
(2008) 10 KAR CK 0037
In the Karnataka High Court
Case No : Writ Petition No. 3919 of 2007

Smt. Sumathi Sadashivayya

APPELLANT

Vs

Lord Krishna Bank Ltd.

RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Securitization and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 14

Citation : (2009) 1 KarLJ 263 : (2009) 2 KCCR 48 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : V.B. Ravishanker, for the Appellant; Ramesh Chandra Rai K.
Advocate for R1 and A.R. Sharadamba, AGA for R3, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioner, assailing the correctness of the impugned notice dated 16th June 2006 bearing No. B.Dis.MAG(2)CR 46/2006-07C4 vide Annexure D issued by third respondent, has presented the instant writ petition.

2. Brief facts of the case are that petitioner herein claims that, she is the tenant/lessee in respect of the schedule property under the lease agreement dated 20th October 2004 entered into with second respondent for a period of three years. Since then, petitioner has been in peaceful possession and enjoyment of the said premises as tenant/lessee. It is the case of petitioner that, she learnt that, the second respondent had availed loan from the first respondent - Bank and other financial institutions. Due to default in payment of loan sanctioned by first respondent, the first respondent has issued notice under Sections 13(2) and 13(3) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short "SARFAESI Act") read with Rule 9 of the SARFAESI Rules, 2002 and took possession of the schedule property under possession notice. Even thereafter, the second respondent has not cleared the

loan availed by him from the first respondent and therefore, the first respondent has initiated recovery proceedings against second respondent invoking the relevant provisions of the SARFAESI Act. In pursuance of the said proceedings, the first respondent obtained permission from the third respondent to take possession of the schedule property. Assailing the correctness of the impugned possession notice, vide Annexure D, referred above, petitioner herein felt necessitated to present the instant writ petition, seeking appropriate reliefs, as stated supra.

3. I have heard learned Counsel appearing for petitioner, learned Counsel appearing for first respondent - Bank and learned Additional Government Advocate appearing for third respondent.

4. Learned Counsel appearing for first respondent - Bank, at the outset submitted that, the writ petition filed by petitioner is liable to be dismissed at the threshold itself with exemplary costs on the ground that, petitioner intentionally and deliberately has suppressed the material facts and not stated the true facts before this Court and it is the duty of the petitioner to approach the Court with clean hands. To substantiate the said submission, he has taken me through the relevant paragraph 4 of the writ petition [internal page. 9) and pointed out that, it is specifically stated in the operative portion of the said paragraph that," As against the order, the petitioner is left with no other alternative or efficacious remedy except to approach this Court seeking redressal of his grievances under Articles 226 and 227 of the Constitution of India. The Petitioner has not filed any other writ petition, appeal, revision or any other case before any authority or Court against the cause of action asserted in the above writ petition....

5. After hearing the learned Counsel appearing for the parties including the relevant material available on file, it is evident that, petitioner has committed fraud on this Court by invoking the extra ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India by making the statements at paragraph 4 of the writ petition that, she has not filed any other writ or appeal before any other authority. Further, learned Counsel appearing for first respondent pointed out that, as on the date of making the aforesaid statement at paragraph 4, and filing the writ petition, petitioner, in fact, had filed I.R. No. 855 of 2006 in A.S.A. No. Nil of 2006 on the file of the Debt Recovery Tribunal at Bangalore on 20th November 2006, questioning the correctness of the impugned possession Notice dated 16th June 2006, viz. the notice issued u/s 14 of the SARFAESI Act and obtained the interim order from the Tribunal by its order dated 20th November 2006. The said interim order reads thus: " Heard the counsel. Perused the records. The Respondent - Bank is about to take physical possession of the property. In view of urgency involved in the matter, interim stay of taking physical possession, conducting auction sale etc. until further orders..." Be that as it may, suppressing this vital information of filing I.R. No. 855/2006 and obtaining interim order in the said proceedings, petitioner has filed this writ petition on 7th March 2007 after four months, questioning the very same

physical possession notice issued u/s 14 of the SARFAESI Act vide Annexure D, and seeking stay of the very same notice by making a declaration as stated at para.4 of the writ petition, internal page. 9, as referred above, that, she has not approached any other forum regarding the same cause of action and also obtained the ex-parte interim order from this Court on 8th March 2007. In the said interim order granted by this Court, the respondents are directed not to dispossess the petitioner from Apartment No. B1 (bearing Door No. 15-4-186/7) on the second floor of SHEFFIELD APARTMENTS measuring 1701 Sq.Ft. in area situated in land bearing R.S. No. 192, T.S. No. 346-9, of Kadri village, Bendoor Ward, Mangalore.

6. After going through the statement of objections filed on behalf of first respondent together with Annexures R1 to R3, it can be seen that, second respondent has entered into couple of agreements with the first respondent. By violating the terms and conditions of the said agreements, viz. condition No. 8 of Annexure R2 and condition No. 4 of Annexure R3 wherein second respondent has declared and sworn to the Affidavit on 10th November 2004 stating that, he would not, during the continuance of the loan, let out or otherwise part with the possession of the party or any part thereof without the consent of the Bank in writing nor shall he sell, mortgage or alienate the said property, second respondent has entered with a lease agreement on 20th December 2004 vide Annexure A with petitioner herein, without bringing it to the notice of the first respondent, when the said agreements were very much in existence and subsisting. These are the vital relevant material available on record. At the first instance, second respondent, has violated the conditions of the agreements entered into with the first respondent by mortgaging/leasing out the property without consent from the Bank. Subsequently, the petitioner, intentionally and deliberately having full knowledge of the filing of the I.R. No. 855/2006 before the Debt Recovery Tribunal, by suppressing the same, has presented this writ petition, giving declaration that, she has not filed any other writ petition, appeal, revision or any other case before any authority or Court against the cause of action asserted in this petition. The said declaration made by petitioner is nothing but committing fraud on this Court by invoking the extra ordinary jurisdiction. It is pertinent to note that, the Apex Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, has held that, a litigant withholding vital documents relevant to the facts of the case in hand itself is fraud on the Court and the guilty is liable to be thrown out at any stage.

7. Further, in one of the recent judgments of the Apex Court, in the case of Prestige Lights Ltd. Vs. State Bank of India, , it is held that, when a party has suppressed the material facts, he is not entitled for ask for an extraordinary remedy under Article 226 of the Constitution from the High Court as also equitable remedy from the Supreme Court under Article 136 of the Constitution and a party, whose hands are soiled, cannot hold the writ of the Court it is appropriate to extract the relevant portion of the judgment which reads thus:

A prerogative remedy is not available as a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

(emphasis supplied)

Therefore, in the instant case, it can be said that, collusive action has been taken with a view to deprive the first respondent - Bank from realising its legal and legitimate dues to which it was otherwise entitled. The second respondent herein, after entering into number of agreements with the first respondent - Bank, had never disclosed that, he had created third party interests in the property mortgaged to the Bank. Therefore, the writ petition is liable to be dismissed in limine.

8. In another judgment of the Supreme Court of the year 2008, in the case of Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs. State of U.P. and Others, , the Apex Court has held as follows:

A writ remedy is an equitable one. A person approaching a superior Court must come with a pair of clean hands. It not only should not suppress any material fact but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law.

(emphasis supplied)

9. Further, it was observed by the Apex Court that, taking recourse to legal proceedings on same core issue again and again amounts to fraud on Court and abuse of process of law and ultimately dismissed the appeal with costs of Rs. 50,000/-.

10. In the instant case, petitioner has intentionally, deliberately, having full knowledge, wantonly has concealed the vital information of filing the I.R. before the Debt Recovery Tribunal and the interim order obtained by her, as referred above and thereafter, has filed the present writ petition declaring that, she has not filed any case before any authority, when the J.R. filed by petitioner was very much pending adjudication before the Tribunal.

11. Therefore, in view of the well settled law laid down by the Apex Court in catena of judgments including the aforesaid ones, petitioner is not at all entitled to invoke the extra ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India and hence, the writ petition filed by petitioner deserves to be dismissed with exemplary cost

12. In the light of the facts and circumstances of the case, as slated above, the writ petition filed by petitioner is liable to be dismissed. Accordingly, it is dismissed with cost of Rs. 25,000/- (Rupees Twenty Five Thousand Only) which shall be paid by petitioner to first respondent - Bank, within a period of three weeks from the date of receipt of a copy of this order. In default of payment of aforementioned cost by petitioner, the first respondent is at liberty to recover the said amount in accordance with law.