
(2013) 09 KL CK 0103

In the High Court Of Kerala

Case No : W.A. No. 1381 of 2013. (O.P. (DRT) No. 2931 of 2013 of High Court of Kerala)

State Bank of India

APPELLANT

Vs

M/s. Kinship Services (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2013) 4 KHC 21

Hon'ble Judges : Dr. Manjula Chellur, CJ. and Mr. K. Vinod Chandran, J.

Bench : Division Bench

Advocate : Sri. D. Anil Kumar, Advocate, for the Respondent; Sri. S. Easwaran, Advocate, for the Appellants

Final Decision : Allowed

Judgement

Dr. Manjula Chellur, C.J. - This appeal is filed against the interim order dated 6/9/2013 passed by a learned Single Judge of this Court in O.P.(DRT) No.2931 of 2013. According to the appellant Bank, the learned Single Judge was not justified in granting the said interim order, staying confirmation of sale till further orders in respect of one item of property which is sought to be sold in auction scheduled to be held on 11/9/2013 under SARFAESI proceedings. It is not in dispute that the appellant Bank has taken resort to SARFAESI proceedings as well as the proceedings under RDBI Act. It is also not in dispute that questioning the debt recovery proceedings initiated by the appellant Bank, matters are pending before the Debt Recovery Tribunal wherein similar grounds are raised by the respondent borrower but the Debt Recovery Tribunal did not agree with those grounds.

2. Meanwhile, possession of the property was taken over by the appellant Bank. However, party is allowed to reside in the residential premise till the property is sold in auction by the respondent Bank and the said concession was extended by the Debt Recovery Tribunal. When the sale is scheduled to be conducted on 11/9/2013, claiming to be a petition under Articles 226 and 227, the debtors have filed a petition as O.P.(DRT) No.2931 of 2013 wherein the above interim

order is granted. The contents of the said petition clearly indicate, the deficits referred to in the original petition is with regard to the proceedings initiated by the creditor Bank under debt recovery proceedings. Placing those deficits which were not accepted by the Debt Recovery Tribunal the debtors have approached this Court seeking interim relief in SARFAESI proceedings in the above petition and the interim relief came to be granted. Looking at the quantum of dues and the properties, they may not be enough to realize the entire dues. According to the appellant Bank, there would not be anyone interested to purchase this property in the public auction, if the confirmation of sale is in dilemma. In other words, will anybody be ready to purchase the property for a proper price, on account of this interim order, is the stand of the appellant Bank. Therefore, according to them, in order to safe guard the amount dues to the appellant Bank, they have approached this Court in this appeal, though it is against an interim order.

3. Learned counsel for the appellant Bank also relies on the decision reported in *United Bank of India v. Satyawati Tondon and others* (2010 (8) SCC 110); paragraphs 42 and 43 to insist upon and to persuade us to note that alternative remedy available to the debtor is to approach the Appellate Tribunal under DRT Act and such approach would definitely involve deposit of 50% of the amount demanded, therefore, in order to avoid such conditional deposit, the respondents had chosen this circuitous method in approaching this Court.

4. As against this, Mr. Anil Kumar, learned counsel representing the respondents submits, though he has styled the petition as O.P.(DRT) under Article 226 and 227 of the Constitution, it is meant to be under Article 227 and therefore, this Court has no jurisdiction to entertain this appeal. We place reliance on the unreported judgment of the Apex Court in Civil Appeal No.6 of 2009 in the case of *State of M.P. v. Sanjay Keralkar* dated 5/1/2009. In the said decision their Lordships appreciated the contentions of the parties regarding the jurisdiction of the High Court which is similar to the present case, which reads as under:

"Leave granted.

Having heard learned counsel for the respective parties, we are unable to sustain the order passed by the Division Bench of the Madhya Pradesh High Court dismissing the appeal as preferred by the appellant herein on the ground that the appeal had been preferred against an order passed under Article 227 of the Constitution. We have had occasion to look into the petition which had been filed before the Single Bench of the High Court, which has been styled as writ petition under Article 226/227 of the Constitution of India. The Division Bench of the High Court appears to have not taken into consideration the fact that the petition had been styled as a writ petition under Article 226 as well and that the frame of the petition was that of a writ petition as would also be evident from the prayers made therein.

We are unable to agree with the High Court that the learned Single Judge had

passed order under Article 227 of the Constitution of India and that the appeal was not maintainable.

We, accordingly, allow the appeal and remit the matter to the High Court to treat the petition as one under Article 226 of the Constitution and to dispose of W.A.182 of 2006 in accordance with law, within two months from the date of communication of this order. "

In the light of the above judgment, we are of the opinion, this Court can entertain the present appeal as original petition, since nature of the interim relief granted by the learned Single Judge is nothing but a discretion exercised under Article 226 of the Constitution of India. Accordingly, this appeal is allowed.