(2014) 09 KL CK 0032

In the High Court Of Kerala

Case No : WP (C). No. 22224 of 2014 (C)

V. Sanal Kumar Pranavam APPELLANT

Vs

The Manager RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17

Citation : (2014) 09 KL CK 0032

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : K.P. Satheesan, Sr., Advocate M.R. Jayaprasad, P. Mohandas, Anoop. V. Nair, S. Vibheeshanan and Siddharth Krishnan, Advocate for the Appellant; P.V. Lonachan, Government Pleader and R.S. Kalkura, SC, SBT, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner is aggrieved by the recovery proceedings initiated against the property of the petitioner.

2. The petitioner filed the above writ petition contending that Exhibit P1 is a notice issued in the year 2013, wherein the petitioner''s property was proceeded against for recovery of sales tax dues as also for default in a Bank loan. One of the properties which was notified for sale, was sold and the entire amounts due to the Sales Tax Department is cleared. So much is clear from Exhibit P2.

3. The proceedings against the other property, for satisfaction of the Bank loan, were initiated, as is evident from Exhibit P4. The petitioner assails the same, on the ground that, in the earlier sale an amount of more than Rupees Fourteen Lakhs was credited to the Bank loan account after clearing the dues to the Sales Tax Department. In such circumstances, the amount could not have risen upto Rupees Twenty Lakhs, is the essential contention.

4. It is trite that for adjudication of disputes, with respect to computation of amounts the defaulters would have to necessarily approach the Debts Recovery

Tribunal as per Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity "SARFAESI Act"]. However, this Court has been granting or extending instalments to the defaulters only on equitable consideration to enable the defaulters to save their residential property from distress.

5. In the present case, when the matter came up for admission, the learned counsel for the respondent-Bank submitted that the petitioner had filed many writ petitions before this Court against the very same recovery and, hence, the petitioner is disentitled from seeking further equity. However, since the learned counsel for the petitioner sought for time to verify the same with the petitioner, this Court had granted time till today.

6. The petitioner has now filed an application [I.A. No. 12114 of 2014] seeking acceptance of additional documents. The same has been accepted. It is seen from the affidavit filed in support of the said application, that, there were two writ petitions filed against the recovery proceedings; but, however, both were concerned with the sales tax arrears.

7. The learned counsel for the respondent-Bank, however, hands over a copy of the judgment in a writ petition, numbered as W.P.(C).34794 of 2010, wherein the very same petitioner had approached this Court seeking interdiction of the proceedings initiated by the very same respondent-Bank under the SARFAESI Act. This Court, in the aforesaid judgment, noted that an interim order was passed, which was not complied with, within the stipulated time or within the period of extension granted. In such circumstance, this Court declined interference in the SARFAESI proceedings. The petitioner has, despite being granted time not apprised the Court of the above writ petition; nor produced a copy of the judgment. In fact, in the affidavit filed in support of I.A. No. 12114 of 2014, the petitioner has chosen to produce judgments, in two Writ Petitions, which were only concerned with sales tax arrears and not the Bank loan recovery. The assertion further made in the additional affidavit filed also does not disclose the earlier Writ Petition. The contentions in the affidavit are belied by the copy of the judgment in W.P.(C).34794 of 2010, handed over across the Bar. This Court is not inclined to extend any further equity to the petitioner.

8. However only on the petitioner''s submission that the petitioner is ready to pay Rs. 5,00,000/- (Rupees five lakhs only/-) within one month, if the said amount is deposited on or before 04.10.2014, the petitioner shall be granted eight equal monthly instalments to settle the entire loans. On the deposit of Rs. 5,00,000/- being made, the petitioner shall be issued with a statement of arrears as on 30.09.2014, which shall be settled in eight monthly instalments starting on 04.11.2014 and of the 4th of each succeeding month. On satisfaction of the same the Bank shall raise a demand for future interest which shall be settled as the 9th instalment. If one default is committed in the instalments, then the recovery proceedings shall revive and continue.

In the above circumstances, the writ petition stands dismissed. The copy of the judgment shall be forwarded to the Kerala Mediation and Conciliation Centre.