(2009) 06 KL CK 0052

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15576 of 2009 (N)

Smt. Ayishumma and Others — APPELLANT

Vs

T. Hassan and Others — RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 14, 31

Citation : AIR 2010 Ker 13 : (2009) 3 ILR (Ker) 397 : (2009) 3 KLT 399

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : K.M. Sathy Anatha Menon, for the Appellant; R.S. Kalkura for No. 5, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—Whether the concerned Magistrate is entitled to decide the merits of the contentions as to the claim for exclusion of the property u/s 31(i) of the SARFAESI Act, while entertaining an application for assistance to take physical possession, invoking the power u/s 14 of the Act, is the subject matter of challenge.

2. The only grievance projected in the present Writ Petition is against Exts. P7 and P8 proceedings, in connection with the application preferred u/s 14 of the SARFAESI Act, before the Chief Judicial Magistrate, Manjeri, whereby an Advocate Com- , missioner has been appointed to take over possession of the secured asset, pursuant to the application filed by the Bank in this regard. The case of the petitioner is that, the property herein is an ''agricultural land'', which is not liable to be proceeded against, by virtue of the exclusion stipulated u/s 31(i) of the Act.

3. The respondent Bank, while disputing the contentions raised from the part of the petitioners, both on legal as well as factual grounds, states that, one of the guarantors by name T. Kunhimuhammed arrayed as the 4th respondent in the

present proceedings and a partner of the firm, had earlier approached the DRT, Ernakulam by filing S.A. 29 of 2008, wherein interference Was declined, however permitting the parties including the firm to discharge the liability within 3 months from 21.4.2008 as borne by Annexure R5(a). It is the case of the respondent Bank that neither the firm nor its partners/guarantors took any efforts to clear the liability within the specified time or even thereafter. Accordingly the sale of the property was notified and in the course of proceedings to take over the physical possession of the property, the Bank had filed necessary proceedings before the Chief Judicial Magistrate''s Court, Manjeri. During the pendency of the above proceedings before the Magistrate''s Court, the first petitioner herein approached this Court by filing WP(C) No, 3104 of 2009, wherein interference was declined by this Court as borne by Annexure R5 (b), holding that the first petitioner (Writ Petitioner in WP(C) No. 3104 of 2009) has already suffered a verdict at the hands of the DRT, Ernakulam and that the parties will be bound by the order of the DRT. Taking note of the proceedings stated as pending before the Chief Judicial Magistrate''s Court, Manjeri, it was observed that the petitioner could raise his contentions before the Chief Judicial Magistrate''s Court and that dismissal of the Writ Petition will not stand in the way of such course of action.

4. The learned Counsel for the respondent Bank submits that, nothing has been mentioned by the petitioners about the earlier Writ Petition filed by the first petitioner leading to Ext. R5(b) judgment in the present proceeding and that the petitioners have not chosen to approach this Court with clean hands, under which circumstance, the Writ Petition is liable to be dismissed on this score alone.

5. As noted above, the orders passed by the DRT earlier have not been subjected to challenge in the present Writ Petition. The petitioners are only aggrieved of the orders passed by the Chief Judicial Magistrate''s Court, Manjeri, appointing the Advocate Commissioner to take over the physical possession of the property in question u/s 14 of the SARFAESI Act. The learned Counsel for the petitioners submits that, the said provision is not liable to be invoked, for the plain reason that the property concerned is an ''agricultural land''; being excluded by virtue of Section 31(i) of the Act, which aspect ought to have been considered by the learned Chief Judicial Magistrate, before passing the orders u/s 14.

5A. The scope and ambit of Section 14 is very much discernible from the terminology used therein, which is extracted below:

14 Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset - (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as

the case may be, the District Magistrate shall, on such request being made to him.

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and, documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of Sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

6. From the above, it is very much clear that absolutely no power, jurisdiction, competence or expertise is intended or vested with the Magistrate to deal with any claim as to the nature of the property in question or as to the merits or demerits with regard to the other aspects involved in connection with the loan ''transaction, but for considering the fact whether the property in question in respect of which the assistance of the Magistrate is sought for u/s 14 is a "secured asset" or not. Obviously for this reason, if the property is not a secured asset interference can be declined and if it is secured asset, nothing further remains to be adjudicated by the Magistrate.

7. In the instant case, there is no case for the petitioner that the property in question is not a secured asset. The only contention is that though it is a secured asset, it is ''an agricultural land'' and hence is excluded from the purview of the SARFAESI Act, as provided u/s 31 (i) of the Act. This is a matter which is to be looked into by the appropriate forum under the Act and not by the. Magistrate, who is only vested with limited jurisdiction, to provide necessary assistance to take over the physical possession of the property, if it is a secured asset. This Court finds support in this regard, from the decisions rendered by this Court, as reported in C.R. Sindhu Vs. State of Kerala and Others, and Muhammed Asharaf v. Union of India 2008 (3) KLT 1 : AIR 2009 Ker 14.

8. In the above circumstances, there is absolutely no jurisdictional error or infirmity on the part of the concerned Magistrate while, passing Exts. P7 and P8 and hence interference is declined. The Writ Petition is dismissed accordingly.

