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Court : Karnataka

Decided On : Nov-16-2016

Judge : Aravind Kumar

Appeal No. : Writ Petition Nos. 36128-129 of 2015 (Gm-Res)

Appellant : P. Manjunath Kumar and Another

Respondent : The Deputy Commissioner Mysuru District and Another

Advocate for Pet/Ap. : Sri. G. Chandrasekaraiah

Judgement :

(Prayer: These writ petitions are filed under articles 226 and 227 of the constitution of India praying to quash the order passed by the respondent no.1 dt.9.7.2015 vide Annexure-A and etc.)

1. Heard Sri G. Chandrasekaraiah learned counsel appearing for the petitioner and Sri S.K.M. Shetty, learned counsel appearing for the second respondent.
2. By the consent of learned Advocates, writ petition is taken up for final disposal.
3. Petitioner has assailed the order dated 09.07.2015 passed by the first respondent at Annexure-A whereunder the first respondent has been directed to

hand over the physical possession of the property bearing No.2203/75-B/2, D-1/B2 situated at I Main Road, Medara Block, Bamboo Bazaar, Devaraja Mohalla, Mysuru, within 30 days from the date of the order to the petitioner by exercising the power under Section 14(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the SARFAESI Act,)

4. Learned counsel appearing for the second respondent has raised a preliminary objection with regard to the maintainability of the present writ petition contending inter alia that impugned order is appealable under Section 17 of the SARFAESI Act and as such writ petition itself is not maintainable.

5. Per contra, learned counsel appearing for the petitioner would submit that since the order in question has been passed under Section 14 of the SARFAESI Act and sub-section (3) of Section 14 bars the petitioner from calling in question the order passed under Section 14 before any other forum, petitioner has no alternative remedy other than approaching this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. Hence, he submits that present writ petition is maintainable.

6. Having heard the learned counsel for the parties, this Court has noticed that issue regarding the alternative remedy available under Section 17 of the SARFAESI Act to the borrower is no more res integra in view of the law laid down by this Court in the case of M/S BALAJI FOOD PROCESSING INDUSTRY VS. BANK OF MAHARASHTRA AND OTHERS - IRR 2016 KAR 229 whereunder it has been held that an appeal is provided under Section 17 of the SARFAESI Act as against the action taken under Section 13(4) of the SARFAESI Act by providing an appeal before the Debts Recovery Tribunal (DRT) and the secured creditor on initiating the proceedings under Sections 13 and 14 of the SARFAESI Act would fall within the four corners of Section 17 of the SARFAESI Act. After noticing the judgment of the Apex Court in the cases of KANAIYALAL LALCHAND SACHDEV Vs. STATE OF MAHARASHTRA, - 2011(2) SCC 782 and STANDARD CHARTERED BANK Vs. V. NOBLE KUMAR -

(2013) 9 SCC 620, this Court has held to the following effect:

In that view, when a borrower or guarantor in respect of the loan or any other person other than the tenant claiming right in respect of the property is seeking to assail the action under Sections 13 and 14 of the SARFAESI Act, in view of the law laid down by the Hon ble Supreme Court, the appeal as provided under Section 17 of the SARFAESI Act is to be considered as an alternate and efficacious remedy provided under the SARFAESI Act. Hence, the DRT would have to entertain the appeal in such matters to consider the contentions on merits and take a decision one way or the other in accordance with law."

(Emphasis supplied)

7. In the instant case, the secured creditor - second respondent by exercising the power under Section 13(4) of the SARFAESI Act and in aid of the said relief has invoked the jurisdiction of the Deputy Commissioner i.e., first respondent for taking possession of the property in question from first petitioner. 1st respondent by exercising the power under Section 14 has passed the impugned order. In view of the law laid down by this Court in BALAJI's case, referred to supra and also taking into consideration that Parliament has brought about amendment to the SARFAESI Act by Act No.44/2016 whereunder sub-section (3) of Section 17 came to be substituted and under the said substituted provision, any person including borrower aggrieved by any of the measures referred to sub-section (4) of Section 13 taken by the secured creditor or his authorized officer, would be entitled to file an application before jurisdictional DRT, it has to be held that invoking of extraordinary jurisdiction of this court is impressible. It is further noticed that DRT would be empowered to examine the facts and circumstances of the case and also evaluate the evidence produced by the parties and arrive at a conclusion that any of the measures referred to sub-section (4) of Section 13 are either in accordance with the provisions of the Act or otherwise and pass appropriate orders. In that view of the matter also, it cannot be gainsaid by the petitioner that impugned order passed by the first respondent - Deputy Commissioner under Section 14 of the Act is not appealable under Section 17 of the Act,

8. Hence, this Court is of the considered view that the present writ petition is not maintainable since petitioner has an alternate and efficacious remedy available

under the Act. However, it is noticed that at the time of issuing notice of this writ petition to the respondents, this Court had passed an interim order to the following effect:

In the meanwhile, there shall be interim stay, subject to the condition that the petitioners shall deposit a sum of Rs. 10,00,000/- (Rupees ten lakhs) with the second respondent within six weeks from this day

9. Though the said amount of Rs. 10,00,000/- is not deposited within the time specified by this Court, fact remains that said amount of Rs. 10,00,000/- has been received by the second respondent. The property which is sought to be brought for sale being a residential building where petitioner is said to be residing this Court is of the considered view that by reserving liberty to the petitioner to approach the Debts Recovery Tribunal by filing an appeal under Section 17 of the SARFAESI Act and continuing the interim order till said application before the Tribunal is disposed of on merits it would meet the ends of justice and for receiving the interest of respondent-Bank if further condition is imposed on the petitioners that they shall deposit a further sum of Rs.7,50,000/- (Rupees Seven lakhs fifty thousand only) within a period of four weeks from today it would secure the ends of justice.

Accordingly, a direction is issued and writ petition stands disposed of in above terms. Ordered accordingly.

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