

(2009) 07 KAR CK 0091
In the Karnataka High Court
Case No : W.A. No. 5033 of 2008

The Authorised Officer/General Manager, Sri. Basaveshwar
Co-operative Bank Ltd.

APPELLANT

Vs

Sri. Balappa Fakkirappa Gurlahosur

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Securitization and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 13 (4), 2 (1) (c) (iv)

Citation : (2010) ILR (Kar) 752 : (2011) 3 KarLJ 300

Hon'ble Judges : Manjula Chellur, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Vigneshwara S. Shastri, for the Appellant; Ramachandra Mali, for the
Respondent

Final Decision : Allowed

Judgement

Manjula Chellur, J.—Heard both the Counsels and the matter is disposed of on merits at the stage of preliminary hearing.

2. It is not in dispute that the respondent herein had borrowed a sum of Rs. 3,10,000/- from the appellant-Bank on 28.03.2003 securing his property bearing CTS No. 9288 situated at LIG 16, Ashoknagar, Belgaum. It is also not in dispute that when the repayment of loan became overdue, after repeated demands and requests, a demand notice was issued u/s 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitisation Act") dated 30.01.2004 asking the borrower to repay the overdue amounts together with interest within the time fixed.

3. Subsequently, another notice came to be issued after two years on 08.06.2005 both on the borrower and on the guarantor intimating the symbolic possession being taken by the creditor-Bank from the security i.e., the house property secured to the Bank. It also informed the said fact in the local newspapers apart from "Vijay Times", Belgaum edition. Subsequently, the Bank

in question approached the Assistant Commissioner, Belgaum, for delivering the vacant possession of the property secured under the Securitisation Act. The Assistant Commissioner concerned passed an order in the year 2006 ordering delivery of physical possession of the property against the respondent-borrower on 20.02.2006. With the assistance of the revenue officials, the appellant-Bank even took physical possession of the secured asset from the borrower under a panchnama drawn at that time. In spite of taking physical possession of the property respondent-borrower did not pay the dues and approached the Debt Recovery Tribunal challenging the possession notice dated 08.06.2005 i.e., symbolic possession being taken, in I.R.345/2006 and the said petition came to be dismissed.

4. Apparently, against the dismissal order of the Debt Recovery Tribunal, the respondent herein did not file any writ petition or statutory appeal provided under the Act. On the other hand, he approached this Court filing the present writ petition No. 3068/2008 questioning the notice dated 08.06.2005 taking symbolic possession of the property by the appellant-Bank. The Learned Single Judge disposed of the matter on 08.07.2008 holding that the present appellant-Bank being a Co-operative Society cannot invoke the provisions of Securitisation Act and the impugned possession notice was without any jurisdiction. Accordingly, the possession notice came to be quashed.

5. Aggrieved by the said order, the present appeal is filed by the appellant-Bank contending that, factually, they were justified in taking physical possession of the property as they gave maximum time for repayment of loan, but the respondent failed to repay the said loan. According to them, their action of issuance of symbolic possession notice followed by delivery of physical possession is also regular because they also come under the definition of "Bank" u/s 2(1)(c)(iv) of the Securitisation Act.

6. The Learned Counsel refers to the Notification dated 28.01.2003 in F. No. 1/2/2002-BO-1, dated 23.01.2003 wherein the "Co-operative Bank" as defined in Clause (cci) of Section 5 of Banking Regulation Act, 1949, is a Bank for the purpose of the Securitisation Act. The said Notification is extracted hereunder:

Notification The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

Notification

F. No. 1/2/2002-BO-I, dated 23rd January, 2003 Karnataka Gazette, Extraordinary No. 86, dated 28-1-2003.

S.O. 705(E).- In exercise of the powers conferred under item (v) of Clause (c) of Sub-section (1) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government hereby specified "Co-operative Bank" as defined in Clause (cci) of Section 5 of Banking Regulation Act, 1949 (10 of 1949), as "Bank" for the

purpose of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).

7. Section 2(1)(c)(iv) of the Securitisation Act is extracted hereunder to understand the position in a better way-

2. Definitions.- (1) In this Act, unless the context otherwise requires;

(a)....

(b)....

(c) "Bank" means-

(i) a Banking company; or

(ii) a corresponding new Bank; or

(iii) the State Bank of India; or

(iv) a subsidiary Bank; or

8. When once there is a Notification dated 28.01.2003 prior to the grant of loan to the Respondent describing the Co-operative Bank as "Bank" attracting the provisions of the Securitisation Act for all practical purposes, the appellant/Co-operative Bank also falls under the category of "Banks" attracting the provisions of the Securitisation Act.

9. Reliance is placed on the judgments of other High Courts. We refer to the following judgments:

(1) In the case of Rama Steel Industries and Others Vs. Union of India (UOI) and Another,

(2) In the case of A.P. Varghese and Vs. The Kerala State Co-operative Bank Ltd. and Others and etc.,

(3) In the case of George Kutty Abraham and Others Vs. Secretary, Kottayam District Co-operative Bank Ltd. and Others,

In all these three cases, their Lordships of the respective Hon'ble High Courts were considering the Notification dated 28.01.2003 in order to see whether a "Co-operative Bank" would fall under the "definition of a "Bank" in view of the Notification as contemplated u/s 2(1)(c)(iv) of the Securitisation Act.

10. In all probability, it was not brought to the notice of the Learned Single Judge the Notification dated 28.01.2003. Therefore, he proceeded to quash the symbolic possession notice by placing reliance on the judgment of the Apex Court in the case of Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others, which was altogether on a different issue, i.e., whether the creditor therein was a Banking Company or not under the DRT Act.

11. Even otherwise, the respondent herein having approached the Tribunal, got

the dismissal of his application and he has invoked two remedies, which ended in vain. The Learned Counsel for the respondent-creditor submits that respondent is ready to pay the amount, if some time is granted. So far as this aspect of the matter is concerned, the respondent is always at liberty to approach the Bank concerned and get resolved the controversies between the parties. So far as the order of the Learned Single Judge quashing Annexure-D dated 08.06.2005, the order is set aside holding that the possession notice at Annexure-D dated 08.06.2005 is in accordance with the Act applicable.

Accordingly, writ appeal is allowed.