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Court : Madhya Pradesh

Decided On : May-05-2015

Judge : Sujoy Paul

Appeal No. : Writ petition No. 2348 of 2015

Appellant : Meera Gupta and Another

Respondent : M/s Anurudh Builders and Developers

Advocate for Def. : Shri. Purushottam Rai

Advocate for Pet/Ap. : Shri. Ashish Saraswat

Judgement :

1. The petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution to challenge the order of District Magistrate, Gwalior dated 31.3.2015 (Annexure P/). The District Magistrate in exercise of powers under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the 'SARFAESI Act') directed the Tahsildar, Gwalior to take possession of the mortgaged property and hand it over to Bank of Maharashtra.

FACTS

2. The petitioners are daughters of Smt. Subhadra Bai. It is contended by the petitioners that the property in question was purchased by Smt. Subhadra Bai through registered sale deed dated 16.4.1979 from Dhani Ram Gupta (Annexure P/10). Smt. Subhadra Bai died while remaining in possession on 17.10.2005. Smt Subhadra Bai died leaving behind legal representatives (i) Meera Gupta-daughter (petitioner) (ii) Rajesh Gupta-son (iii) Geeta Gupta-daughter (petitioner) (iv) Sunita Gupta-daughter (v) Sanjeev Gupta-son (vi) Pawan Gupta-son (vii) Anita Gupta-daughter.

3. Shri Ashish Saraswat, learned counsel for the petitioners submits that by virtue of Section 15(1)(a) of Hindu Succession Act, 1956, the property has devolved in the sons and daughters. Accordingly, the petitioners are having 1/7th share (each) in the said property. It is contended that Civil Suit No. 7A/2012 was filed by Rajesh Gupta(brother of petitioners) before Fourteenth Additional District Judge, Gwalior. In the said civil suit, the present petitioners are also party respondents. In the said civil suit, the Bank filed an application under Order 7 Rule 11 CPC for dismissing the suit in view of section 34 of SARFAESI Act. The said application of Bank was dismissed by the trial court on 2.3.2012. This order is called in question by the Bank in Civil Revision No. 145/2012. This Court by order dated 9.11.2012 stayed the proceedings of said civil suit.

4. Shri Ashish Saraswat further contends that petitioners do not have any alternative remedy. The petitioners were not heard by the Bank before taking coercive action under section 13 of the SARFAESI Act. The District Magistrate has also erred in not deciding the question of right of petitioners on 1/7th share of the property. It is vehemently argued that unless the rights and shares of the petitioners are crystalized and decided, the Bank has no authority to proceed further. The District Magistrate has erred in not deciding this aspect. Shri Saraswat submits that it was obligatory on the part of the District Magistrate to decide the question of 1/7th share of the petitioners on the property in question. In support of contentions, he relied on (2014) 6 SCC 1 (Harshad Govardhan Sondagar vs. International Assets Reconstruction Co.Ltd. and Ors.); 2013 (1) MPHT 252 (Prabha Jain vs. Central Bank of India and others); AIR 2011 BOMBAY 144 (State Bank of India v. Sagar Pramod Deshmukh); AIR 2009 MADRAS 74 (M/s.

Cambridge Solutions Ltd., Bangalore v. Global Software Ltd. and Ors.); AIR 2007 RAJASTHAN 129 (Mohan Lal and another vs. Dwarka Prasad and Ors.); AIR 1006 KARNATAKA 21 (Krishna v. Kedarnath and Ors.) and, Rohit Chauhan vs. Surinder Singh and others [(2013) 9 SCC 419)].

5. Shri Harshwardhan Topre, learned counsel for the Bank opposed the said relief. He submits that the present petition suffers from suppressio Veri . The petitioners have approached the court with unclean hands and, therefore, not entitled for any relief. A preliminary objection is raised on the ground that under section 17 of the SARFAESI Act, the petitioners have an efficacious alternative remedy. In support of this contention, he relied on the judgment of Supreme Court in United Bank of India vs. Satyawati Tondon, reported in AIR 2010 SC 3413. Shri Topre contended that the respondent-Bank sanctioned cash credit limit of Rs. 16.00 lacs to M/s. Anurudh Builders and Developers, acting through its partners. Pawan Gupta and Sanjiv Gupta (respondents No.3 and 4 herein) have mortgaged the property situated at Old 18/604, then 28/882 and now numbered as 33/771, Gendewali Sadak, in front of Shri Krishna Temple, Gwalior. The said loan was declared as 'NPA' on 9.8.2011. A notice dated 10.8.2011 under section 13 (2) of SARFAESI Act was served on Pawan Gupta and Sanjiv Gupta. To delay the recovery proceedings, a writ petition was filed by the said persons bearing WP No. 6904/2011, which was dismissed by this Court on 31.10.2011 (Annexure R-2). This Court permitted the petitioners therein to avail the alternative remedy. The possession notice was given on 20.12.2011 (Annexure R/3). An appeal was filed before the Debts Recovery Tribunal (DRT) under section 17 of the SARFAESI Act. This appeal No. SA 26/2012 was dismissed by the Tribunal on 16.5.2012 (Annexure R/4). It is stated that Rajesh Gupta and Sanjiv Gupta in collusion filed a civil suit for declaration and permanent injunction, which was registered as Civil Suit No. 7A/2012. The Bank's application preferred under Order 7 Rule 11 was rejected against which Civil Revision No.145/2012 is pending before this Court.

It is further contended that in Civil Suit No. 7A/2012, the plaintiff filed an application under Order 39 Rules 1 and 2 CPC. Same was rejected by the Court on 25.6.2012 (Annexure R/6). Misc. Appeal No.779/2012 under Order 43 Rule 1 CPC was filed, which was also dismissed by the Court on 16.8.2012 (Annexure

R/7). Thereafter, Rajesh Gupta (respondent No.4 herein) submitted a representation on certain grounds. The reply was given by the Bank on 2.12.2014. Rajesh Gupta filed Writ Petition No. 23/2015 seeking direction to the officers of the Bank to initiate enquiry on representation dated 22.11.2014. This writ petition was also dismissed on 24.2.2015 (Annexure R/8). The petitioners prayed for a liberty to assail the impugned communication before appropriate forum. Shri Topre by narrating these facts contended that the present petitioners are sisters of said Rajesh Gupta and Sanjiv Gupta. In collusion with the brothers, this petition is filed with a view to create hindrance in legal proceedings. He submits that there is no legal flaw which warrants interference in the order of District Magistrate (Annexure P/1). In support of his contentions, he relied on AIR 2010 SC 3413 (United Bank of India vs. Satyawati Tondon and Ors.); 2008 (1) MPLJ 619 (Manoj Kumar Jain and another vs. Corporation Bank and another); (2007) 1 Comp.L.J. 292 (Mad.) (Bank of India, Kurichi Industrial Estate Branch vs. Manickam @ Sellakumarasamy and Rayappan); AIR 2008 Bom. 167 (Yuth Development Cooperative Bank Ltd. v. Balasaheb Dinkarrao Salokhe and others); AIR 2007 Delhi 213 (Ram Kumar and another vs. Ravinder Kumar Gulati and another); AIR 2009 SC 2420 (Authorized Officer, Indian Overseas Bank and another vs. Ashok Saw Mill); AIR 2011 Chhattisgarh 61 (Smt. Anjana Nagadia vs. Branch Manager, Dena Bank and another).

6. No other point is pressed by learned counsel for the parties.

7. I have bestowed my anxious consideration on rival contentions and perused the record.

8. The petitioners have only prayed that the order of District Magistrate dated 31.3.2015 (Annexure P/1) be set aside. As narrated above, the bone of contention of the petitioners is that they being daughters of Smt. Subhadra Bai have right over 1/7th share of the property. The District Magistrate has erred in passing the impugned order without determining the said share in favour of the petitioners. Thus, the pivotal question is whether District Magistrate has committed any legal error in not determining the said right of the petitioners. However, before dealing with this aspect, I deem it proper to deal with the preliminary objection raised by

Shri Topre regarding availability of alternative remedy. Shri Purushottam Rai, learned counsel for the respondents No.2 and 3 supported the petitioners and borrowed the contentions raised by learned counsel for the petitioners.

9. Indisputably, the District Magistrate has passed the order under Section 14 of the SARFAESI Act. Section 14 of the SARFAESI Act reads as under:-

14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.- (1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

A plain reading of sub-section (3) of Section 14 of the SARFAESI Act makes it clear that the order of District Magistrate attained a finality and cannot be put to test before the Courts except the Constitutional Courts, which can examine the validity of the said order.

10. The Apex Court in *Harshad Govardhan Sondagar (supra)*, opined that the statutory provision attaching finality to the decision of an authority excluding the power of any other authority or Court to examine such a decision will not be a bar for the High Court or for Supreme Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot take away the power vested by the Constitution. The view taken in *Columbia Sportswear Company v. Director of Income Tax, Bangalore (2012) 11 SCC 224*, was followed. The Apex Court further opined that the decision of District Magistrate can be challenged before the High Court under Article 226 and 227 of the Constitution by any aggrieved party. If such a challenge is made, the High Court can examine the decision of District Magistrate in accordance with settled principle of law.

11. In the teeth of Section 14 (3), I am unable to hold that the petitioners can invoke section 17 of the SARFAESI Act to examine the validity of the order of District Magistrate dated 31.3.2015 (Annexure P/1). Thus, this objection of the Bank is rejected.

12. Reverting back to the pivotal question, i.e., whether the District Magistrate has erred in not deciding the question and right on 1/7th share, it is apt to consider the judgments cited by Shri Ashish Saraswat, learned counsel for the petitioners. In *Prabha Jain (supra)*, Division Bench of this Court opined that section 17 of the SARFAESI Act does not oust the jurisdiction of Civil Court on matters which cannot be decided by DRT. Therefore, the jurisdiction of Civil Court to decide these matters cannot be held to be ousted under section 34 of the SARFAESI Act. In *Sagar Pramod Deshmukh (supra)*, the Nagpur Bench of High Court has taken a similar view. In para 33 of said judgment, the High Court summarized the decision in eleven points. In point (v), the Court held that the jurisdiction of the Civil Court to entertain, try and decide the suit for partition and separate possession of the property in respect of which security interest is created in favour of secured creditor, is not barred under Section 34 of the Act. The Madras High Court in *M/s. Cambridge Solutions Ltd. (supra)*, opined that Section 34 of SARFAESI Act debars the Civil Court from entertaining any suit in respect of any matter which falls within the jurisdiction of DRT or Appellate Tribunal, as the case may be. So far civil rights of the parties, which are not covered under Section 34 of the SARFAESI Act are

concerned, the Civil Court has got jurisdiction to deal with it. The judgment of Rajasthan High Court in Mohan Lal (supra) is also on the same point. Similarly, Division Bench of Karnataka High Court in Krishna (supra) opined that the rights or claims for partition of property which are in the nature of civil right cannot be stopped under Section 34 of SARFAESI Act. The suit filed in this regard is maintainable and not barred (para 7). The last reliance was on Rohit Chauhan (supra), in which Apex Court opined that the moment plaintiff was born, he got a share in father's property and became a co-parcener. A plain reading of this judgment shows that it is arising out of a civil suit where the rival rights of the parties were considered and adjudicated in the light of Sections 6 and 8 of Hindu Succession Act, 1956.

13. In the present case, the trial court while dismissing the Bank's application under Order 7 Rule 11 CPC opined as under:-

LANGUAGE

14. The District Magistrate, in the impugned order, opined that he is satisfied that necessary ingredients for exercising the power under Section 14 of the SARFAESI Act are available and, therefore, he issued the impugned directions. So far petitioners claim of 1/7th share is concerned, he opined that this can be decided in the civil suit.

15. A plain reading of Section 14, reproduced above, shows that the powers vested with the District Magistrate under Section 14 are in the nature of almost execution proceedings. No jurisdiction is vested in him to decide rival civil claims of the parties. I find support in my view from AIR 2010 BOMBAY 53 (M/s. Puran Maharashtra Automobiles, Aurangabad and another vs. Sub-Divisional Magistrate, Aurangabad and Ors.). It is held that the powers of District Magistrate to take steps for taking possession of the assets are not quasi-judicial in nature but purely executionary in nature. Similar view is taken by Division Bench of Bombay High Court in Arjun Urban Cooperative Bank Ltd. vs. Chief Judicial Magistrate, Solapur (AIR 2009 BOMBAY 380). In AIR 2010 BOMBAY 150 (United Bank of India vs. State of Maharashtra), Division Bench of Bombay High Court opined that before exercising power under Section 14 of the SARFAESI Act, the District Magistrate

has to only verify from Bank/financial institution whether notice under Section 13 of SARFAESI Act is given or not and whether secured assets fall within his jurisdiction. There is no power vested in the District Magistrate to adjudicate upon any issue of any kind pertaining to secured assets. Vesting the said jurisdiction in him by applying the provisions of Section 21 of General Clauses Act, 1897 would amount to re-writing the provisions of Section 14, which is impermissible in law. The jurisdiction exercised by the Magistrate under Section 14 being limited only to assist the secured creditor in taking possession of the secured assets. He had no jurisdiction or authority to adjudicate and decide the issue about the status of the lands and exclude them from the purview of SARFAESI Act. The Apex Court in (2013) 9 SCC 620 (Standard Chartered Bank vs. V. Noble Kumar and others) held that the satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily required the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset. (Para 25).

16. In the light of aforesaid discussion, it is clear that it is beyond the authority of the District Magistrate to examine the question of any civil right on the property. By no stretch of imagination, it can be held that under Section 14 of the SARFAESI Act, the District Magistrate can decide the question of right of share on an alleged coparcenary property. In this view of the matter, I am unable to hold that District Magistrate has committed any error in not dealing with said aspect raised by the petitioners.

17. Shri Ashish Saraswat, learned counsel for the petitioners has heavily relied on the judgment of Apex Court in Harshad Govardhan Sondagar (supra). He placed reliance on paras 37 and 37.1 of said judgment. It is contended that in the said judgment, the Apex Court remitted the matter back to the Chief Metropolitan Magistrate, Mumbai to examine the rights of the parties and pass fresh orders in accordance with the judgment. It was contended that this matter be remitted back before the District Magistrate to address on the aforesaid aspect. I find no merit in the said contention. In Harshad Govardhan Sondagar (supra), the appellants were tenants of different premises in Mumbai. Their premises were mortgaged with

different Banks. The borrowers had defaulted in repayment of loan and, therefore, section 13(2) of SARFAESI Act was invoked. The question arose whether provisions of SARFAESI Act have in any way affected the right of a lessee to remain in possession of secured asset during the period of a lease. The Apex Court considered this aspect in great detail and opined that as per Section 33 of Maharashtra Rent Control Act, the jurisdiction is vested with the Courts named therein to decide disputes between the landlord and tenant and not dispute between the secured creditor and tenant under landlord, who is borrower of the secured assets. In para 36, the Apex Court opined that if any of the appellants claimed that they are entitled to possession of a secured asset for any term exceeding one year from the date of lease made in his favour, he has to produce proof of execution of a registered instrument in his favour by the lessor. Where he does not produce proof of such execution of instrument and relies on an unregistered instrument or oral agreement, the District Magistrate will have to come to the conclusion that he is not entitled to possession of the secured assets. To examine this aspect whether the appellants do possess these documents or not, the matter was remitted back. Needless to mention that in the said case, the rights are to be determined on the basis of instrument already existing. The limited scrutiny required to be made by District Magistrate was regarding the existence of the said instrument. In that factual backdrop, the directions were issued. In the present case, the civil rights of the petitioners are yet to be established before a Civil Court of competent jurisdiction. Hence, no fault can be found in the order of District Magistrate in this regard. In nutshell, it cannot be held that District Magistrate has erred in not deciding the question of right of petitioner on 1/7th share of alleged coparcenary property.

18. In view of aforementioned analysis, I find no reason to interfere in this petition. Petition is bereft of merits and is hereby dismissed. No cost.

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