
(2014) 09 KAR CK 0168
In the Karnataka High Court

Case No : Writ Petition Nos. 56839 and 57493 to 57495 of 2013 (GM-RES)

V. Lakshmidevi

APPELLANT

Vs

IDBI Bank Limited

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

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

Citation : (2015) 1 BC 622 : (2014) 6 KarLJ 570

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : Holebasappa C. Betsur, Advocate for the Appellant; G.B. Hariprasad and K.V. Lokesh, Advocate for the Respondent

Judgement

A.N. Venugopal Gowda, J.—Petitioners are the guarantors to the loan availed by respondent 2 from respondent 1. Petitioners created security interest on their properties in favour of respondent 1-Dank. Respondent 2-loanee, having committed default, the account was declared as "Non-performing Asset". Measures having been taken under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the Act") and the properties shown in the schedule of the writ petitions, mortgaged in favour of the bank, having been notified for auction sale in public, vide Annexure-B, assailing the communication as at Annexure-A and the public notice issued for auction sale of the properties published, in "the Hindu" daily newspaper dated 30-11-2013, vide Annexure-B, these writ petitions were filed on 12-12-2013. By an order dated 20-12-2013, it was made clear that the respondent 1 may proceed with the auction scheduled on 31-12-2013 and that the same shall not be finalised or the sale shall not be confirmed in favour of the highest bidder. Learned Advocate for the respondent 1-bank submitted that the auction sale notified vide Annexure-B did not materialise. He submitted that the properties notified have not been sold in terms of Annexure-B. He further submitted that in view of the purpose of said notification having not materialised,

the prayers in these writ petitions, insofar as Annexures-A and B are concerned, do not survive for consideration.

2. Learned Advocate appearing for the petitioners submitted that, since the intended sale in terms of Annexures-A and B has not taken place, the petitioners do not press the reliefs sought in respect of Annexures -A and B, in prayer columns (a) and (b). He submitted that, since respondent 2 owns properties, respondent 1 may be directed to recover its dues by proceeding against the assets of respondent 2 i.e., before proceeding against the collateral security offered by the petitioners.

3. Sub-section (11) of Section 13 of the Act reads thus:

"13. (11) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Act".

The prayer of the petitioners in column (c) is contrary to the aforesaid provision.

4. In *State Bank of India Vs. Messrs. Indexport Registered and others*, , Apex Court has held that the decree-holder-Bank can execute the decree against the guarantor without proceeding against the principal borrower on the ground that the guarantor's liability is co-extensive with that of the principal debtor. In the said decision, it has been held as follows:

"10. ... The execution of the money decree is not made dependent on first applying for execution of the mortgage decree. The choice is left entirely with the decree-holder. The question arises whether a decree which is framed as a composite decree, as a matter of law, must be executed against the mortgage property first or can a money decree, which covers whole or part of decretal amount covering mortgage decree can be executed earlier. There is nothing in law which provides such a composite decree to be first executed only against the property".

5. In *Ram Kishun and Others Vs. State of U.P. and Others*, , it has been held that the creditor has a right to obtain a decree against the surety and the principal debtor and that the surety has no right to restrain execution of decree against him until the creditor has exhausted his remedy against his principal debtor for the reason that it is the business of the surety/guarantor to see whether the principal debtor has paid or not. It has been held that the surety does not have a right to dictate terms to the creditor as to how he should make the recovery and pursue his remedies against the principal debtor at his instance. The respondent-Bank can proceed against security interest created in its favour. There is no legal compulsion for the respondent-bank to exhaust its claim as against respondent 2 and then only proceed against the petitioners. The prayer being contrary to the provision reproduced supra and settled principles of law in the decisions, noticed

supra, is untenable.

In the result, the petitioners are not entitled to the prayer, at column (c) of the writ petitions.

The petitions are disposed of accordingly with no order as to costs.