

(2011) 12 KAR CK 0124
In the Karnataka High Court
Case No : CCC (Criminal) No. 5 of 2011

Sri M.P. Mallesh, Smt Aruna Mallesh and Sri Smaran Mallesh	APPELLANT
Vs	
Sri Karunakara Shetty	RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Contempt of Courts Act, 1971 — Section 10, 15 (1) (b)
Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13 (2), 13 (4)

Citation : (2011) 12 KAR CK 0124

Hon'ble Judges : D.V. Shylendra Kumar, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : A.M. Vijay, for the Appellant; Nagaraj Damodar, for the Respondent

Final Decision : Dismissed

Judgement

Shylendra Kumar, J.—The complainants are borrowers who had availed loan of Rs. 34,20,000/- from the Bangalore Branch of M/s. Vijaya Bank - a Nationalized Bank as per loan transaction dated 5.11.2003.

2. The complainants being defaulters in repayment, it appears the Bank had initiated action for recovery under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short, "the Act"]. The Bank had caused issue of a demand notice u/s 13[2] of the Act on 12.12.2008 and due to default, followed it up for action u/s 13[4] of the Act, particularly, for recovery of possession as per notice dated 11.7.2009. This proceeding under sections 13[2] and 13[4] of the Act was subject matter of appeal before the Debt Recovery Tribunal in SA No. 448/2009, particularly, for questioning the possession notice dated 11.7.2009.

3. The Debt Recovery Tribunal, it appears allowed the appeal and directed the Bank to initiate fresh proceedings as per its order dated 26.4.2010. It appears the accused as Manager of the Bank had filed an application before the Magistrate u/s 14 of the Act for recovery of possession and that application is

dated 6.6.2010 and while it was not clear as to on what date it had been presented or filed before the learned Magistrate, the application having resulted in the order dated 19.7,2010 for taking possession of the premises which was a security for repayment of loan, the complainant had filed writ petition No. 24511/2010 questioning the legality of the order passed by the learned Magistrate u/s 14 of the Act,

4. In the meanwhile, the complainants have presented this petition under Article 215 of the Constitution of India read with sections 10 and 15[1][b] of the Contempt of Courts Act, 1971 complaining that, the follow up action by the Bank notwithstanding the notice issued u/s 13[4] of the Act dated 11.7.2009 by the Debt Recovery Tribunal as per its order dated 26.4,2010 is nothing short of a preemptive action on the part of the accused person; that it is not a bona fide action, but virtually a mala fide action to spike the complainants though they had succeeded in SA No. 448/2009 and the notices under sections 13[2] and 13[4] of the Act which is based for making an application u/s 14 of the Act to the Magistrate had been set aside by the Debt Recovery Tribunal.

5. It is under such circumstances, the present, contempt petition.

6. While initially the notice had been issued to the accused and the matter was formally admitted on 29.11.2011 and accused was given an opportunity to file his response to the petition, the accused is present today and statement is also tiled today on behalf of the accused person.

7. The statement, inter alia, indicates that the accused person has been doing only his duty and nothing beyond and all actions are taken in accordance with law and in a bona fide manner; that it is not as though the accused person has tried to overreach any orders of the Debt Recovery Tribunal: that on and after setting aside of the earlier notice under sections 13[2] and 13[4] of the Act by the Debt Recovery Tribunal, fresh notices had been issued to the complainants on 10.6.2010; that intimation and contents of notice was also published in "The Hindu" news daily and also in "Udaya Vani" on 12.6.2010 and the application before the Magistrate was in fact filed afresh only on 26.6.2010 and on which day the matter was directed to be listed on 15.7.2010 for production of originals and the learned Magistrate had passed an order for taking possession of the premises by use of force on 19.7.2010, but in the meanwhile this court has quashed the order of the Magistrate dated 19.7.2010 as per order dated 2.8.2011 passed in writ petition No. 24511/2010; that the accused person has not initiated action nor the Bank was able to secure possession of the subject, premises; that in this narration of facts and events, no overreaching act or conduct can be attributed to the accused: that all action taken is bona fide action and therefore has prayed for dismissal of the contempt petition.

8. We have heard Sri. A M Vijay, learned counsel for the complainants and Sri. Nagaraj Damodar, learned counsel for the accused.

9. The main submission of Sri. A M Vijay, learned counsel for the complainants,

by drawing attention to the provisions of sections 13, 14 and 17 of the Act is that even when notice dated 11.7.2009 for handing over possession issued by the Bank u/s 13[4] of the Act had been set aside by the Debt Recovery Tribunal as per its order dated 26.4.2010 and in spite of the knowledge that such demand notice for recovery of possession dated 11.7.2009 had been set aside by the Tribunal, the accused person has nevertheless taken follow up action by making an application before the Magistrate which no doubt has been later set aside by this court, but the action in moving an application u/s 14 of the Act before the learned Magistrate in spite of the knowledge of the basis for moving such action, namely, notice u/s 13[4] of the Act had already been set aside by the Debt Recovery Tribunal is an act which is virtually overreaching the court, proceedings, showing disrespect to the order passed by the Tribunal and not bona fide action and in fact a mala fide action warranting initiation of action against the accused person in contempt; jurisdiction, particularly, the act constituting criminal contempt within the meaning of section 2[c][iii] of the Contempt of Courts Act, 1971.

10. While it does appear that an application dated 6.6.2010 u/s 14 of the Act was presented before the learned Magistrate without the backing of any fresh notice issued u/s 13[2] of the Act and followed up by notice u/s 13[4] of the Act, does give an impression that the person has acted in contravention or in violation of the order dated 26.4.2010 passed by the Debt Recovery Tribunal, what is pointed out as per the statement and submission of Sri. Nagaraj Damodar, learned counsel for the accused person is that the application while is dated 6.6.2010 actually was presented before the learned Magistrate on 26.6.2010 and before filing of such an application u/s 14 of the Act, fresh individual notices u/s 13[4] of the Act had already been issued on 10.6.2010 to the complainants and it had been followed up by paper publication caused in "The Hindu" news daily and "Udaya Vani" on 12.6.2010 and in this development of facts, neither any overreaching conduct nor any procedural irregularity can be attributed to the action taken by the accused person; that the accused person has only acted as per his duties and responsibilities and as an employee of the Bank and therefore submits that the contempt petition is without any merit and is to be dismissed.

11. We have examined the matter with reference to the developments and dates as noticed above and considered the submissions made at the Bar.

12. Submission of Sri. Nagaraj Damodar, learned counsel for the accused is also of some significance as it is submitted that while an amount of Rs. 26,66,380.75/- was due as on 3.10.2011, no payment has been received by the Bank thereafter and though Mr. A M Vijay, learned counsel for the complainants submits that this is subject matter of appeal before the Debt Recovery Tribunal and what was due by the complainants on the day mentioned above was only about Rs. 13,00,000/- and not Rs. 26,66,380.75/- etc., the fact remains that even this amount has not been paid by the complainants to the Bank and if so, if the accused person has taken steps to recover the amount whether as claimed

by the borrowers as Rs. 13,00,000/ or as was claimed by the Bank to be at Rs. 26.66.380.75/-, no lack of bona fides can be attributed, leave alone attributing any mala fides to the conduct of the accused person.

13. As we have found when the action for tiling an application u/s 14 of the Act which was filed on 26.6.2011 had been preceded by issue of fresh notices under sections 13[2] and 13[4] of the Act, we do not find any lack of bona fides or mala fide action, leave alone any conduct coming within the definition of "criminal contempt" u/s 2[c][iii] of the Contempt of Courts Act. 1971. We do not: find any ease for keeping this matter pending any further before this court and therefore this contempt petition is dismissed.