
(2010) 09 DEL CK 0400

In the Delhi High Court

Case No : Writ Petition (C) No. 6206 of 2010

Triton Corp. Pvt. Ltd.

APPELLANT

Vs

Karnataka Bank Ltd.

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Constitution of India, 1950 — Article 141
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13(2), 13(3), 13(4), 17

Citation : (2010) 09 DEL CK 0400

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Chandra Prakash, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner by this writ petition impugns the notice dated 19th March, 2010 issued by the respondent Bank to the petitioner u/s 13(2) & (3) of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) and threatening to enforce the rights against secured assets in terms of Section 13(4) of the said Act. The challenge by the petitioner is threefold. Firstly, it is contended that the respondent Bank is not a secured creditor as is necessary for invocation of powers u/s 13(4). Secondly, it is contended that the account of the petitioner with the respondent Bank is not a Non-Performing Asset (NPA) which is sine qua non for invoking the aforesaid provision. Lastly, it is contended that the notice has not been issued by the respondent Bank but by its officer and that the Bank has not furnished any details to the petitioner to enable the petitioner to satisfy itself as to whether the amount claimed by the respondent Bank has been correctly computed or not.

2. The respondent Bank in the notice aforesaid claims a sum of 29,71,19,387.26 to be due from the petitioner as on 18th March, 2010.

3. With respect to the first contention, the counsel for the petitioner has contended that the Agreement between the petitioner and the respondent Bank was reached on 25th July, 2007 and copy whereof is filed at pages 55 to 59 of the paper book. The said document is a letter from the respondent Bank to the petitioner informing the petitioner of the sanction of financial/credit facilities to the petitioner on the terms mentioned therein. One of the terms mentioned under the head "Details of Securities" inter alia mentions "Equitable mortgage by way of deposit of title deeds of industrial building property situated at 113, Udyog Vihar Phase-I, Gurgaon, Haryana" belonging to the petitioner. It is contended that the said document since mentions mortgage, was required to be compulsorily registered and being not registered, no mortgage of the property aforesaid came into existence in favour of the respondent Bank to make it a secured creditor of the dues from the petitioner. Reliance in this regard is placed on *Rachpal Mahraj Vs. Bhagwandas Daruka and Others*, wherein it was laid down that if the parties choose to reduce the contract to writing, the implication is excluded by their express bargain, and the document will be the sole evidence of its terms and in such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage and the document requires registration.

4. I am unable to accept the contention of the petitioner. The document on which reliance is placed is as aforesaid merely a communication of the acceptance of the offer of the petitioner. Though it lists out the terms on which sanction had been obtained but one of such terms requires the petitioner to execute necessary loan/security documents. Thus the said document is only a precursor to the contract between the parties. The said document itself talks of creation of an equitable mortgage and not mortgage by registered document. The petitioner has chosen not to file the documents executed in pursuance to the acceptance aforesaid. It thus cannot be said that for the reason of the said document being not registered, no equitable mortgage came into being.

5. Moreover, when the petitioner with full knowledge that what was required to be created was an equitable mortgage and not the mortgage by registered document, has availed the financial limits from the respondent Bank, the petitioner now cannot turn around and aver that no mortgage was created.

6. The counsel for the petitioner with respect to his second contention urges that for an account to be declared as an NPA, mere default in payment is not enough. It is contended that what is required is mismatch between the value of the security offered and the amount due. It is contended that there is no mismatch in the present case and the value of the security with the respondent Bank i.e. the property aforesaid at 113, Udyog Vihar Phase-I, Gurgaon, Haryana is much more than the amount due. Reliance is placed on *Transcore Vs. Union of India (UOI)* and *Another*,

7. Attention of the counsel has been invited to para 3 of the notice dated 19th March, 2010 issued by the respondent Bank in which the respondent Bank has

stated that on account of failure of the petitioner to repay the dues as required, the Bank in terms of RBI guidelines as to the Income Recognition and Prudential Accounting Norms, has classified the account of the petitioner as Non-Performing Asset as on 29th January, 2010. The counsel for the petitioner however contends that there is no finding of mismatch therein.

8. Ordinarily, when the respondent Bank has stated that the account of the petitioner has been classified as an NPA, there is no reason for this Court not to accept the said statement especially in writ jurisdiction. The counsel for the petitioner however contends that while the loan sanctioned was for 2725 lacs, the balance outstanding according to the respondent Bank also is 29,71,19,387.26. It is contended that there is hardly a difference of 2 crores in the amount sanctioned and the amount due and thus it is to be presumed that the respondent Bank at the time of obtaining the security had secured itself for the said difference also.

9. The attention of the counsel for the petitioner has been invited again to the sanction letter which records the "forced sale value" of the said property as 2728.50 lacs". In view of the claim of the respondent Bank of the balance outstanding as on 18th March, 2010 being 29,71,19,387.26, it cannot be said that there is no mismatch. There is a difference of about 2.50 crores. For the petitioner the said difference may not be enough but this Court cannot act on such perceptions so long as a mismatch is made out. Thus, it cannot be said that the declaration by the respondent Bank of the account of the petitioner as NPA is faulty.

10. Though the counsel for the petitioner has not urged the last ground for challenge, of the notice having not been issued by the respondent Bank and the issuance thereof by the official of the respondent Bank being not as per the SARFAESI Act, the said plea has to be rejected. The respondent Bank being a juristic person has to necessarily act through its officials and it is clear from the notice dated 19th March, 2010 that it has been issued on behalf of the respondent Bank and not by the official in his personal capacity. Similarly, the factual pleas of what is the amount due cannot be gone into in the writ jurisdiction.

11. The counsel for the petitioner has lastly urged that notice of this petition be issued and the respondent Bank be called to enable the property to be sold by the petitioner and repay the dues. The said argument itself shows that the petitioner is unable to pay the dues of the respondent Bank. The SARFAESI Act was enacted to enable the Banks & Financial Institutions realise their dues expeditiously from the security taken from the borrower. The Courts on sympathetic considerations cannot defeat the legislative intent especially when no error in the procedure followed has been shown.

12. The contention of the counsel for the petitioner that the petitioner has no alternate remedy is also not found correct. The petitioner vis-?-vis any factual

disputes has the statutory remedy u/s 17 of the SARFAESI Act available to it.

13. The counsel for the petitioner has relied on Hotel and Restaurant Asscn. and Another Vs. Star India Pvt. Ltd. and Others, to contend that wherever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms, in order to create and raise the jurisdiction those terms should be complied with and if they are not complied with, the jurisdiction does not arise. However, in view of my findings above, the said judgment is of no avail to the petitioner.

14. At this stage, the counsel for the petitioner draws attention to para 68 of the judgment of the Apex Court in Transcore (supra) to contend that respondent Bank was required to first issue a notice to the petitioner to give additional security and only if the petitioner fails to give the additional security can proceed against the petitioner u/s 13(4) of the Act. The counsel admits that there is no provision in the SARFAESI Act requiring the Bank to demand such additional security but contends that the law declared by the Supreme Court is binding under Article 141 of the Constitution of India. This contention of the petitioner is contrary to the first contention that there is no mismatch. In any case, the observations in para 68 came to be made in the context of the proceedings before the DRT and which is not the case over here. The said argument also is not found to come to the rescue of the petitioner.

The petition is dismissed. No order as to costs.