THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.9480 OF 2019

O R D E R
(*Per Sri Justice Sanjay Kumar)*

The petitioners assail the order dated 15.12.2018 passed by the learned Chief Metropolitan Magistrate, Nampally, Hyderabad, in Crl.M.P.No.8052 of 2018, in exercise of power under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the Act of 2002'). The first petitioner is a registered partnership firm and the second and third petitioners are its partners. The second petitioner is the husband of the third petitioner. The first petitioner firm availed a loan of Rs.1.00 Crore from HDB Financial Services, Hyderabad, the first respondent, and offered the house property situated at H.No.8-2-686/B/D, Plot No.5, Survey No.129/31, Road No.12, Banjara Hills, Hyderabad, belonging to the third petitioner, as security therefor by creating an equitable mortgage through deposit of title deeds.

Default having been committed in repayment of the loan, the first respondent initiated arbitration proceedings which culminated in the Award dated 15.02.2012, holding that the first petitioner firm was liable to pay a sum of Rs.1,01,71,494.56 ps. to the first respondent. Arbitration Petition No.177 of 2013 was filed by the petitioners under Section 34 of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), to set aside the said Award, but the same was dismissed by a learned Judge of the Bombay High Court on 20.01.2014. Aggrieved thereby, the petitioners preferred Appeal No.322 of 2014. The said appeal was however disposed of by order dated 13.07.2015, recording the compromise between the parties to the effect that the petitioners herein would pay to the first respondent a sum of Rs.1,30,00,000/- in 13 equal monthly installments of Rs.10,00,000/- each, commencing from August, 2015. The order further recorded that in the event of two defaults being committed in such repayment, the appeal would stand dismissed and the order dated 20.01.2014 passed by the learned Judge in Arbitration Petition No.177 of 2013 would stand revived. Admittedly, the petitioners failed to pay the installments as agreed upon.

While matters stood thus, the Government of India issued Notification F.No.C/1/2014-Recovery on 05.08.2016 under the Act of 2002 notifying certain companies as 'financial institutions' within the meaning of Section 2(1)(m)(iv) of the Act of 2002 and the first respondent was one amongst them. Thereupon, the first respondent issued demand notice dated 10.11.2016 under Section 13(2) of the Act of 2002 calling upon the petitioners to pay a sum of Rs.2,43,55,483/- towards the outstanding dues. Possession notice dated 01.03.2017 was thereafter issued by it under Section 13(4) of the Act of 2002. The first respondent again issued demand notice dated 11.12.2017 under Section 13(2) of the Act of 2002 quantifying the amount payable by the petitioners at Rs.2,08,40,697/-. The petitioners submitted their reply dated 08.02.2018, raising certain issues, but the first respondent issued possession notice dated 16.02.2018 under Section 13(4) of the Act of 2002 without complying with Section 13(3A) thereof. Aggrieved thereby, the third petitioner herein filed W.P.No.8502 of 2018 before the High Court for the State of Telangana and the State of Andhra Pradesh. The said writ petition was allowed on 10.08.2018, holding that the possession notice dated 16.02.2018 was invalid for non-compliance with the statutory mandate of Section 13(3A) of the Act of 2002.

In the meanwhile, the first respondent filed an application under Section 14 of the Act of 2002 before the learned Chief Metropolitan

Magistrate, Hyderabad, seeking delivery of possession of the secured asset, viz., the house property belonging to the third petitioner. This application was numbered as Crl.M.P.No.4991 of 2018 and was ordered on 08.06.2018. However, having come to know of the order passed in W.P.No.8502 of 2018, the learned Chief Metropolitan Magistrate, Hyderabad, terminated the proceedings in Crl.M.P.No.4991 of 2018, *vide* order dated 28.09.2018.

At that stage, the first respondent filed an execution petition under Section 36 of the Act of 1996 in C.E.P.No.7 of 2018 on the file of the learned Commercial Court Judge-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad, seeking to enforce the Award dated 15.02.2012. By order dated 26.10.2018, the executing Court allowed the EP and directed attachment of the EP schedule property, viz., the house property of the third petitioner.

The first respondent again approached the learned Chief Metropolitan Magistrate, Hyderabad, by way of Crl.M.P.No.8052 of 2018 filed under Section 14 of the Act of 2002. This application was ordered on 15.12.2018 and Sri T.Srinath Babu, Advocate, the second respondent, was appointed as an Advocate Commissioner to execute the warrant of delivery. This warrant was to be executed initially by 15.02.2019 but was thereafter extended up to 26.04.2019. It was ultimately executed on 16.04.2019 and possession of the subject house property was taken over by the first respondent.

It is the claim of the petitioners that after passing of the order in W.P.No.8502 of 2018, the first respondent did not serve upon them any order passed under Section 13(3A) of the Act of 2002. They allege that the first respondent again took recourse to measures under Section 13(4) of the Act of 2002 by publishing the possession notice dated 29.10.2018 in newspapers on 01.11.2018. It is their further case that it was not open to the first respondent to proceed against them under the Act of 1996 and the

Act of 2002 simultaneously. They point out that, having secured attachment of the subject house property in the execution proceedings under the Act of 1996, the first respondent again initiated measures under the Act of 2002 and assert that the same is invalid in law. According to them, the first respondent is oscillating between enforcement of the arbitration award and invocation of the provisions of the Act of 2002 and such a course is impermissible. As the first respondent already secured attachment of the subject property in the execution proceedings, they would contend that the first respondent has to follow the procedure prescribed under Order 21 CPC and bring the property to sale and in such circumstances, the learned Chief Metropolitan Magistrate, Hyderabad, could not have exercised power under Section 14 of the Act of 2002. It is on these grounds that they challenge the order passed by the Chief Metropolitan Magistrate, Hyderabad.

Sri P.S.Rajasekhar, learned counsel, entered appearance for the first respondent and filed a counter. Therein, the authorized signatory of the first respondent stated as follows: The first respondent is a company registered under the Companies Act, 1956, engaged in the business of providing non-banking financial services. It was notified as a financial institution within the meaning of Section 2(1)(m)(iv) of the Act of 2002 on 05.08.2016. The petitioners availed a loan of Rs.1.00 Crore by creation of an equitable mortgage by deposit of title deeds and the same was registered, *vide* Document No.2349 of 2011 dated 27.02.2011. The property mortgaged was the subject house property belonging to the third petitioner. Having repaid 10 installments out of 60 equated monthly installments, the petitioners fell in arrears from 14.06.2012 onwards. He admitted the initiation of arbitration proceedings and thereafter, the invocation of the provisions of the Act of 2002, when the first respondent became entitled to do so.

The authorized signatory then stated that upon receipt of the objections of the petitioners under their letter dated 08.02.2018, the first respondent sent its reply on 23.02.2018. He therefore asserted that it was not open to the petitioners to contend that the objections raised by them, *vide* their reply dated 08.02.2018 in response to the demand notice under Section 13(2) of the Act of 2002, had not been considered. He pointed out that this aspect was also brought out in para 11 of the writ affidavit filed by the third petitioner herself in support of W.P.No.8502 of 2018.

The authorized signatory conceded that after securing attachment of the subject house property in the execution proceedings relating to the Award, the first respondent filed another application under Section 14 of the Act of 2002 resulting in the appointment of the second respondent-Advocate Commissioner and the taking of the physical possession of the subject house property on 16.04.2019 under the cover of a panchanama. He asserted that the first respondent was in possession of the subject property since then. With regard to the other contention urged by the petitioners, he stated that the Supreme Court had categorically held that there was no bar to taking recourse to remedies under different enactments simultaneously. He accordingly prayed for dismissal of the writ petition.

Sri Vedula Srinivas, learned counsel for the petitioners, would spiritedly contend that it is not open to the first respondent to vacillate between the two enactments, viz., the Act of 1996 and the Act of 2002, and the later proceedings under the Act of 2002 would therefore have to be invalidated on that ground.

Per contra, Sri P.S.Rajasekhar, learned counsel for the first respondent, would rely upon case law in support of his contention that such a course is permissible in law.

The contention of the petitioners that recourse was taken by the first respondent to measures under Section 13(4) without complying with Section 13(3A) of the Act of 2002, yet again, is without merit. Perusal of the application filed by the first respondent before the learned Chief Metropolitan Magistrate, Hyderabad, demonstrates that specific reference was made to the reply dated 23.02.2018, whereby the first respondent dealt with the objections raised by the petitioners and rejected them. Further, as rightly pointed out, this aspect was also referred to by the third petitioner herself in W.P.No.8502 of 2018. This aspect of the matter therefore stands settled.

As regards the other contention urged by Sri Vedula Srinivas, learned counsel, in relation to the pursuit of parallel remedies simultaneously, it may be noted that, in M.D.FROZEN FOODS EXPORTS PRIVATE LIMITED V/s. HERO FINCORP LIMITED[1], the Supreme Court specifically dealt with the issue as to whether arbitration proceedings could be carried on simultaneously with proceedings under the Act of 2002. The contention urged before the Supreme Court was that once arbitration proceedings were set in motion, it must be construed that the secured creditor had elected its remedy by seeking recovery through the arbitration process and therefore could not subsequently and simultaneously initiate proceedings under the Act of 2002. The Supreme Court however held that proceedings under the Act of 2002 were in the nature of enforcement proceedings while arbitration was an adjudicatory process and that proceedings under the Act of 2002 and arbitration proceedings could thus go hand in hand.

Again, in INDIABULLS HOUSING FINANCE LIMITED V/s. DECCAN CHRONICLE HOLDINGS LIMITED[2], the Supreme Court had occasion to consider this issue. The High Court had taken the view that once

[1] (2017) 16 SCC 741
[2] (2018) 14 SCC 783

the provisions of the Act of 1996 were invoked, it was not open to the secured creditor, the appellant before the Supreme Court, to take recourse to the provisions of the Act of 2002. Referring to the decision in M.D.FROZEN FOODS EXPORTS PRIVATE LIMITED[1] at length, the Supreme Court affirmed the view taken therein.

In the light of the authoritative edict of the Supreme Court to the effect that proceedings under the Act of 1996 and the Act of 2002 can go on simultaneously and one would not be antithetical to the other, this Court finds no merit in the contention of the petitioners that the first respondent cannot simultaneously proceed against them under both these enactments. The order secured and acted upon by the first respondent under Section 14 of the Act of 2002 therefore does not suffer from any illegality on this count. As no other grounds have been urged in relation to the said order, this Court finds no reason to interfere in the matter. The writ petition is devoid of merit and is accordingly dismissed.

Pending miscellaneous petitions shall also stand dismissed. In the circumstances, there shall be no order as to costs.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

4th JULY, 2019

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