

(2019) 12 DEL CK 0114

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 6248 Of 2019

State Bank Of India

APPELLANT

Vs

Sanjay Narayan Singh

RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Securities
Interest Act, 2002 — Section 14, 34

Citation : (2019) 12 DEL CK 0114

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Siddharth Sangal

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

Crl. M.A. 41928/2019

1. Allowed, subject to all just exceptions.

2. Application is disposed of.

Crl.M.C.6248/2019 & Crl.M.A. 41927/2019

3. Vide the present petition, the petitioner prays as under:

a) To allow this petition under Section 482 of the Cr.P.C. and pass an appropriate order or direction thereby quashing/setting-aside the Orders dated 01.10.2019 & 23.10.2019 passed by the ASJ/Spl. Judge (NDPS), Dwarka Courts, New Delhi in Criminal Revision No. 22 of 2019; and

b) To allow this petition under Section 482 of the Cr.P.C. and pass an appropriate order or direction thereby declaring that the Criminal Revision No. 22 of 2019 was not maintainable before the Court of the ASJ/Spl. Judge (NDPS), Dwarka

Courts, New Delhi, against the Order dated 07.01.2019 passed by the Court of the CMM (SW), Dwarka Courts, New Delhi under Section 14 of the SARFAESI Act in CC. No. 26087/2018; and

c) To allow this petition under Section 482 of the Cr.P.C. and pass an appropriate order or direction to the respondent to immediately handover the 1st and 2nd floors of the Property: B-2/56, Ground to Second Floors, Janakpuri, New Delhi-110058, to the petitioner-Bank; and

d) To allow this petition under Section 482 of the Cr.P.C. and pass an appropriate order or direction to the Court of the ASJ/Spl. Judge (NDPS), Dwarka Courts to dispose of the Contempt Application No. 96 of 2019 in Criminal Revision No. 22 of 2019 in a time-bound frame.

4. It is stated in the present petition that the Court of the CMM (SW), Dwarka Courts, New Delhi allowed the petitioner-State Bank of India's CC. No.26087/2018 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) by its Order dated 18.07.2018 and appointed the Receiver for taking over physical possession of the Property built on residential plot bearing No. 56, Block B-2, Land area measuring 270 sq. meters (322.92 sq. yards) situated in the layout plan of the residential scheme of Janakpuri, New Delhi-110058.

5. The Court Receiver moved an application for discharge on personal grounds, thus, a new Court Receiver was appointed by the CMM by its Order dated 06.10.2018, directing the Receiver to take possession within two weeks after giving notice of possession within a week and then file report within one month.

6. Another application was filed before the CMM, resultant, the CMM by its Order dated 18.10.2018, directed the Receiver to give notice of possession within a week and take possession of the secured asset by 15.11.2018. The respondent, Sanjay Narayan Singh, who is an alleged tenant in possession of the 1st and 2nd floor of the Property moved an application before the CMM for retaining the possession of the Property and stay of orders for taking possession, which application was disposed of by the CMM by vide dated 12.11.2018 by giving liberty to the respondent to approach appropriate forum. The respondent, instead of approaching appropriate authority, filed a Civil Suit No. 12/2019 before the JSCC-ASCJ-Cum-Guardian Judge, Dwarka Courts, which, by its Order dated 22.12.2018 restrained the landlord (borrower) from taking the possession of the Property from the respondent.

7. Learned counsel for the petitioner submits that the petitioner-Bank was not made a party in the said Civil Suit and even the orders passed by the CMM were not disclosed by the respondent in the said Suit. In any case, Order dated 22.12.2018 was in violation of Section 34 of the SARFAESI Act and was obtained by the respondent without disclosing complete facts and situation to the said Court. The above interim Order was continued on 05.01.2019 till final disposal of the Civil Suit. Thereafter, an application for clarification was moved by the

Receiver before the CMM stating that pursuant to the Order passed on 24.12.2018, the Receiver had gone to take possession of the Property, however, he was shown the Order dated 22.12.2018 passed in the Civil Suit restraining the landlord from dispossessing the same. The CMM by its Order dated 07.01.2019, held that since the petitioner-Bank is not a party in the said Civil Suit, there is no hindrance in taking possession of the property by the Receiver. Again, instead of approaching the appropriate authority, the respondent challenged the above Order dated 07.01.2019 passed by the CMM in Section 14 SARFAESI proceedings before the Court of the Sessions & District Judge, Dwarka Courts, New Delhi by filing Criminal Revision No. 22/2019 dated 09.01.2019. The Judge, instead of dismissing the said Criminal Revision for want of jurisdiction, entertained the said Criminal Revision by its Order dated 10.01.2019 and stayed the Order dated 07.01.2019 passed by the CMM. Vide its Order dated 16.01.2019, the Addl. Sessions Judge disposed of the Criminal Revision No. 22/2019, however, granted time till 21.02.2019 to the respondent to vacate the Property.

8. The petitioner-Bank did not forcefully object because the Criminal Revision was disposed of and the respondent had voluntarily agreed to handover the vacant peaceful possession of the Property on 21.02.2019. Meanwhile, the Owner of the Property had initiated proceedings before this Court which were disposed of vide Order dated 10.01.2019 and time was granted to him to handover the possession of the Ground Floor of the Property to the petitioner-Bank by 11.02.2019.

9. Learned counsel further submits that the Respondent, instead of handing over the possession of the Property to the petitioner-Bank by 21.02.2019, filed an Application dated 19.02.2019 before the Addl. Sessions Judge for extension of time in vacating the Property, which application was allowed by Order dated 23.02.2019 and the respondent was granted time until 25.03.2019 to hand over the keys of the Property.

10. It is further submitted that the Addl. Sessions Judge entertained the said application even when it had no jurisdiction to entertain the Criminal Revision. But, again the petitioner-Bank did not have much choice in the Court on 23.02.2019. Meanwhile, the respondent, in compliance of his statement before the Addl. Sessions Judge on 16.01.2019, withdrew the Civil Suit No. 12/2019 filed against the Landlord on 13.02.2019. The CMM in its Order dated 25.02.2019 noted the above Order dated 23.02.2019 giving extension of time to vacate the Property to the respondent, however, directed the Receiver to take possession of the Ground Floor of the Property from the Owner within a week in view of the fact that the time granted to the Owner until 11.02.2019 stood expired.

11. The petitioner-Bank could get the physical possession of the Ground Floor of the Property on 28.02.2019 which was put to auction and on this ground alone, the Addl. Sessions Judge by its Order dated 25.03.2019 permitted the respondent to hand over the keys of the Property on 26.04.2019 and not on the same day i.e. 25.03.2019.

12. Learned counsel for the petitioner submits that there is no reason why the petitioner-Bank would not want the possession of the remaining Property immediately, however, the way the proceedings were conducted in the Court, the petitioner-Bank had no choice but to listen to the order passed by the Court.

13. It is also submitted that the respondent did not handover the keys and possession even on 26.04.2019 and thereafter, kept dilly-dallying the advances of the petitioner-Bank on one or the other pretext in giving the possession, hence, with no option left, the petitioner-Bank filed Contempt Application No.96/2019 dated 19.08.2019 in Criminal Revision No. 22/2019 against the respondent, which came up for hearing on 21.08.2019 in which notice was issued for 05.09.2019.

14. The Addl. Sessions Judge noted that the respondent is not traceable and premises is locked, thus, by its Order dated 05.09.2019 observed that the petitioner-Bank is at liberty to move before the CMM for appropriate remedy, while fixing 23.09.2019 as the next date of hearing. However, on the said date, the Addl. Sessions Judge simply put up the matter for final arguments on 01.10.2019 despite the fact that the possession had been delayed by the respondent for more than 7 months already. Since by its Order dated 05.09.2019, the Addl. Sessions Judge directed the petitioner-Bank to approach the CMM for appropriate remedy and CMM by its Order dated 25.09.2019, directed the Receiver appointed by Order dated 06.10.2018 to take possession of the secured asset without any further notice with police aid.

15. Despite blatant violations and abusing the process of the law, the respondent instead of handing over the vacant peaceful possession of the 1st and 2nd floors of the secured assets filed another application for extension of time dated 30.09.2019 praying for a further 3 months from 01.10.2019.

16. Learned counsel submits that the application has been filed despite the fact that contempt proceedings are still pending against the respondent. The contempt application and the application for extension of time was taken up by the Addl. Sessions Judge on 01.10.2019, however, the respondent, with a view to further delay the proceedings, stated that he shall handover the possession of the property in question within 30 days, but, despite the strong objection of the petitioner-Bank, the Addl. Sessions Judge, strangely, adjourned the matter to 23.10.2019 for arguments on pending applications. Again the Addl. Session Judge, instead of taking strong objection to the deeds of the respondent and without putting him to task for his statement that he was ready to handover the possession of the Property to the petitioner-Bank within 30 days i.e. before 30.10.2019, adjourned the matter to 04.11.2019 for no reason at all. Because of strikes in the lower courts, the matter could not be taken up on 04.11.2019 and was expected to come up on 15.11.2019, on which date also the Court of the Addl. Sessions Judge did not decide the matter and now, the petitioner-Bank has no hope from the Court of the Addl. Sessions Judge and it appears that right from illegally entertaining the Criminal Revision till giving time one after the

other to the defaulting respondent, all is not well with the law and justice in the Court of the Addl. Sessions Judge, Dwarka Courts, New Delhi. Meanwhile, the authorized officer visited the property on 12.11.2019 & asked the respondent to handover the keys & possession of the property, but the respondent failed to do so. Thus, being aggrieved as aforesaid, the petitioner-Bank has filed the present petition.

17. Since the direction has already been passed by the courts below and this Court, as noted above, for handing over the possession of the property in question, however, till date, the possession has not been handed over. Moreover, the contempt application is pending against the respondent for not abiding by the orders passed by the courts. Thus, the respondent has made mockery of the judicial system which cannot be allowed.

18. Accordingly, I hereby give liberty to the petitioner to take police assistance to get the property vacated. The SHO of the Police Station concerned is directed to get the property in question vacated and if any valuables are inside the property and respondent is not present, entry of the same shall be made and thereafter, taken to the police station and same be handed over to the respondent and receipt of the same shall be kept by the SHO concerned. This order shall be complied within two days from the receipt of this order.

19. The learned ASJ concerned is directed to decide the contempt application filed by the petitioner within two weeks from the next date of hearing fixed before the court.

20. In view of above directions, the present petition is disposed of.

21. Order dasti under signatures of the Court Master.

22. Copy of this order be transmitted to the SHO, Janakpuri and ASJ concerned for compliance.