(2011) 11 MP CK 0066

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 589 of 2011

Smt. Saroj Shivhare and Others — APPELLANT

Vs

M/s. Gaurav Enterprises and Others — RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Registration Act, 1908 — Section 17(2)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(8)
Transfer of Property Act, 1882 — Section 60

Citation : (2012) 4 BC 93 : (2012) 1 MPHT 292

Hon'ble Judges : S.K. Gangele, J;Giriraj Das Saxena, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Heard.

1. This order shall govern disposal of Writ Appeal No. 581/2011, State Bank of India and another Vs. M/s. Gaurav Enterprises and others and Writ Appeal No. 589/2011, Smt. Saroj Shivhare and others Vs. M/s Gaurav Enterprises and others.

2. Both these appeals have been filed against the order dated 20-10-2011 passed by learned Single Judge of this Court in Writ Petition No. 5432/2011.

3. M/s Radhika Food Products had taken a loan from the State Bank of India. It could not repay the loan, hence, the bank proceeded against respondent Nos. 3 to 5, who are appellants in Writ Appeal No. 589/2011, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the "SARFAESI Act". The Bank issued a notice for auction of the property, which was mortgaged with the Bank by respondent No. 2, Smt. Saroj Shivhare, respondent No. 3, Suresh Shivhare. An advertisement was published to this effect in the local news papers. The auction was held on 26-7-2011. Respondent No. 1, M/s. Gaurav Enterprises,

participated in the auction and his bid was highest of Rs. 1,00,21,777/-. He deposited Rs. 25,05,500/-, 25% of the bid amount, immediately with the State Bank of India. In the meanwhile the borrowers, i.e., respondent Nos. 3 to 5 filed a petition before this Court, which was registered as 4898/2011 and disposed of on the basis of settlement arrived at between the State Bank of India and borrowers, respondent Nos. 3 to 5. The Writ Court passed the following order:--

(1) That, the present petition has been filed challenging the auction proceedings initiated by the State Bank of India under SARFAESI Act, 2002.

(2) That, as on date an amount of Rs. 1,05,36,058/- (Rupees One Crore five lakh thirty six thousand and fifty eight only) is due against the petitioner. The property has already been auctioned on 26-7-2011.

(3) That, the petitioners are ready to deposit the aforesaid amount of Rs. 1,05,36,058/- on or before 5-8-2011 in full and final settlement. If the aforesaid amount is deposited by the petitioners on or before 5-8-2011, in that case, the respondent Bank shall not finalize the auction held on 26-7-2011 in regard to the petitioner''s property and the loan account shall be closed.

(4) That, if the petitioners fails to deposit the aforesaid amount upto 5-8-2011 in that case, the said proposal shall proceed further against the petitioners for remaining dues.

4. On 16-8-2011, respondent No. 1, M/s Gaurav Enterprises, filed petition before this Court seeking a relief that respondent-Bank be directed to hand over possession of the property in auction to it and the Bank shall not hand over possession of the property to the borrowers, respondent Nos. 3 to 5. That petition has been allowed by the learned Single Judge of this Court and the respondent Bank is directed to hand over possession of the property to respondent, M/s Gaurav Enterprises.

5. Learned Senior Counsel appearing on behalf of appellants in both the appeals has contended that the order passed by the learned Single Judge is bad in law. The appellants in Writ Appeal No. 589/2011 borrowers, had already deposited the amount of Rs. 1,05,36,058/- on 6-8-2011 in accordance with the earlier order passed in Writ Petition No. 4898/2011, hence the appellants in Writ Appeal No. 589/11 have a right to redeem the property in question because the amount has already been deposited with the Bank. It has further been submitted that there was no document of sale executed in favour of respondent, M/s Gaurav Enterprises, hence, the mortgagee has a right to redeem the property because the loan amount has already been deposited with the Bank. In support of his contentions, learned Senior Counsel relied on a judgment of Hon''ble the Supreme Court in the case of M/s L. K. Trust Vs. EDC Ltd. and others, reported in AIR 2011 SC 2000.

6. Contrary to this, learned Counsel for respondent No. 1, M/s Gaurav Enterprises, has contended that in pursuance to the auction proceedings the sale

was confirmed in favour of respondent No. 1. The appellants in Writ Appeal No. 589/2011, borrowers, did not deposit the amount in accordance with the order passed by the Writ Court upto 5-8-2011, hence, they have no right of redemption of the property.

7. Undisputed facts of the case are that the Bank issued an advertisement for auction of the mortgaged property in accordance with the provisions of SARFAESI Act. Respondent No. 1 M/s Gaurav Enterprises, participated in the auction, which was held on 26-7-2011. It was the highest bidder and it also deposited 25% amount of the bid immediately after auction. Thereafter, the appellants in Writ Appeal No. 589/2011, borrowers, filed a petition before this Court, which was registered as Writ Petition No. 4898/2011 and it was disposed of in terms of settlement entered into between the appellants and the bank.

8. There is a factual controversy in regard to the fact that whether the amount as ordered in the settlement was deposited by the appellants-borrowers upto 5-8-2011 Rs. Admittedly, up to the aforesaid date the appellants-borrowers did not deposit the amount. As per appellants-borrowers, they submitted a cheque to the Bank on 5-8-2011, however, on the aforesaid date there was a strike, hence, the cheque was credited on the next day. The assertion of the appellants-borrowers is not correct. A cheque bearing number 340507, dated 6-8-2011 of Punjab National Bank, Branch Naya Bazar, Gwalior of Account No. 0290002100059921 of Rs. 1,04,00,000/- was handed over to the Bank by the appellants-borrowers. As per the letter dated 26-11-2011 of Senior Manager of the Punjab National Bank, Branch Naya Bazar, Gwalior, following was the balance in the aforesaid account on 6-8-2011, 8-8-2011 and 9-8-201 land Cheque No. 340507, dated 6-8-2011 for Rs. 1,04,00,000/- was deposited in the aforesaid account on 9-8-2011:--

Date

Balance

6-8-2011

Rs. 6508.83

8-8-2011

Rs. 2608.83

9-8-2011

Rs. 11508.83

However, the State Bank of India in its return has pleaded that the cheque was debited on 6-8-2011 in the loan.

9. Admittedly, the cheque was presented before the Bank on 6-8-2011 and on the aforesaid date there was no amount in the Bank account of which cheque was handed over to the State Bank of India for depositing in the loan account of

the appellants-borrowers. The officer of the Bank, who swear the affidavit, Mr. N. Prabhakar Iyer, was present before the Court and he stated that the Cheque was sent for clearing on 8-8-2011 and on that date the credit was given to the appellants-borrowers, however the cheque was cleared on 9-8-2011. But, the fact is that the appellants-borrowers did not deposit the amount of Rs. 1,05,36,058 in terms of the order dated 23-7-2011 passed by the Writ Court in Writ Petition No. 4898/2011 up to 5-8-2011 and as per clause (4) of the settlement the proposal would come to an end and the State Bank of India has an obligation to finalize the auction proceedings. After auction, the Bank issued a certificate, Annexure P-2 filed before the Writ Court, in favour of respondent No. 1, M/s Gaurav Enterprises. It has been mentioned in the Certificate that respondent No. 1 had deposited an amount of Rs. 25,05,500/-, i.e., 25% of the bid amount, in accordance with the auction and sale of the property has been certified and respondent No. 1, M/s Gaurav Enterprises shall deposit the remaining amount of Rs. 75,16,277/- on or before 9-8-2011. Admittedly, the respondent No. 1, M/s Gaurav Enterprises had deposited the aforesaid amount within the time stipulated in the certificate by way of Bank Draft.

10. The argument advanced by the learned Senior Counsel, appearing on behalf of appellants, that the sale of the mortgaged property was not confirmed or there was no registration in favour of respondent, M/s Gaurav Enterprises, hence, the appellants have a right of redemption, could not be accepted because if the argument be accepted then it would run contrary to the order passed by the Writ Court in Writ Petition No. 4898/2011, which has become final. Apart from this, the appellants-borrowers did not deposit the amount within the fixed date, i.e., 6-8-2011 fixed by the Writ Court for the purpose of redemption.

11. Learned Senior Counsel relied on a judgment of Hon''ble the Supreme Court in the case of M/s L.K. Trust Vs. EDC Ltd. and others (supra), and Section 60 of the Transfer of Property Act. However, the aforesaid judgment is distinguishable in the peculiar facts of the case. In the present case, the mortgage came to an end after 5-8-2011 in accordance with the order passed by the Writ Court in Writ Petition No. 4898/2011. The sale was also confirmed in favour of respondent No. 1, M/s Gaurav Enterprises.

12. The Division Bench of Madras High Court in the case of K. Chidambara Manickam Vs. Shakeena and Others, has discussed in detail the provisions of Section 17 (2) (xii) of the Registration Act and also discussed the SARFAESI Act and Transfer of Property Act and Right of redemption and has held that right of redemption will not prevail over sales already effected under SARFAESI Act and once the sale has been confirmed under the provisions of SARFAESI Act the sale becomes complete. We are in agreement with the findings recorded by the Division Bench.

13. In the present case, there is peculiar fact that even in terms of settlement the mortgage has came to an end in terms of the order of the Writ Court passed on 28-7-2011, hence, in our opinion, there is no illegality or irregularity in the

order passed by the Writ Court.

14. There is a strange feature of the case. The State Bank of India, respondent Nos. 1 and 2 before the Writ Court, filed an affidavit. In the aforesaid affidavit it has been pleaded by the State Bank of India that the borrowers deposited the whole of the amount on 6-8-2011. The relevant pleadings are in Para 7 of the return filed by the State Bank of India, which are as under:--

7. As to sub-para (7) of Para 5 of the petition : The contents of this para are not correct hence denied. As already submitted, that as per the provision of Section 13 (8) of the SARFAESI Act if the borrower deposits whole of the amount of due and expense etc. prior to sale and transfer then in that case no further action can be taken by the secured creditor, i.e., the answering respondent State Bank of India. In the present case the borrower has deposited all the dues and expenses before the registration of sale deed and transfer of property in the name of the auction purposes. Therefore, the petitioner/auction purchaser was having no right over the property and was not a necessary party because no rights were created in its favour till the transfer of the property by way of the registration of sale deed is done/created. Merely being a, successful bidder the petitioner cannot get any right title or interest over the property in question. As far as the drafts deposited by the petitioner are concerned the same were deposited on 9-8-2011 and not on 8-8-2011, while the borrower deposited whole of the amount on 6-8-2011, as on 5-8-2011 the Bank was not working due to the all India strike of Bank''s employees. The drafts submitted by the petitioner have been duly returned to it by the answering respondents.

15. However, as stated above in this order, there was no amount in the Account No. 0290002100059921, of the appellants-borrowers, of which the cheque was deposited by the appellants-borrowers and as per the report of the Senior Manager of the Punjab National Bank, Branch Naya Bazar, Gwalior, the amount was transferred from the account of the person who issued the cheque on 9-8-2011. In our opinion, admittedly a false pleading has been made by the respondent, State Bank of India, before the Writ Court. On behalf of the State Bank of India, the affidavit has been filed in support of its return by Mr. N. Prabhakar Iyer, Chief Manager, State Bank of India, Stressed Assets Management Branch, Bhopal.

16. Hence, Registry of this Court is directed to register a Contempt of Court proceedings against Mr. N. Prabhakar Iyer, Chief Manager, State Bank of India, Stressed Assets Management Branch, Bhopal and notice be also issued to him. A copy of this order be also sent to the Head Office, Mumbai.

17. Consequently, we do not find any merit in both these appeals. Writ Appeal No. 581/2011 and Writ Appeal No. 589/2011. Both these appeals are hereby dismissed. No order as to costs.