
(2012) 06 AHC CK 0031
In the Allahabad High Court

Tanya Automobiles (P) Ltd. A Comp Incorporated Under	APPELLANT
Vs	
District Magistrate Lucknow and Ors.	RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Citation : (2012) 06 AHC CK 0031

Hon'ble Judges : Anil Kumar, J

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri Jaideep Narain Mathur, learned Senior Advocate assisted by Sri Mudit Agarwal for the petitioner, learned State Counsel for opposite parties no.1 and 8, Sri D.K. Pathak and Sri Amit Chandra, learned counsel for opposite party no.2 , Sri Sidharth Dhaon, learned counsel for opposite party no.5 and Sri Bireshwar Nath, learned counsel for opposite party no.7.

2. Issue notice to opposite parties no. 3 ,4 and 6.

3. Facts, as submitted by learned counsel for the petitioner for the purpose of interim relief are that initially the opposite party no.3/M/s T.S. Motors India (Pvt.) Ltd., a company registered under Companies Act , 1956(hereinafter referred as "borrower company") in which Sri Sumit Arora, Rohit Arora and Smt. Rita Arora are Directors have taken a loan from the Punjab National Bank by mortgaging certain properties including the property situated at Sneh Nagar, Lucknow (hereinafter referred to as "property in dispute")

4. Sri Jaideep Narain Mathur, learned counsel for the petitioner submits that the property in dispute has been sub let by M/s Tanya Automobiles (P) Ltd. to one Sri Shakti Bhatiya, thereafter a sub lease deed has been executed by Sri Shakti Bhatiya in favour of the petitioner/M/s Tanya Automobiles (P) Ltd. on 1.5.2010 (Annexure no.2 to the writ petition) and in the sublease deed one of the Director of M/s T.S. Motors India (Pvt.) Ltd. Sri Sumit Arora was also the authorized signatory, thus in pursuance of the said facts,petitioner has taken

possession of the property in question and running his business.

5. He further submits that thereafter in respect to the property in dispute , an agreement to sell dated 24.10.2011 (Annexure no.3 to the writ petition) has been executed for a sale consideration of Rs. 3,80,00,000/ (rupees three crores and eighty lacs only) between petitioner ,Sumit Arora/ opposite party no.4(an authorized signatory of M/s Tanya Automobiles (P) Ltd.) and Punjab National Bank and as advance Rs.38,00,000/ (rupees thirty eight lacs only) has been given to the bank. However, thereafter the sale deed was not executed within the time as mentioned in the agreement to sell in spite of the best efforts made by the petitioner who is ready to pay the remaining amounts towards the sale consideration for the purpose of execution of sale deed , his client has already prepared the cheque/ bank draft and the same has been offered to the Bank but the bank has not accepted the same with oblique motive and purpose and wants to take more amount in comparison.

6. Sri Mathur also submits that in respect to property in dispute , the proceedings under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of the Security Interest Act, 2002((SARFAESI Act) has been initiated by the District Magistrate, Lucknow/ respondent no.1 without taking the recourse of section 13(4) of the SARFAESI Act and passed an order on 20.10.2011. In the said proceedings , neither the petitioner was a party nor any opportunity was afforded to him. Further , the said fact was also not brought to the knowledge of the petitioner by the bank while executing the agreement to sell dated 24.10.2011 by the authority of the bank which is clear from the recital of the said documents as such the action on the part of the official respondent/ opposite party no.1 to take possession of the property in dispute in the proceedings under Section 14 of the SARFAESI Act,2002 from the petitioner is illegal , arbitrary thus violative of Article 14 of the Constitution of India as well as principles of natural justice.

7. Sri D.K. Pathak and Sri Amit Chandra, learned Counsel for opposite party no.2/ Punjab National Bank as per the instructions received from bank submits that in the matter in question property in dispute is one of the mortgage property on the basis of which loan amount has been given to M/S T.S. Motors India (Pvt.) Limited . Thereafter the proceedings under Section 13(2) initiated against the Director of the borrower company . Subsequently, the proceedings under Section 13(4) of the SARFAESI Act,2002 has been initiated in respect to the property in dispute and accordingly the matter was forwarded to District Magistrate, Lucknow to take appropriate steps / action under Section 14 of the SARFAESI Act,2002 . Learned counsel for the bank submits that the petitioner has got knowledge of the said fact so the arguments as advanced on behalf of the learned counsel for the petitioner that he has no knowledge in respect to the proceedings under Section 14 of the Act , is totally incorrect and wrong and also contrary to record and the petitioner is also not entitled for any relief.

8. Sri Sidharth Dhaon, learned counsel appearing on behalf of opposite party

no.5 , who is one of the Director of the borrower company , raised the following objections:

(a) present writ petition filed by M/s Tanya Automobiles(P) Ltd. is not maintainable as there is no authorization/ resolution on behalf of the Director to file the present writ petition.

(b) Sri Shakti Bhatiya, who had executed the sublease deed in favour of the petitioner by virtue of which property in dispute is in possession of the petitioner has not been impleaded as respondent, so the the present writ petition is liable to be dismissed on the ground of nonjoinder of the necessary parties.

(c) As per agreement to sell dated 24.10.2011, petitioner has to comply the terms of the said agreement and execute the sale deed within 45 days(as per clause 5) but the same has not been done , so the petitioner cannot derive any benefit from the documents in the present case.

9. I have heard the learned counsel for the parties for the purpose of interim relief and gone through the record.

10. Admitted position, in nut shell as emerge out from the record is that out of certain properties which are mortgaged by the borrower company, the property in dispute is one of the same in order to take loan from Punjab National Bank.

11. Further, the property in dispute which has been earlier leased in favour of Shakti Bhatiya by the borrower company has been sublet by him in favour of the petitioner/M/s Tanya Automobiles (P) Ltd. to which Sri Sumit Arora , one of the Director of the borrower company, is also the authorized signatory and by virtue of the said documents, petitioner came into possession over the property in dispute and running a business.

12. On 24.10.2011, an agreement to sell has been executed for a sale consideration of Rs. 3,80,00,000/ for purchase of property in dispute to which M/ s Tanya Automobiles (P) Ltd./ petitioner, Sri Sumit Arora/ Director of borrower of the company as well as the bank were signatory . As per the said agreement, a sum of Rs. 38,00,000/ has been paid as advance to the bank, but thereafter sale deed was not executed due to one or other reason..

13. From the documents which are on record, it also transpires that neither in the agreement to sell dated 24.10.2011, it has been mentioned that the property in respect to which the agreement to sell has been executed, the proceedings under Section 14 of the SARFAESI Act,2002 is pending before opposite party no.1 or any order has been passed nor the petitioner was a party before the District Magistrate, Lucknow/ opposite party no.1 in the proceedings under Section 14 of the SARFAESI Act,2002.

14. Needless to mention herein that at this stage, an offer has been given to Sri Sidharth Dhaon, learned counsel for opposite party no.5/ Rohit Arora, one of the Director of the borrower company whether he is ready to deposit a sum of

Rs.3,80,00,000/ the sale consideration of the property in dispute as per agreement to sell dated 24.10.2011 in order to take back the same. Sri Sidharth Dhaon , learned counsel for opposite party no.5 submits that he has to seek instructions from his client in this regard.

15. Sri Jaideep Narain Mathur, learned Senior Advocate appearing on behalf of the petitioner after consulting his client , submits that he is ready to deposit the remaining amount of sale consideration in respect to the property in dispute as per agreement to sell dated 24.10.2011.

16. In view of the said facts , in the interest of justice in order to balance the equity between the parties as an interim measure, I feel appropriate that the petitioner is permitted to deposit Rs.3,42,00,000/(rupees three crores and forty two lacs only) the remaining sale consideration as per agreement to sale dated 24.10.2011 by 30.6.2012, as agreed between the learned counsel for the petitioner and the learned counsel for the bank, with opposite party no.2. If the same is done, the opposite party no.2 shall invest it in some interest bearing scheme/ FDR, which shall be subject to further orders of this Court.

17. Till the next date of listing, parties are directed to maintain status quo.

18. As prayed, parties are at liberty to file affidavit in support of their case raising preliminary objection or any objection as may be.

19. List this petition on 16.7.2012.