

Prabhakar Vs. Additional District Magistrate Collectorate Premises, Nagpur and Others

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Court : Mumbai Nagpur

Decided On : Feb-12-2016

Judge : The Honourable Mrs. Justice Vasanti A. Naik & A.S. Chandurkar

Appeal No. : Writ Petition No. 5901 of 2015

Appellant : Prabhakar

Respondent : Additional District Magistrate Collectorate Premises, Nagpur and Others

Judgement :

P.C.

1. By this writ petition, the petitioner challenges the order of the Additional District Magistrate, Nagpur dated 9-10-2015 under Section 14 of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest act, 2002 (herein after referred to as the 'Act' for the sake of brevity) permitting the respondent No.2 Bank to secure the actual possession of the property from the petitioner.

2. The petitioner is one of the co-borrowers who had obtained cash credit facility from the respondent No.2 Bank to the extent of Rs.2,75,000/-. Since the petitioner defaulted in repaying the loan amount, the respondent No.2 Bank issued a notice

under Section 13(2) of the Act on 17-9-2009. The symbolic possession of the property that was mortgaged by a registered mortgage deed by the petitioner with the respondent No.2 Bank was secured by the Bank immediately thereafter, in terms of the provisions of Section 13(4) of the Act. After securing the symbolic possession, the Bank decided to sell the property by a public auction. An auction notice was published but since the Bank did not secure purchasers for the said property, the respondent No.2 Bank decided to sell the same by private treaty, as permissible under the Act. A notice was issued by the respondent No.2 Bank to the petitioner on 26-7-2011 asking the petitioner to repay the amount within a period of 30 days or else the property would be sold by private treaty. Since the petitioner did not comply with the letter - notice dated 26-7-2011, the Bank sold the property to the respondent No.4 for a sum of Rs.5,12,000/- on 22-8-2011. The petitioner did not challenge the action of the respondent Bank of selling the property by private treaty. The petitioner again approached the Bank in the year 2014 with an offer to repay the amount. It is the case of the petitioner that the Bank accepted an amount of Rs.2,10,000/- from the petitioner towards the dues and returned the original documents in respect of title to the petitioner. The said fact is, however, disputed by the respondent Bank as it is the case of the respondent Bank that the new Branch Manager was oblivious of the transaction that took place in the year 2011, when the property stood transferred in terms of the private treaty and the loan account was also closed. Since the respondent No.4 was not delivered with the possession of the property, the Bank filed an application before the Additional District Magistrate, Nagpur under Section 14 of the Act. In the said proceedings, the aforesaid facts were brought to the notice of the Additional District Magistrate, and by the impugned order, the Additional District Magistrate, permitted the Bank to secure the actual possession of the property. The order of the Additional District Magistrate is challenged by the petitioner in the instant petition.

3. Shri Kshirsagar, the learned Counsel for the petitioner submitted that the order of the Additional District Magistrate suffers from illegality and the same is liable to be set aside. It is submitted that the Bank entered into a compromise with the petitioner in 2014 and accepted the amount of Rs.2,10,000/- towards full and final settlement. It is stated that the original documents of title were also returned to the

petitioner and the dues that were liable to be paid in view of the notice under Section 13(2) of the Act were cleared by the petitioner. It is stated that since an amount of Rs.2,10,000/- was paid in terms of the compromise, if at all the Bank was desirous of wriggling out of the said transaction, the Bank ought to have reissued a notice to the petitioner under Section 13(2) of the Act. It is stated that the respondent No.4 had claimed that the petitioner had entered into an agreement with the said respondent before the proceedings were initiated under Section 13 of the Act by the Bank and even before the initiation of the said proceedings, the respondent No.4 had filed a civil suit for specific performance of the contract for sale of the mortgaged property in favour of the respondent No.4. It is stated that the respondent No.4 was ready to purchase the suit property from the petitioner for a sum of Rs.6,11,000/- and the sale of the property by the Bank to the respondent No.4 for an amount of Rs.5,12,000/- is illegal. It is submitted that in the aforesaid set of facts, the impugned order is liable to be set aside. The learned Counsel relied on the judgment of the Hon'ble Supreme Court reported in III (2014) BC page 657 to substantiate his submission.

4. Shri Purohit, the learned Counsel for the respondent Bank supported the order of the Additional District Magistrate, Nagpur and submitted that in the circumstances of the case, the writ petition is liable to be dismissed. It is stated that the concerned property is not mortgaged with the Bank by delivery of title deeds, but was mortgaged by a registered mortgage deed. It is submitted that the petitioner had defaulted in repaying the loan amount and the symbolic possession of the property was secured by the Bank in the year 2009. It is stated that the action initiated by the bank under Section 13 of the Act was never challenged by the petitioner in proceedings under Section 17 of the Act. It is stated that the petitioner also did not challenge the notice of the respondent Bank dated 27-6-2011 calling upon the petitioner to pay the dues or else the property would be sold by private treaty. It is stated that the petitioner neither paid the dues nor did he challenge the action of the respondent Bank of selling the property to the respondent no.4 by private treaty on 22-8-2011. It is stated that the petitioner did not challenge the sale certificate issued in favour of the respondent No.4. It is stated that none of the proceedings initiated by the Bank were ever challenged by the petitioner. It is stated that when the Manager of the Bank changed, the

petitioner again approached the Bank with an offer to repay the dues. It is stated that the Bank manager was oblivious of the earlier transactions and hence, he permitted the petitioner to deposit a sum of Rs.2,10,000/-. It is stated that the dues payable by the petitioner were more than Rs.2,60,000/- in the year 2009 and the amount of Rs.2,10,000/- could not have been accepted towards full and final settlement in the year 2014.

It is stated that the loan account was not in existence at the relevant time when the petitioner paid the amount of Rs.2,10,000/- as per the so called compromise. It is stated that the return of the original title deeds in favour of the petitioner would have no effect in the circumstances of the case as the property is mortgaged to the Bank by a registered mortgage deed and the property stood transferred in favour of the respondent no.4 three years earlier. It is submitted that the loan account of the petitioner was closed in the year 2011 after the Bank received an amount of Rs.5,12,000/- from the respondent No.4. After adjusting the loan amount, the excess amount was sought to be returned to the petitioner. As soon as the petitioner did not accept the same, the same was deposited in sundry credit account. It is stated that the Bank has placed the amount of Rs.2,10,000/- in the sundry credit account and the petitioner can also receive the same. It is submitted that in the circumstances of the case, the judgment reported in III (2014) BC 657 and relied on by the Counsel for the petitioner cannot be made applicable. It is submitted that since the petitioner has not challenged the actions of the Bank of the year 2009-11 under Section 17 of the Act, the petitioner cannot challenge them by a writ petition filed under Section 226 of the Constitution of India. The learned Counsel for the respondent Bank sought for the dismissal of the writ petition.

5. Mrs. Joshi, the learned Assistant Government Pleader appearing on behalf of the Additional District Magistrate, Nagpur and Shri Khubalkar, the learned Counsel for the respondent No.4 supported the order of the Additional District Magistrate, Nagpur. It is submitted that the Additional District Magistrate, Nagpur considered the developments that took place in the year 2009-11 to allow the application filed by the Bank under Section 14 of the Act. It is submitted that in the circumstances of the case, the writ petition is liable to be dismissed.

6. On hearing the learned Counsel for the parties, it appears that no case is made out by the petitioner for interference with the order of the Additional District Magistrate, Nagpur in exercise of the writ jurisdiction. Since it was submitted on behalf of the petitioner when the matter was heard for admission that the matter was compromised between the Bank and the petitioner and the order under Section 14 of the Act could not have been passed, this Court had issued notice to the respondents and had also restrained the Bank from taking any action in furtherance of the impugned order on the bonafide belief that the matter stood compromised between the parties. At that time, it was not pointed out by the Counsel for the petitioner that the concerned property was already sold to the respondent No.4 by the respondent Bank on 22-8-2011 and the petitioner had not challenged either the proceedings under Section 13 of the Act or the sale certificate or the proceedings initiated for the sale either by public auction or by private treaty under Section 17 of the Act. The amount of more than Rs.2,60,000/- was due and payable by the petitioner when the notice under Section 13(2) was served on the petitioner on 17-9-2009. The petitioner did not challenge the action of the Bank under Section 13(2) and 13(4) of the Act. The petitioner also did not challenge the notice of auction and the further proceedings initiated by the Bank for selling the concerned property by private treaty. The notice of the Bank dated 27-6-2011 was never challenged. So also, the petitioner did not challenge the issuance of the sale certificate in favour of the respondent No.4 on 22-8-2011. We do not find any merit in the submission on behalf of the petitioner that the sale by private treaty to the respondent No.4 is unconscionable as the property was worth Rs.6,00,000/- was sold at Rs.5,12,000/-. Selling a property for Rs.5,12,000/-, if the property is worth Rs.6,00,000/- would not be unconscionable. The sale certificate was never challenged by the petitioner. Also, the Additional District Magistrate has no jurisdiction to consider these issues. We find force in the submission made on behalf of the Bank that since the petitioner had never challenged the action of the bank under Section 13 of the Act and the sale of the property to the respondent No.4 in the year 2011, the subsequent act on the part of the new Manager to accept a sum of Rs.2,10,000/- in the year 2014 and return the original documents of title deed to the petitioner is of no significance. The said act would be insignificant and needs to be ignored specially when it is the case of the Bank that

the Manager was oblivious of the transactions that took place in the year 2011 and the sale of the property to the respondent No.4. The new Manager could not have entered into a compromise when the loan account was closed and a sale certificate was issued in favour of the respondent No.4 in the year 1911. The property was mortgaged by a registered mortgaged deed and the return of the original document of title did not have the effect of nullifying the sale certificate that was issued in favour of the respondent No.4 on 22-8-2011. Also, the petitioner was liable to pay a sum of more than Rs.2,60,000/- on 17-9-2009 and the petitioner claims to have paid only a sum of Rs.2,10,000/- in the year 2014 towards the dues which the bank has placed in the sundry credit account. With the sale of the property in the year 2011, the petitioner cannot effectively challenge the order of the Additional District Magistrate, Nagpur under Section 14 of the Act without challenging the sale certificate. We do not find any force in the submission made on behalf of the petitioner that the provisions of Section 13(2) stood complied with on the payment of Rs.2,10,000/- by the petitioner in the year 2014 and hence, the Bank was required to issue a 30 days notice under Section 13(2) of the Act afresh if it wanted to proceed under the provisions of the Act again. The submission is ill founded and is liable to be rejected. In the circumstances of the case, the judgment reported in III (2014) BC Page 657 and relied on by the Counsel for the petitioner cannot be made applicable.

7. Since the order of the Additional District Magistrate, Nagpur is just and proper, we dismiss the writ petition with no order as to costs.

8. The prayer made by the Counsel for the petitioner for staying the order for a period of eight weeks is rejected. We have already observed herein above that at the time of issuance of notice to the respondent and staying the impugned order, it was not pointed out to this Court that the proceedings under Section 13 of the Act and the issuance of sale certificate in favour of the respondent No.4 in the year 2011 was never challenged by the petitioner when the petitioner sought to pay the amount of Rs.2,10,000/- to the Bank. Order accordingly.