and the

respondents 1 & 2 may be restrained from taking physical possession of the property. Hence, the writ petition.

3. Heard; Sri. B. Krishna Mani, the learned counsel appearing for the petitioner and Sri. Sunil Shanker, the learned Standing Counsel appearing for the respondents 1 & 2. In view of the limited relief that I propose to pass, I dispense with notice to the third respondent.

4. The petitioner's case is that she has a right over the property, which has been mortgaged by the third respondent in favour of the second respondent – Bank. According to her, it is to defeat her interest that the third respondent has created an equitable mortgage in favour of the second respondent. The petitioner has instituted Ext P1 suit before the competent court seeking half share of the property.

5. Indisputably, there is no prohibitory orders of injunction passed by the civil Court, restraining the respondents 1 & 2 from proceeding against the secured asset under the Act.

6. On an appreciation of the pleadings and materials on record, it can be gathered that it is the third respondent – the owner of the property – who has created an equitable mortgage over the secured asset in favour of the second respondent – Bank by deposit of title deeds. Therefore, the respondents 1 and 2 are at liberty to proceed against the secured asset, unless the same is interdicted by a competent court of jurisdiction.

7. As matters stand now, there is no order interdicting the respondents 1 & 2 from proceeding against the secured asset. Thus, I do not find any legal impediment in the respondents 1 & 2 proceeding against the secured asset.

8. The Hon'ble Supreme Court in *South Indian Bank Ltd vs. Naveen Mathew Philip* [2023 LiveLaw (SC) 320], after advertent to a myriad of earlier judicial pronouncements rendered under the Act, has categorically declared that High Courts shall not, unless in extra ordinary circumstances, interfere with proceedings initiated under the Act in writ proceedings under Article 226 of the Constitution of India.

9. Having considered the pleadings and materials on record and after appreciating the rival submissions made across the Bar, I do not find any extra-ordinary circumstances to entertain the writ petition by exercising the plenary powers of this Court under Article 226 of the Constitution of India. Nonetheless, it would be up to the petitioner to work out her statutory remedies, in accordance with law.

Resultantly, the writ petition is dismissed, without prejudice to the right of the petitioner to work out her remedies, in accordance with law.