THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.7086 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The action of the first respondent-bank, in initiating proceedings under the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for brevity, 'the Act'), in taking possession of the property and in proposing to conduct an auction on 10.04.2015 of the secured asset, is questioned in this Writ Petition as being arbitrary and illegal.

The petitioner claims that his grand mother had purchased the house property on 06.07.1963 by way of a registered sale deed; she had executed a Will in favour of her daughter-in-law (petitioner's mother) on 29.01.1990 bequeathing all her properties in favour of the petitioner's mother; thereafter she had executed a codicil on 01.02.1991 restricting life interest to her daughter-in-law, and vesting the reminder in favour of the petitioner; the said Will was notarized on the same day; his mother had only a life interest over the property, and had no saleable right or interest thereupon; his grand mother died later; the sale deed executed by his mother in favour of the fourth respondent is a sham, and a created document; and his mother had no right to transfer the same.

The fourth respondent obtained a loan from the first respondent-bank in the year 2005, and mortgaged the secured asset by deposit of title deeds. A notice under Section 13 (2) of the Act was issued on 30.12.2009. The petitioner claims to have submitted his objections thereto under Section 13 (3A) of the Act on 04.03.2010. A notice under Section 13 (4) of the Act was issued on 29.03.2010 proposing to take possession of the subject property on 10.04.2010. The petitioner approached the Debt Recovery Tribunal by filing S.A.No.92 of 2010 which was dismissed by order dated 02.07.2013, leaving it open to him to approach the Civil Court for determination of whether or not he had acquired any right, title or interest over the property.

The petitioner filed O.S.No.222/2013 in the Court of the I Additional Senior Civil Judge, Machilipatnam against respondents 1 to 4 herein on 23.07.2013 seeking a declaration that he had a vested remainder, and an absolute right and interest over the property. As the first respondent-bank did not appear, they were set *ex parte* on 12.08.2013. Thereafter an application in I.A.No.161 of 2014 was filed by the first respondent-bank to set aside the *ex parte* order. The first respondent also appears to have filed a mortgage suit in O.S.No.443 of 2013, on the file of the Principal Senior Civil Judge, Machilipatnam, against the fourth respondent and his wife for recovery of Rs.7,35,426/-.

The first respondent-bank filed an application under Section 14 of the Act before the second respondent, on 26.08.2014, requesting his assistance in taking over possession of the subject property. The second respondent, by order dated 29.11.2014, directed the third respondent to take possession, and hand it over to the first respondent-bank. The second respondent took possession of the subject property, after which an auction notice dated 28.02.2015 was published in the newspapers on 04.03.2015 proposing to auction the subject property on 10.04.2015.

Sri Narasimha Rao Gudiseva, learned counsel for the petitioner, would contend that, as the petitioner has filed a suit seeking declaration of his right and title over the subject property, the bank is precluded from proceeding to put the secured asset to sale during pendency of proceedings in the Civil Suit, more so as they have also filed a suit against the fourth respondent for recovery of the amount due; even otherwise the respondents have violated Rule 8 (6) (f) of the Security Interest (Enforcement) Rules, 2002 (for brevity, 'the Rules') in failing to mention, in the notice, the fact that O.S.No.222/2013 had been filed by the petitioner herein; and, consequently, the auction proceedings necessitates being set aside.

The petitioner's self-serving claim of being the owner of the property notwithstanding, the fact remains that no order has, as yet, been passed by the Civil Court in O.S.No.222 of 2013 filed by him seeking declaration of his right and title over the subject property. In the absence of any decree being passed by the Civil Court in his favour, the petitioner cannot, at this stage, be heard to contend that he is the owner of the property. Pursuant to a registered sale deed executed in his favour, by none other than the petitioner’s mother, the fourth respondent had mortgaged the property with the first respondent-bank, and had obtained a loan. The bank is entitled to proceed to put the secured asset to sale in accordance with the provisions of the Act. Other than Rule 4 (1) and Rule 8 (6) (f) of the Rules, no other statutory provision, either plenary or subordinate, has even been said to have been violated by the first respondent-bank in bringing the secured asset to sale.

Rule 4 (1) of the Rules is attracted only where the secured asset, possession of which is sought to be taken by the secured creditor, is movable property. It is not in dispute that the secured asset, in the present case, is immovable property and not a movable asset. Rule 4 (1) of the Rules has, therefore, no application. Rule 8 (6) (f) of the Rules requires the authorized officer to also state in the public notice any other thing which he considers material for a purchaser to know in order to judge the nature and value of the movable secured assets. As noted hereinabove, the secured asset is immovable property and not a movable asset. Hence Rule 8 (6) (f) has no application.

Even otherwise the petitioner’s contention, in short, is that Rule 8 (6) (f) of the Rules required the bank to refer to O.S.No.222 of 2013 in the public notice. As far as the first respondent-bank is concerned, the fourth respondent had purchased the subject property from the petitioner’s mother by way of a registered sale deed, and had mortgaged the said property in favour of the bank. In the absence of any judgment or decree being passed by the Civil Court in O.S.No.222 of 2013, the first respondent-bank cannot be faulted in not recognizing the petitioner's right and title over the subject property. Rule 8 (6) (f) requires the authorized officer to state other things which he considers material. The authorized officer cannot be faulted in not considering the fact of the petitioner having filed O.S.No.222 of 2013 material for its reference in the public auction-cum-sale notice.

Viewed from any angle, the action of the first respondent-bank, in putting the subject property to auction in terms of the provisions of the Act, does not suffer from any illegality warranting interference in proceedings under Article 226 of the Constitution of India. The Writ Petition fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

18th March, 2015.
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