Gad Industries, and anr. Vs. M/S. Syndicate Bank. Rep.by Authorized Officer.

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Court : Karnataka

Decided On : Feb-04-2011

Judge : Mr.Justice B.S.Patil, J.

Acts : Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002 (SARFAESI Act) - Sections 17,14 ; Constitution of India - Articles 226, 227;

Appeal No. : W.P.No.4492-4493/2011 (GM-RES).

Appellant : Gad Industries, and anr.

Respondent : M/S. Syndicate Bank. Rep.by Authorized Officer.

Advocate for Def. : Sri K.Radhesh Prabhu, Adv.

Advocate for Pet/Ap. : Sri G.D. Aswathanarayana, Adv.

Judgement :

1. In this writ petition petitioners, are seeking the following reliefs:

(i)To issue a writ of certiorari to quash the order passed by the Deputy Commissioner, Mandya District, in Case No.MAG(5)SARFAESI/20/2010-11 dated 06.01.2011 vide Annexure-A filed by theRespondent-Bank against the petitioner herein;

(ii) To issue a writ of mandamus or direct the Respondent-Bank from invoking the jurisdiction under the SARFAESI Act and to proceed with the recovery subject to the findings of irregularities of the Bank and its employees with respect to the appropriation of the accounts by DRT in the recovery proceedings in OA 686/2010, and grant any other relief or relief in the facts and circumstances of the case, in the interest of justice.

2. It is not in dispute that aggrieved by the possession notice issued, the petitioners had preferred S.A.No.384/2010 under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. 2002 (hereinafter referred to as "the Act', for short). During the pendency of the said application, an interim order dated 28.04.2010 was passed staying the possession notice issued on 18.03.2010. Subsequently, the interim order was vacated on 26.07.2010. As a result, the bank proceeded with the measures contemplated under the provisions of the Act and moved the District Magistrate under Section 14 seeking police protection for taking over possession. The District Magistrate has passed the impugned order at Annexure-A on 06.01.2011 allowing the application and granting police protection to take over the possession of the two properties being industrial sites. In one of them, it is urged, there is an industrial unit. It is at this stage that the petitioner has approached this Court. However, in the meanwhile, as referred to above, the Debts Recovery Tribunal has passed the order on 24.01.2011 dismissing the application filed under Section 17 of the Act.

3. The main contention oi the learned Counsel lor the petitioners is that there was no occasion to the petitioners to challenge Annexure-A order before the Tribunal as it has been passed after the filing of the application under Section 17 of the Act. He further contends that since the OTS Scheme was in vogue and the respondent-Bank did not extend the benefit to the petitioners to settle the loan amount by availing the benefit under the OTS scheme, the cause of action seeking for issue of a writ of mandamus to the bank to consider settling the loan by taking note of the OTS scheme is distinct and separate from that of the cause of action that occurs to approach the DRT under Section 17 of the Act, and therefore, this writ petition is maintainable for the relief sought therein, tie further contends that

there are several disputed questions raised in the matter which cannot be effectively gone into in an application filed under Section 17 ot the Act or in an appeal filed against the order passed by 'he Debts Recovery Tribunal under Section 18 of the Act. before the Appellate Tribunal. Learned Counsel has also contended 'hat the bank was duty bound to act in a rational manner and in the instant case the action of the bank is totally iiTational and therefore permitting the bank to proceed to invoke coercive measures under Act, which provides for stringent and hard measures, is not permissible. He has also pointed out that since there is a original application pending where the bank itself is seeking recovery of the amount in O.A.No.686/2010. the bank shall not be permitted to proceed under the Act invoking stringent measures when there are disputed questions to be adjudicated between the parties.

4. Learned Counsel for the respondent-Bank has strongly refuted the contentions of the petitioners and has urged that Section 17(3) provides for consideration of the legitimate grievance of the petitioners with regard to the action of the bank. He contends that the provisions of the Act have been upheld and it is declared by the Apex Court in the case of M/S. TRANSCORE VS UNION OF INDIA & ANR. - ATR 2007 SC 712. that the bank is entitled to resort to the provisions of the Act even when recovery proceedings are pending.

5. Having considered the contentions of the learned Counsel for the parties and on careful perusal of the pleadings and the documents produced, it is clear that the petitioners had in fact approached the Debts Recovery Tribunal. Bangalore, under Section 17 of the Act challenging the possession notice issued. Petitioners have taken several contortions before the Debts Recovery Tribunal including the question regarding failure of the bank to settle the loan due from the petitioners by taking note of one time settlement scheme. The Tribunal has rejected these contentions of the petitioners. There is an appeal provided against the order passed by the Tribunal as per Section 18 of the Act. to the Appellate Tribunal. All the contentions that are urged against the action of the bank and that can be urged under the provisions of Section 17 of the Act, are available to be urged before the Appellate Tribunal. Ii cannot be said that the Appellate Tribunal will not be entitled to go into the question regarding the OTS scheme or the alleged

irrational approach of the bank in resorting to the measures including the so-called disputed facts which the petitioners are trying to highlight before this Court, hi fact, it is a serious handicap tor this Court to embark upon examination of such facts in exercise of the writ jurisdiction. The Apex Court in the case of UNITED BANK OF INDIA VS SATYAWATI TANDON & OTHERS - AIR 2010 SC 3413. has held that the proper course for die aggrieved party is to approach the Tribunals before whom the alternative remedy is provided and not to knock at the doors of the High Court under Articles 226 & 227.

6. Counsel for the respondent is right and justified in placing reliance on the judgment in the case of M/S. TRANSCORE VS UNION OF INDIA & ANR. - AIR 2007 SC 712. while contending that the pendency of the original application No.686/2010 is no bar to the bank to initiate proceedings under the Act. Therefore, 1 do not find any merit in the contentions of the petitioners. However, in this particular case, the fact remains that the bank has moved the District Magistrate and has obtained an order for police protection to take over possession of the properties. This Court at (he time of preliminary hearing has granted interim order directing the parties lo maintain status quo. if the interim order is not extended to enable the petitioners to approach the Appellate Tribunal and seek necessary relief, it will subject the petitioners to serious hardship and prejudice. Therefore, in my considered view, this is a fit case to extend the interim order directing the parties to maintain status quo with regard to the possession of the petition schedule property, for a period of four weeks.

7. Learned Counsel for the petitioners has placed reliance on the judgment of the Apex Court in the case of M/S. SARDAR ASSOCIATES & ORS VS. PUNJAB & SINDH BANK & ORS. - AIR 2010 SC 218. to contend (hat the guidelines issued by the Reserve Bank of India regarding One Time Settlement scheme can be enforced in terms of the provisions of 2002 Act. It is not necessary to examine this aspect of the matter as it is very clear that the petitioners have taken up a contention before the Tribunal that their plea for One Time Settlement has not been considered. It is open to them to urge this ground as well in the appeal to be filed.

8. Reserving liberty to file an appeal before the Debt Recovery Appellate Tribunal, this writ petition is dismissed. The interim order directing the parties to maintain status-quo is extended for a period of 4 weeks.