(2011) 09 KAR CK 0061

In the Karnataka High Court

Case No : Writ Petition No''s. 34895 and 35124 of 2011

Sri Gajaraj S. and Sri C.M. Krishnashetty — APPELLANT

Vs

The Assistant General Manager Retail Assets Small and Medium Enterprises, City Credit Centre (RASMECCC), State Bank of India and Classic Briquetting Industries — RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13 (4), 17

Citation : (2011) 09 KAR CK 0061

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : R. George Lazarus, for the Appellant; N. Suryaprakash, for R1, for the Respondent

Judgement

B.S. Patil, J.—Petitioners are calling in question the possession notice dated 06.08.2011 issued by the 1st Respondent-Bank to the provisions u/s 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ''the Act'') as per Annexure-G. Challenge is also made to the notice dated 24.08.2011 produced at Annexure-H intimating the Petitioners to remove all the machineries unauthorisedly kept in the premises which is the subject matter of mortgage in favour of the Respondent-Bank on or before 28.08.2011.

2. Petitioners claim to be the sub-lessees under the 2nd Respondent who is the lessee from the KIADB. It is not in dispute that the 2nd Respondent has availed loan mortgaging the property in question in favour of the 1st Respondent-Bank.

3. Learned Counsel for the Petitioners has placed reliance on the deed of sub-lease allegedly executed on 27.06.2010 by the 2nd Respondent in favour of the Petitioners subletting the property for the purpose of running an industry. As the 2nd Respondent-mortgager failed to discharge the loan advanced to the 1st

Respondent, the 1st Respondent initiated proceedings for recovery of the amount resorting to the provisions u/s 13(4) of the Act. In that regard, possession notice vide Annexure-G dated 06.08.2013 was issued to the borrower.

4. The borrower has addressed a letter, as can be seen from the document produced along with the statement of objections at Annexure-R7 that the 1st Petitioner had kept three machineries in the premises and that the Bank may inform him to remove the machineries. Accordingly, the bank has issued notice at Annexure-H calling upon the Petitioners to remove the machineries.

5. The contention of the Petitioners is that they have been validly inducted as subtenants in the said premises, hence the Bank has no power of jurisdiction to proceed against them and forcibly take possession of the property.

6. Learned Counsel for the Petitioners have placed reliance on the judgment in the case of Hutchison Essar South Ltd. Vs. Union Bank of India and Aditya Automation, followed in another decision in the case of R.S. Subramanyan v. S. Govindan and Ors. in W.P. No. 21184/2010 disposed of on 16.11.2010.

7. On the other hand, learned Counsel for the 1st Respondent submits that the Petitioner has got alternative remedy of approaching the Debts Recovery Tribunal u/s 17 of the Act and therefore the writ petition cannot be entertained. He further submits that the Petitioners are not bonafide tenants and they have come up before this Court setting up a false plea of sub-tenancy. It is also contended by him that even the mortgagor-2nd Respondent has not stated in his letter addressed to the Bank at Annexure-R7 that Petitioners were inducted as tenants in the premises. He draws the attention of the Court to the agreement dated 27.02.2007 executed by the KIADB in favour of the 2nd Respondent which is produced at Annexure-B along with the writ petition, particularly, to Clause 11(2) to contend that, on a written request made by the lessee (2nd Respondent), the lessor (KIADB) may permit to sub-lease the building/shed constructed on the schedule property on such norms as may be prescribed by the lessor from time to time in furtherance of the implementation of the project as approved by the competent authority and subject to obtaining such clearances as may be required by the Financial Institutions/Banks. The alleged sub-lease is stated to have been created without the clearance from the 1st Respondent-Bank in whose favour the mortgage of the schedule property was created. In this background, he contends that the judgment relied on by the Petitioner has no application to the case as the said judgment is applicable to the tenants who are in occupation of the premises as bonafide tenants/sub-tenants.

8. On consideration of the entire materials on record, I find that the question whether the Petitioner is a bonafide tenant or not is a matter to be decided by the Debts Recovery Tribunal. Since the disputed questions of facts cannot be gone into in exercise of the writ jurisdiction, the Petitioners are required to avail the remedy before the Tribunal and seek redressal. As rightly contended by the counsel for the 1st Respondent, if the Petitioners were to be bonafide tenants

lawfully inducted in the premises, then the bank will be constrained to take action in accordance with law and not proceed to forcibly dispossess such lawful tenants. As this question has to be addressed before the appropriate forum as provided u/s 17 of the Act, I desist from expressing any opinion on this aspect. Therefore, while declining to entertain the writ petition, Petitioners are given fifteen days time to approach the Debts Recovery Tribunal to seek redressal. Until then parties are directed to maintain status-quo.

9. The writ petition is accordingly disposed of.

