

(2024) 07 KL CK 0085
In the High Court Of Kerala
Case No : Writ Petition (C) No.13669 Of 2024

Subair.T.P

APPELLANT

Vs

South Indian Bank Ltd

RESPONDENT

Date of Decision : 18-07-2024

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 17

Citation : (2024) 07 KL CK 0085

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : G.Ranjita, Ashitha Pauly, Shifana Shafeeq, P.A.Augustine Areekattel

Final Decision : Dismissed

Judgement

N. Nagaresh, J.

1. The 1st petitioner is the Proprietor of M/s. Magic Flex Print. The 1st petitioner obtained a loan creating equitable mortgage of an extent of 0.0452 Hectares in Malampuzha-II Village of Palakkad Taluk. The loan of ₹ 20 lakhs taken on 24.11.2017 fell into arrears and the respondent-Bank declared the loan account as NPA.

2. The petitioners state that the property worth ₹ 35 lakhs was undervalued for auction and was sold to the 4th respondent for ₹ 12 lakhs. The 4th respondent sold the property to the 6th respondent for ₹ 13,25,000/-. The sale by the Bank was fraudulent, allege the petitioners. The petitioners seek to quash Ext.P2 Sale Certificate and to direct the respondents to regularise the loan account of the 1st petitioner.

3. I have heard the learned counsel for the petitioners and the learned Standing Counsel representing respondents 1 to 3.

4. It emerges from the pleadings and arguments that after invoking the

provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Bank had taken possession of the 1st petitioner's property / secured asset and subsequently, the property was put in auction and sold to a third party. Ext.P2 is the Sale Certificate. The petitioners challenge Ext.P2 on various grounds including fraud.

5. The first prayer of the petitioners is to quash Ext.P2 Sale Certificate. For setting aside a Sale Certificate issued under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the petitioners have to approach the Debts Recovery Tribunal invoking Section 17 of the Act, 2002. If the petitioners' case is of fraud, the petitioners can also approach civil court for appropriate remedies. A writ petition is not maintainable under the circumstances.

6. The counsel for the petitioners relies on a judgment of this Court in W.P.(C) No.1030/2018 wherein this Court has held that if there is patent fraud involved in a matter, this Court can invoke writ jurisdiction. W.P.(C) No.1030/2018 was a case where the petitioner had produced materials to show that the property was sold for price much less than the value of the property. That was a case where the petitioner had produced Sale Deeds in respect of sale of similar properties in the same survey number. The materials produced by the petitioners in this writ petition are not sufficient to arrive at a conclusion of fraud on the part of the Bank.

The writ petition is therefore without any merit and it is hence dismissed.