

(2019) 01 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No. 31260 Of 2018 (Gm-Drt)

Sri. Rameshchandra

APPELLANT

Vs

Kotak Mahindra Bank Ltd. And Ors

RESPONDENT

Date of Decision : 28-01-2019

Acts Referred:

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 3(2), 13(4), 14, 14(3), 13(4), 17, 17(1)
Recovery of Debts and Bankruptcy Act, 1993 — Section 20
Constitution of India, 1950 — Article 226, 227

Citation : (2019) 01 KAR CK 0013

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : R. Nataraj, B.C. Avinash

Final Decision : Disposed Off

Judgement

1. Mr.Nataraj R., learned counsel for the petitioner. Mr.B.C.Avinash, learned counsel for the respondent No.1

2. The writ petition is admitted for hearing. With consent of the parties, the same is heard finally.

3. In this petition under Articles 226 & 227 of the Constitution of India, the petitioner has assailed the validity of the order dated 05.08.2016 passed by the VIII Additional Chief Metropolitan Magistrate, Bangalore as well as order dated 05.05.2018 passed by Debt Recovery Tribunal, Bangalore. In order to appreciate petitioner's grievance, few facts need mention, which are stated infra:

The petitioner claims to be the owner of property in question which was leased out to the HDFC Bank. The petitioner filed a suit for eviction, which was dismissed. Being aggrieved an appeal has been filed by the petitioner, which is pending before this Court. The petitioner had sold the property by a registered sale deed dated 25.09.2014 to respondent No.2 and the sale consideration was

paid to the petitioner vide three cheques for an amount of Rs.1,50,00,000/-, Rs.1,50,00,000/- & Rs.1,45,50,000/-. The respondent No.2 mortgaged the property in question with respondent No.1-Bank on 25.09.2014 itself and availed off financial assistance to the tune of Rs.5,74,00,000/-.

4. The cheques given to the petitioner towards the sale consideration were dishonored. Thereupon the petitioner sent a notice dated 19.12.2014 to respondent No.2. The petitioner has also filed a suit seeking the relief of cancellation of the sale deed dated 25.09.2014. The respondent No.1 treated the account of the respondent No.2 as non performing asset on 13.07.2015 and issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act' for short) on 17.07.2015 and took symbolical possession under Section 13(4) of the Act. Thereafter, the respondent No.1 filed a petition under Section 14 of the Act on 16.04.2016 to take actual possession of the secured asset. The Magistrate passed an order on 05.08.2016 authorizing respondent No.1 to take possession of the property with police help. It is the case of the petitioner that under a mistaken notion he has filed an appeal under Section 17 of the Act against an order passed under Section 14 of the Act, which in fact was not maintainable. The aforesaid appeal was dismissed by an order dated 05.05.2018. In the aforesaid factual background, the petitioner has visited this Court.

5. Learned counsel for the petitioner submitted that in view of bar contained under Section 14(3) of the Act, no appeal lies against an order passed under Section 14 of the Act. Alternatively it is argued that in any case the Debt Recovery Tribunal (hereinafter referred to as 'the Tribunal' for short) ought to have entertained the appeal on merits. On the other hand, learned counsel for the respondent submitted that the petitioner has the remedy of filing an appeal under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993 therefore, no interference in the matter is called for.

6. I have considered the submissions made on both sides and have perused the record. Before proceeding further, it is apposite to notice Section 14

(3) of the Act, which reads as under:

"14(3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorized by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

7. The Supreme Court in 'UNITED BANK OF INDIA VS. SATYAVATHI TONDON AND OTHERS', (2010) 8 SCC 110 while dealing with the scope of interference under Article 226 of the Constitution of India in case of an alternative remedy in the context of the Act has held that expression 'any person' used in Section 17(1) of the Act is of wide import and any person who may be aggrieved by an action taken under Section 13(4) of the Act or an order passed under Section 14

of the Act can take recourse to the remedy under Section 17 of the Act. It was further held that while dealing with petition involving challenge to the action taken for recovery of public dues, the High Court must keep in mind the legislations enacted by Parliament and State Legislature for recovery of such dues, which contain comprehensive procedure for recovery of dues but also envisage constitution of quasi-judicial bodies for redressal of grievance of any aggrieved person. It was also held that High Court in such a case must insist that before availing the remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute. Similar view was taken in 'KANAIYA LAL CHAND SACHDEV & ORS. VS. STATE OF MAHARASHTRA AND OTHERS', (2011) 2 SCC 782 and AUTHORIZED OFFICER STATE BANK OF TRAVANCORE AND ANOTHER VS. MATHEW K.C. (2018) 3 SCC 85.

8. In view of aforesaid enunciation of law, it is axiomatic that an order passed under Sections 13(4) and 14 of the Act is appealable under Section 17 of the Act and an aggrieved person must take recourse to the remedy provided under the Act. So far as the submission that in view of bar contained in Section 14(3) of the Act an appeal under Section 17 of the Act does not lie, suffice it to say that Section 14(3) of the Act provides that no act of Chief Metropolitan Magistrate or District Magistrate done in pursuance of this Section shall be called in question in any court or before any authority. However, if an order is passed under Section 14 of the Act, in view of law laid down by the Supreme Court, the same would be appealable under Section 17 of the Act and the embargo created by Section 14(3) of the Act would not be attracted to the fact situation of the case.

9. In the instant case, the petitioner had filed an appeal along with an application for condonation of delay of 152 days in filing the appeal. The Tribunal while recording a finding that sufficient cause for condonation of delay was not made out, has recorded the finding on merits and has dismissed the appeal preferred by the petitioner. Such a course is clearly impermissible in law. If the Tribunal was of the opinion that sufficient cause for condonation of delay is not made out, the Tribunal ought to have dismissed the appeal in limine without recording the findings on the merits of the case. It is trite law that the expression 'sufficient cause' should receive liberal consideration so as to advance the cause of justice. The delay of 152 days in the fact situation of the case was sufficiently explained and therefore, the tribunal ought to have condoned the same. The impugned order dated 05.05.2018 is hereby quashed and set aside. The Tribunal is directed to decide the appeal preferred by the petitioner on merits by a speaking order after hearing the parties. Since, the auction of the property of the petitioner is fixed for tomorrow i.e., 29.01.2019 and a Bench of this Court while entertaining the Writ Petition had granted an ad-interim dated 06.08.2018, the same shall continue to remain in force till application for stay is taken up for consideration by the Tribunal. It is made clear that this court has not expressed any opinion on the merits of the case and the Tribunal shall decide the application for stay as well as the appeal on its own merits.

Accordingly, the petition is disposed of.