(2021) 03 KL CK 0313

In the High Court Of Kerala

Case No : Writ Petition (C) No. 7769 Of 2021

Sundaran P.S APPELLANT

Vs

Authorised Officer And Ors RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 14

Citation : (2021) 03 KL CK 0313

Hon'ble Judges : A.M. Badar, J

Bench : Single Bench

Advocate : Madhu Radhakrishnan, Nelson Joseph, M.D. Joseph, Deepak Ashok Kumar, H. Ramanan

Final Decision : Dismissed

Judgement

1. By this petition, the petitioner is praying for the following reliefs:

(i) Issue a writ of ceritiorari or any other appropriate writ, order or direction calling for records leading to Ext.P5 and quash the same;

(ii) Issue a writ of mandamus or any other appropriate writ, order or direction directing the 1st respondent not to initiate further SARFAESI proceedings against the immovable property of the petitioner comprising of 35 cents of land lying in Sy. No. 660/1 of Kunnukara Village until the final report is submitted by the CBCID in crime No.481/2009.

(iii) To pass such other writ order or direction as this Hon'ble Court may deem fit and proper

(iv) Award the costs of the writ petition.

2. The document at Ext.P5 is the notice given by the Advocate Commissioner for taking possession of the secured asset under the SARFAESI Act.

3. The learned counsel for the petitioner argued that the petitioner intended to

offer his property as a security for a loan of Rs.18 lakhs which was to be taken by the 3rd respondent namely Shibu. S. However, respondent No.3, Shibu, instead of availing loan of Rs.18 lakhs, had availed loan of Rs.24 lakhs for which the property of the petitioner was mortgaged. It is further argued that subsequently without even the knowledge of the petitioner, his property came to be mortgaged for a loan taken by the 5th respondent, Indushekharan Nair.B, from the 1st respondent for Rs.9.50 lakhs. The petitioner is not even knowing the 5th respondent-Indushekharan Nair. B. With this, the learned counsel for the petitioner argued that on earlier occasion, the petitioner had preferred writ petition, WP(C) No. 9936/2017 and while deciding the said petition, this Court has observed that result of the SARFAESI proceedings would depend on investigation conducted by the police regarding alleged forgery. The investigation of the crime registered at the instance of the petitioner was directed to be conducted by the CBCID by this Court vide judgment dated 18/03/2020.

4. The learned counsel for the petitioner further argued that the petitioner had preferred WP(C) No. 1372/2020 challenging the action on the part of the respondent No.1 secured creditor in preferring an application under Section 14 of the Securitization Act, but that petition came to be disposed of on 16.03.2018, Ext.P1, with an observation that the petitioner is granted liberty to initiate such remedy as he may be advised, if further proceedings under the SARFAESI Act are initiated by the Bank.

5. According to the learned counsel for the petitioner, now the proceedings under the SARFAESI are initiated which have been culminated into the notice at Ext.P5 by the Advocate Commissioner for taking possession of the secured asset.

6. The Hon'ble Supreme Court in the matter of Authorised Officer, SBT & Another Vs. Mathew K.C., reported in ((2018) 3 SCC 85 (DB) has categorically held that writ petition challenging the action taken by the secured creditor under the SARFAESI Act is not maintainable, because the aggrieved person in such matters has alternate an most efficacious remedy as prescribed by the SARFAESI Act. In the instant case, the petitioner is challenging the action taken by the secured creditor under the SARFAESI Act and as such, the instant petition is not maintainable.

7. So far as alleged forgery is concerned, the secured creditor was not a party respondent in WP(C) No. 9936/2017. The order passed in that petition proceeded on its own facts. This Court while deciding WP(C) No. 1372/2020 had reserved liberty with the petitioner to initiate such remedies as may be advised. It is seen that the petitioner had not initiated or taken any civil action in the matter for getting the mortgage deeds declared as null, void and not binding on the petitioner. It is seen that the competent Civil Court has not yet given a declaration regarding legally or otherwise of the mortgage deeds and as such, at this stage, it cannot be said that the respondents are not competent enough to initiate proceedings under the SARFAESI Act. The mortgage deeds are still subsisting and therefore, in this extra ordinary writ jurisdiction, this Court cannot

interfere with the action sought to be taken by the secured creditor against the petitioner.

For the foregoing reasons, the petition is devoid of merit and the same is accordingly dismissed. The petitioner is free to take recourse to such remedy as are available under law.

