(2022) 01 KL CK 0186

In the High Court Of Kerala

Case No : Writ Petition (C) No. 179 Of 2022

State Bank Of India APPELLANT

Vs

Stephen Bernard RESPONDENT

Date of Decision : 25-01-2022

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(4), 14, 17(1), 17(2)

Citation : (2022) 01 KL CK 0186

Hon'ble Judges : V.G.Arun, J

Bench : Single Bench

Advocate : S.Easwaran, Liju.V.Stephen, Indu Susan Jacob

Final Decision : Allowed

Judgement

V.G.Arun, J

1. The first respondent along with his wife, availed credit facilities from the erstwhile State Bank of Travancore and committed default. The Bank

initiated securitization proceedings in the year 2016. While so, SBT merged with the SBI and hence, petitioner Bank continued the proceedings and

took measures for getting physical possession of the secured assets. Challenging the proceedings under Section 14 of the SARFAESI Act, the first

respondent filed SA No.268 of 2017 before the Debts Recovery Tribunal. The application was dismissed by the DRT on 10.04.2018. Thereupon, the

first respondent challenged that order before the Debts Recovery Appellate Tribunal in AIR (SA) 268 of 2018, which got rejected on 30.08.2018.

Thereafter, the secured assets were notified for sale. The first respondent challenged those proceedings in W.P.(C) No.919 of 2020. That writ petition having been dismissed, he filed W.A.No.503 of 2020. The writ appeal was also dismissed vide Ext.P5 judgment dated 11.03.2020. Undeterred, the

first respondent preferred Special Leave Petition, which the Supreme Court refused to entertain. While dismissing the SLP under Ext.P6 order dated

06.12.2021, the Apex Court observed that it will be open for the first respondent to approach the DRT against the action of the petitioner Bank as and

when such proceedings are initiated and the same shall be considered in accordance with law and on its own merits.

2. Meanwhile, the petitioner proclaimed the secured assets for sale by notice dated 11.10.2021, fixing the date of sale as 09.11.2021. The notice of

sale and further proceedings was challenged unsuccessfully and repelled by Ext.P4 judgment. The auction sale was conducted on 09.11.2021 and

some properties were sold for a total consideration of Rs.97,75,000/-. Thereafter, the petitioner Bank issued sale notice dated 7.12.2021 scheduling

sale of the balance two properties on 29.12.2021. The first respondent challenged Ext.P12 notice and further proceedings before the DRT in

S.A.No.355 of 2021. By the impugned order dated 28.12.2021, the DRT interdicted confirmation of the sale if any conducted, subject to the applicant

depositing a sum of Rs.1.50 Crores to the petitioner Bank, out of which a sum of Rs.75 lakhs is to be paid on or before 25.01.2022 and another

Rs.75,00,000/- on or before 22.02.2022. The petitioner was given the liberty to confirm the auction sale, if the applicant failed to deposit any part of the

sum as ordered. This writ petition is filed by the Bank aggrieved by Ext.P13 order.

2. Sri.S.Easwaran, learned Counsel for the petitioner Bank submitted that the Bank is constrained to approach this Court under Article 226, since the

Debts Recovery Appellate Tribunal, Chennai, which is the Appellate Forum, is not functioning. Reference is made to the order of the Honourable

Supreme Court in SLP No.10911 of 2021, requesting the concerned High Courts to entertain matters falling within the jurisdiction of non-functional

DRTs and DRATs till further orders. It is contended that the DRT committed gross illegality in issuing the interim order in a mechanical manner,

without considering either the merits of the challenge or even the previous judgments of this Court and order of the Apex Court. The petitioner took

over physical possession of the property, after the borrower's challenge against the proceedings under Section 14 of the SARFAESI Act was repelled.

Hence, the petitioner is entitled to realise the secured debt by bringing the property to sale following the procedure prescribed under the Security Interest (Enforcement) Rules, 2002. The first respondent was unsuccessful in his challenge against the sale notice dated 11.10.2021 and the sale was held on 09.11.2021. Some of the properties were sold in the auction. The impugned notice dated 07.12.2021 is issued for bringing the balance properties to sale. The first respondent has not challenged the sale of the properties in the auction held on 09.11.2021 and no legally sustainable ground is raised in the Securitization Application for interfering with sale of the balance properties. The challenge against the earlier proceedings for sale has attained finality by Ext.P6 order dismissing the Special Leave Petition. Even though the Apex Court granted liberty to the first respondent to approach the DRT against action of the petitioner Bank, it is specifically directed that the matter should be considered in accordance with law and on merits. Contrary to the direction, the DRT passed Ext.P13 order without going to the merits of the case. Finally it is submitted that no concession, as observed in the impugned order, was made by the Bank's Counsel. As on 07.12.2021, an amount of Rs.5,89,88,482/- was due to the Bank and the DRT should not have interfered with the sale by directing deposit of Rs.1.5 Crores.

3. Sri.Liju V.Stephen, learned Counsel appearing for the first respondent submitted that the action of the Bank is ill-motivated. The attempt is to wreak vengeance against the first respondent for approaching the Insurance Ombudsman and securing an award containing scathing remarks against the bank officials. According to the learned Counsel, the amount claimed is highly exaggerated and the attempt of the Bank is to sell valuable immovable properties to persons of their choice for paltry amounts. Reliance is placed on the observations in Ext.P6 order of the Apex Court to contend that the first respondent has been given the liberty to agitate all issues before the DRT. The first respondent having done so, the Tribunal was fully justified inÂ passingÂ theÂ interimÂ order.Â Moreover, the Bank'sÂ interestÂ havingÂ been safeguardedÂ by the directionÂ toÂ payÂ portionÂ of theÂ debt,Â the writ petition is liable to be dismissed.

4. Indisputably, the borrowers were not successful in their challenge against the earlier proceedings under Section 14 of the SARFAESI Act. Even as against the present sale notice, the first respondent had preferred a writ petition

(W.P.(C) No.24016 of 2021) before this Court, which stands

dismissed by Ext.P4 judgment. The sale was conducted thereafter and some of the properties sold. As rightly contended by the learned Counsel for

the petitioner, the first respondent has not challenged that sale. The notice dated 07.12.2021 was issued for bringing the balance properties to sale.

Section 17 (1) of the SARFAESI Act enables the borrower to challenge the proceedings initiated under Section 13(4) and sub-section (2) of Section

17 empowers the DRT to consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor for

enforcement of the security are in accordance with the provisions of the Act and the Rules made thereunder. In Ext.P6 order, while reserving the first

respondent's liberty to approach the DRT against the action of the Bank, the Apex Court directed the DRT to consider the challenge in accordance

with law and on its own merits. Therefore, the DRT was bound to consider the challenge raised in Ext.P12 securitisation application in the manner

provided in Section 17(2) of the Act. No doubt, if, on such consideration, the DRT finds a prima facie case to have made out, it has the inherent

jurisdiction to pass an interim order. As far as the instant case is concerned, the Tribunal passed the order without even going into the merits of the

case. Curiously, no reference is made to Ext.P6 order of the Apex Court and no mention is made regarding the judgments of this Court and the order

of the DRAT. In my considered opinion, the Tribunal was bound to consider the contentions on merits and to have reached a prima facie satisfaction

about the merits of the challenge, before passing the interim order. No such exercise having been undertaken by the Tribunal, I am compelled to set

aside the impugned order.

In the result, the writ petition is allowed. Ext.P13 order is set aside. The Debts Recovery Tribunal is directed to take up S.A.No.355 of 2021 and pass

a reasoned order thereon, after affording an opportunity of hearing to the parties, preferably within two weeks of receipt of a copy of this judgment.

Needless to say, confirmation of the sale conducted pursuant to the notice dated 7.12.2021 will be subject to the outcome of S.A.No.355 of 2021.