(2016) 01 OHC CK 0031

In the Orissa High Court

Case No : W.P. (C) No. 8993 of 2013

Sonali Mohapatra APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 22-01-2016

Acts Referred:

Constitution of India, 1950 — Article 14
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, Section 17

Citation : (2016) 01 OHC CK 0031

Hon'ble Judges : P. Mohanty and Biswajit Mohanty, JJ.

Bench : Division Bench

Advocate : Prashanta Kishore Ray and N. Dash, for the Appellant; R.K. Rath, Senior Advocate and Himansu Patnaik, for the Respondent

Final Decision : Partly Allowed

Judgement

Biswajit Mohanty, J.—1. The petitioner has filed the present writ application praying for quashing of notice dated 9.1.2013 (Annexure-1) issued by the opposite parties under Sub-section (2) of Section-13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and possession notice dated 27.3.2013 (Annexure-8) issued in exercise of powers conferred under Sub-section (4) of Section-13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The petitioner has also prayed for a direction to the opposite parties to return the original title deeds within a stipulated time to enable her to utilize the same for a fruitful purpose and to pay damages for withholding the said title deeds since 15.4.2010.

2. The case of the petitioner is that one M/s. Konark Cylinder & Containers Pvt. Ltd. availed credit facilities from the opposite parties-Bank. In order to secure such loan, initially the petitioner was a guarantor as well as mortgager. Later on vide Annexure-2 dated 15.4.2010, the Bank has released the properties given on

mortgage by the petitioner and one Smt. Rajashree Das covering five plots. It has been asserted by the petitioner that all the properties indicated under Annexure-2 stood in the name of the petitioner and Smt. Rajashree Das. Vide Annexure-4 dated 11.7.2011, the Bank intimated the Managing Director of M/s. Konark Cylinder & Containers Pvt. Ltd. that its existing working capital limits stood renewed for a further period of 12 months and that apart a WCTL of Rs. 3.50 Crores has been sanctioned by carving out the limit from existing Bank Guarantee limit. But it further made clear that the renewal of working capital limits and sanction of WCTL of Rs. 3.50 Crores as indicated in Annexure-4 were subject to the terms and conditions as set out in Annexures-A to D attached to Annexure-4. Annexure-A deals with collateral security and reflects the names of guarantors. According to the learned counsel for the petitioner, Annexure-4 shows that while renewing the working capital limits and sanction of WCTL of Rs. 3.50 Crores, neither the petitioner nor Smt. Rajashree Das has been shown as a guarantor nor the lands covered by Annexure-2 belonging to both of them have been reflected there in Annexure-A attached to Annexure-4. On 4.7.2012 vide Annexure-6, a request was made for release of mortgage documents of the petitioner and Smt. Rajashree Das pertaining to plots covered under Annexure-2. On 8.1.2013 vide Annexure-7, the Managing Director of M/s. Konark Cylinder and Containers Pvt. Ltd. was directed to make payment of entire outstanding of Rs. 17,42,64,572.00. On 9.1.2013 vide Annexure-1, the opposite parties issued notice to the guarantors and borrower under Sub-section (2) of Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, for short "the Act" to make payment of the demanded amount within 60 days. It was also indicated therein that the guarantors and the borrower were also liable to pay future interest at the contractual rate on the aforesaid amount together with incidental expenses, cost, charges, etc. It was also made clear that if the guarantors & borrower failed to repay the indicated sum of Rs. 17,42,64,572/- as on 8.1.2013 with future interest and incidental expenses, costs, etc., the Bank would exercise all or any of the rights detailed under Sub-section (4) of Section 13 of "the Act". Further, it is the case of the petitioner that being compelled, M/s. Konark Cylinder & Containers Pvt. Ltd. filed W.P.(C) No. 5539 of 2013 praying therein for quashing of the notice dated 9.1.2013 under Annexure-1 along with Misc. Case No. 5217 of 2013 in which it had prayed for interim stay of operation of the said notice dated 9.1.2013. In the said writ application, notice was issued on 26.3.2013 and as an interim measure, it was directed that operation of notice dated 9.1.2013 shall remain in abeyance till the next date subject to the petitioner depositing a sum of Rs. 2,00,00,000.00 (Rupees Two Crores) on or before 26.4.2013. Despite this, on 27.3.2013 vide Annexure-8, the impugned possession notice was published. For such action, the petitioner of W.P.(C) No. 5539 of 2013 has already filed CONTC No. 513 of 2013. It is the further case of the petitioner that as per letter dated 15.4.2010 under Annexure-2, the Bank is no more a mortgagee and holds no charge over the properties indicated therein. Instead of returning the original title deeds of the said properties to the petitioner along with the co-owner, strangely the said properties have been indicated under the mortgage head in the notice under Sub-section (2) of Section-13 of "the Act" under Annexure-1. In such background the petitioner has prayed for quashing of Annexure-1 and Annexure-8 and has also prayed for return of Title Deeds of the plots covered under Annexure-2.

In reply, the Bank has stated that the present writ application is not maintainable as the petitioner has rushed to the Court without filing any objection to the notice dated 9.1.2013 under Annexure-1. Further the Bank has stated that without filing of any objection, the petitioner has filed a suit styled as C.S. No. 90 of 2013 challenging the action of the Bank in the court of the learned Civil Judge (Senior Division),Bhubaneswar. She also filed an interim application bearing I.A. No. 57 of 2013. Learned Civil Judge (Senior Division) after hearing the same, by order dated 3.4.2013 dismissed the said interim application vide Annexure-A/2. Suppressing the order under Annexure-A/2, the present petitioner filed the present writ application challenging the notices dated 9.1.2013 and 27.3.2013 issued under Sub-section (2) of Section 13 of "the Act" and on 30.4.2013, this Court was pleased to direct that there should be interim stay of notice under Annexure-1 till next listing of the case. In the counter, it was further made clear that the Bank had no knowledge about order dated 26.3.2013 passed in W.P.(C) No. 5539 of 2013 till 5.4.2013. In such background possession notice under Annexure-8 was issued. The Bank also indicated that the Bank has already filed O.A. No. 227 of 2013 before the Debts Recovery Tribunal, Cuttack in which the petitioner has already appeared and is trying to drag the proceeding with some plea or other. Further, it is averred that after expiry of the statutory period of 60 days, the Bank has initiated proceeding under Sub-section (4) of Section 13 of "the Act" and measures taken under Sub-section (4) of Section-13 of the Act are appealable under Section 17 of the Act.

Heard Mr. P.K. Ray, learned counsel for the petitioner and Mr. Rajat Kumar Rath, learned Senior Advocate ably assisted by Mr. Himansu Patnaik, Advocate for the opposite parties-Bank.

Mr. P.K. Ray, learned counsel for the petitioner vehemently argued that once vide Annexure-2 dated 15.4.2010, the opposite parties have released the five plots from mortgage they could not have included the properties covered by Annexure-2 in their notice under Sub-section (2) of Section 13 of "the Act" under Annexure-1 dated 9.1.2013 as mortgaged properties. According to him, this showed total non-application of mind and arbitrary exercise of power. Mr. Ray further contended that since as per latest renewal of working capital limit and sanction of WCTL of Rs. 3.50 Crores under Annexure-4 neither the petitioner nor Smt. Rajashree Das had been shown either as guarantor or mortgager, the Bank authorities had no right to include the joint properties of the petitioner and Smt. Rajashree Das as covered under Annexure-2 in Annexure-1. By doing so, the Bank authorities acted in a high handed manner. In such background, he prayed that the notice under Annexures-1 and 8 be quashed and the Title Deeds of the properties covered by Annexure-2 be returned to the petitioner. He further contended that fraud has been committed by the Bank Officers in Bank Misc. Case No. 22 of 2013 before the Collector & District Magistrate, Khurda and accordingly taking up of possession by the Bank pursuant to order of the Collector is vitiated. In this context specifically he relied on the decision of the Hon''ble Supreme Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others as reported in , AIR 1994 SC 853. He also relied on the decisions of the Hon''ble Supreme Court in the cases of M/s. Transcore v. Union of India and another as reported in , AIR 2007 SC 712, M/s. Jholei Baba Agency v. State Bank of India reported in , AIR 2009 ORISSA 109, Swastik Agency and others v. State Bank of India, Bhubaneswar and others reported in , AIR 2009 ORISSA 147, Gobinda Chandra Pattnaik v. Presiding Officer, Debts Recovery Tribunal, Cuttack and others reported in , 108 (2009) CLT 451, Central Bank of India v. State of Kerala and others reported in , (2009) 4 SCC 94, Standard Chartered Bank v. V. Noble Kumar and others reported in , (2013) 9 SCC 620, General Manager, Sri Siddeshwara Cooperative Bank Limited and another v. Ikbal and others reported in , (2013) 10 SCC 83, Vasu P. Shetty v. M/s. Hotel Vandana Palace and others reported in , AIR 2014 SC 1947, J. Rajiv Subramaniyan and another v. M/s. Pandiyas and others reported in , AIR 2014 SC 1710, Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and others reported in , (2014) 6 SCC 1, Shiv Charan Lal Sharma v. Allahabad Bank A.M.U. Branch, Aligarh and others reported in , AIR 2015 Allahabad 136 and Mathew Varghese v. M. Amritha Kumar and others reported in , AIR 2015 SC 50. He also submitted that C.S. No. 90 of 2013 filed by the learned Civil Judge (Senior Division), Bhubaneswar has been withdrawn on 8.8.2015.

Mr. R.K. Rath, learned Senior Advocate for the opposite parties-Bank submitted on 22.12.2015 that though in the notice issued under Sub-section (2) of Section 13 of "the Act" under Annexure-1 the properties of the petitioner were included as properties mortgaged to the Bank, however, in the notice issued under Sub-section (4) of Section 13 of "the Act" under Annexure-8, the joint properties of the petitioner have not been reflected. Further he submitted that the Bank was not going to auction the joint properties of the petitioner as covered under Annexue-2. In such background, he made it clear that Annexure-8 should not be quashed as it did not involve any of the joint properties of the petitioner. With regard to the second prayer made in the writ application for return of documents/ title deeds vis-?-vis the plots covered under Annexure-2, Mr. Rath submitted that the opposite parties were prepared to hand over those title deeds if the mortgagers (which included the petitioner) would approach the Bank authorities on any particular date. He further submitted that the decisions cited by Mr. Ray, learned counsel for the petitioner were all distinguishable on facts as Annexure-8 did not cover the joint properties of the petitioner and as the Bank was prepared to hand over the title deeds covered under Annexure-2. With regard to allegations of fraud vis-?-vis Bank Misc. Case No. 22 of 2013, Mr. Rath drawing our attention to order dated 13.9.2013 passed by the Collector & District

Magistrate, Khurda under Annexure-F/2 Series submitted that the order therein did not cover the properties of the petitioner at all. So, the petitioner could not have any grievance on that score.

To a pointed query by the Court, Mr. Rath submitted that the petitioner or her Power of Attorney holder and Smt. Rajashree Das or her Power of Attorney holder could approach the Bank on 23.12.2015 to take back the title deeds covered under Annexure-2 and in such background, the case was posted to 24.12.2015.

From the records, it appears that on 23.12.2015, one Bidyutlata Mohapatra, Power of Attorney holder of the petitioner went to the Bank to get return of the Title Deeds but she was advised to bring Smt. Rajashree Das along with her as the documents would only be handed over jointly to Smt. Rajashree Das and Bidyutlata Mohapatra, Power of Attorney holder of Sonali Mohapatra. To the effect, the opposite parties have filed further affidavits on 24.12.2015 and on 5.1.2016.

In the above factual background, we have to consider the prayers of the petitioner. Her first prayer is with regard to quashing of notice under Annexure-1. In the background of release of joint properties of the petitioner from mortgage under Annexure-2, the inclusion of the said properties under Annexure-1 as mortgaged properties reflect total non-application of mind by the authorities. By including the joint properties of the petitioner in Annexure-1, the authorities have acted arbitrarily and unreasonably thereby violating Article 14 of the Constitution of India. Thus, to that extent, the notice under Annexure-1 is legally vulnerable. In such background, we have no hesitation for quashing Annexure-1 so far as it covers joint properties of the petitioner which have been released from mortgage much earlier in 2010 vide Annexure-2.

With regard to the second prayer of the petitioner to quash Annexure-8, we must say that the same is wholly misconceived as the possession notice under Annexure-8 neither contains the name of the petitioner nor covers the properties of the petitioner. As rightly pointed out by Mr. Rath, on examination of records, we find that Bank Misc. Case No. 22 of 2013 does not cover the joint properties of the petitioner. Thus, the decision cited by Mr. Ray in S.P. Chengalvaraya Naidu (dead) by L.Rs (supra) would not be of any help to him. In any case in the present writ application, no prayer is there pertaining to Bank Misc. Case No. 22 of 2013. With regard to rest of the decisions cited by Mr. Ray, learned counsel for the petitioner, we can only say that those decisions have no application to the present case, where facts are totally different.

With regard to the last prayer of the petitioner for return of documents in the background of the facts indicated above, more particularly in the background of Annexure-2 and also submissions of Mr. Rath that the opposite parties are prepared to hand over the Title Deeds covered under Annexure-2, we direct the opposite parties to hand over the Title Deeds of plots covered by Annexure-2 jointly to the petitioner/her authorized agent and the co-owner of the said properties/her authorized agent no sooner such persons present themselves before the opposite parties with a written prayer for taking return of such documents. In case the petitioner and her co-owner of the properties covered by Annexure-2 cannot appear in person and the authorized representatives appear on their behalf, the opposite parties should do well to release the documents after verifying the Authorization Letter/Power of Attorney documents. It is needless to say that while releasing the documents to Authorized Representatives/Power of Attorney holders, the opposite parties should keep copies of such Authorized Letters/Power of Attorney documents with them along with the necessary receipts.

The writ application is accordingly partly allowed. No costs.

P. Mohanty, J.—I agree.