
(2011) 05 AHC CK 0448

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19030 of 2011

Upasana Garg

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4)

Citation : (2011) 7 ADJ 374 : AIR 2011 All 166 : (2011) 5 AWC 4960 : (2012) 2 BC 438 : (2011) 8 RCR(Civil) 498

Hon'ble Judges : S.P. Mehrotra, J;Rajesh Chandra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. It appears that a partnership firm, namely, M/s Garg Automobile took Cash Credit Facility from the respondent No. 2-State Bank of India. One of the partners of the firm, namely, Ajay Garg, mortgaged 1/5th share in the property in question, namely, Khasra No. 131, area about 0.882 Hectare i.e., 2.18 Acre, as security for the said facility, given to the partnership firm.

2. The said 1/5th share in the property in question had been purchased by the said Ajay Garg by the sale-deed dated 9.10.2002.

3. It further appears that Smt. Upasana Garg, the petitioner herein also purchased 1/5th share in the property in question by a sale-deed dated 9.10.2002. The said 1/5th share of Smt. Upasana Garg, petitioner herein was not mortgaged with the respondent No. 2 as security for the said facility given to the partnership firm.

4. Further, it appears that the said partnership firm committed default in respect of the said facility. Consequently, the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "the Securitization Act") were initiated. Notice dated 7.1.2010

(Annexure 4 to the Writ Petition) was issued to M/s Garg Automobile u/s 13(2) of the Securitization Act. In Schedule "D" Part-II of the said notice dated 7.1.2010, the entire area of the property in question, i.e., 0.882 Hectare = 2.18 Acre was mentioned as the secured assets.

5. The said notice u/s 13(2) of the Securitization Act was followed by a Possession Notice dated 27.1.2011 (Annexure 6 to the Writ Petition) u/s 13(4) of the Securitization Act. In the said Possession Notice also, the entire area of the property in question, i.e., 2.18 Acre was mentioned.

6. The grievance of the petitioner in the present Writ Petition is that only 1/5th area of the property in question, which was owned by the said Ajay Garg, was mortgaged with the respondent No. 2 as security for the Cash Credit Facility given to the aforesaid partnership firm. 1/5th share of the petitioner was never mortgaged with the respondent No. 2 as security for the said Facility. The Notice u/s 13(2) of the Securitization Act as well as the Possession Notice u/s 13(4) of the Securitization Act mentioned the entire area of the property in question including the share of the petitioner in the said property. This action of the respondent No. 2, it is submitted on behalf of the petitioner, was illegal and the Possession Notice dated 27.1.2011 is liable to be quashed.

7. A Short Counter-Affidavit has been filed on behalf of the respondent No. 2. Paragraphs 3, 4, 5, 6, 7, 8 and 9 of the said Short Counter-Affidavit, which are relevant in the present Writ Petition, are as below:

3- That as the cash credit loan account of M/s Garg Automobiles was highly irregular and not running as per financial norms of the Bank, despite best efforts and accommodation was given to the M/s Garg Automobiles by the Respondent No. 2 from time to time for running the cash credit loan account but of no avail as such after due notices the said account was declared non performance assets by the respondent Bank and as per provisions made in SERFESAI Act, 2002, the notice u/s 13(2) of Act, 2002 was issued only against the M/s Garg Automobiles through its Proprietor Shri Ajay Garg on 8.5.2010 (filed as Annexure No. 5 to the Writ Petition) for the recovery of dues from the secured Assets mortgaged with the respondent Bank in lieu of the cash credit limit as per provisions of law (Security Interest Act, 2002). However, it is necessary to clarify here that the security of the above cash credit limit account 1/5th area of 2.18 acre of Khasra No. 131 and Khatauni No. 179 at Village Shanpur Tehsil Bilari, District Moradabad was mortgaged with respondent No. 2 for the security of above cash credit limit account by the Proprietor of M/s Garg Automobiles Sri Ajay Garg husband of the petitioner and all the action are initiated under the Act 2002 against only Sri Ajay Garg and his 1/5th area of said property.

4- That due to oversight /inadvertently at the time of issuing notice u/s 13(2) of the Act, 2002 on 8.5.2010 (Annexure No. 5 to the writ petition) total area 0.882 hectare =2.18 acre has been mentioned in place of 1/5th area of 2.18 acre as only 1/5 area part of 2.18 acre is only mortgaged with respondent No. 2 for the

security of the above cash credit limit account by the M/s Garg Automobiles Proprietor Sri Ajay Garg.

5- That as per provisions of law laid down in the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 the proceedings were initiated by invoking provisions u/s 13(2) of the Act 2002 against the M/s Garg Automobiles in accordance with law and symbolic possession of 1/5 area i.e. part of 2.18 acre has been taken on 27.1.2011 by the respondent No. 2 as per possession notice (Annexure No. 6 to the writ petition). Due to oversight/inadvertently the total area 2.18 acre has been published/mentioned in the possession notice published in Dainik Amar Ujala. On 27.1.2011 possession of 1/5 area part of" 2.18 acre has only been taken by the respondent No. 2 as per provisions made u/s 13(4) of the SARFEASI Act, 2002. The relevant documents/Xerox copy of the possession taken by the respondent No. 2 u/s 13(4) of the Act, 2002 on 27.1.2011 as such report submitted to the Regional Manager dated 2.4.2011 enclosing the Note for the NW Credit Committee, Lucknow, Panchnama dated 27.1.2011, Inventory (Rule 4(2) prepared on 27.1.2011, valuation report etc. mentioning that only 1/5 area part of 2.18 acre has been only taken in possession by the respondent No. 2 as per provisions laid down in the Security of Interest Act, 2002. The Xerox copy of the Branch Letter No. 29/2001 dated 2.4.2011 enclosing the Note for the NW Credit Committee, Lucknow, Panchnama, Inventory, Valuation Report submitted by Valuer are being filed collectively herewith and marked as Annexure No. SCA-1 to this Affidavit.

6- That due to oversight/inadvertently that the total area 2.18 acre has been mentioned in the notice issued u/s 13(2) of Act, 2002 dated 8.5.2010 and also in the possession notice which was not deliberate but due to human error and this mistake was not deliberate and only possession of 1/ 5 area part of 2.18 acre has been taken by the respondent No. 2 on 27.1.2011 as per provisions contained u/s 13(4) of the Act, 2002. However, it is further submitted that the petitioner is wife of Proprietor Sri Ajay Garg (M/s Garg Automobiles) who has given her personal guaranty for the above loan as such she is also liable to pay the same.

7- That in view of the facts as stated in the proceeding paragraphs of the short counter-affidavit the mistake committed is due to oversight and not deliberate as such on this ground the proceedings initiated against the borrower cannot be hampered or suffer as the symbolic possession u/s 13(4) of the Act, 2002 has been taken of only 1/5 area part of 2.18 acre by the respondent Bank on 27.1.2011.

8- That when in near future the further proceeding will be initiated for auction / sale of the secured assets (property mortgaged with the respondent No. 2) of the M/s Garg Automotibles through its Proprietor Ajay Garg the mistake committed due to oversight will be corrected as per possession taken on 27.1.2011 of the property mortgaged i.e. 1/5 area part of 2.18 acre only at present no irreparable

loss or any inconvenience has been caused to the petitioner as only symbolic possession of only 1/5 area part of 2.18 acre has been taken on 27.1.2011 which is secured assets as per provisions of Security of Interest Act 2002.

9- That however, it is also necessary to mention here that as per provision laid down under the SARFESAI Act, 2002 the Enforcement Agent has been appointed and the total area 1/5 of 9.882 hectare (2.18) has been mentioned. The Xerox copy of appointment of Enforcement Agent dated 20.12.2011 is being filed herewith and marked as Annexure No. SCA-2 to this Affidavit.

8. From the averments made in the above paragraphs of the Short Counter-Affidavit, it is evident that the respondent No. 2 has accepted that the entire area of the property in question, namely, 2.18 Acre was mentioned in the Notice u/s 13(2) of the Securitization Act as also in the Possession Notice u/s 13(4) of the Securitization Act on account of inadvertent mistake. It is further evident that the respondent No. 2 has taken possession of only 1/5th of the total area of the property in question, i.e., the share of the said Ajay Garg which was mortgaged with the respondent No. 2.

9. It is also evident from the averments made in the above-quoted paragraphs 8 and 9 of the Short Counter Affidavit that the respondent No. 2 has undertaken that in near future, when further proceedings will be initiated for auction of the sale of the secured asset, the proceedings shall be undertaken only with regard to 1/ 5th share of Ajay Garg, which was mortgaged with the respondent No. 2. The averments further indicate that the respondent No. 2 has undertaken not to touch 1/5th share of the petitioner in the property, i.e. Khasra 131.

10. In view of the above, we are of the opinion that no cause of action survives to the petitioner and no further order requires to be passed in the present Writ Petition.

11. The Writ Petition stands disposed of accordingly.