HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No. 32350 of 2017

ORDER: *(per V. Ramasubramanian, J)*

1) Contending that the Sub-Registrar, Malkajgiri, who is the second respondent herein, is refusing to register a sale certificate issued by the Authorised Officer of the bank pursuant to an auction sale conducted in terms of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitization Act"), the Bank of India has come up with the above Writ Petition.

2) Heard Ms.V.Dyumani, learned counsel for the petitioner, the Government Pleader for Revenue (TG) for respondents 1 and 2 and Mr.K.Sairam Murthy, learned counsel for the 6th respondent-Kotak Mahindra Bank Limited. Respondents 4 and 5 are the owners of the property around which the present dispute lies. They have been served with notice but they have not chosen to appear.

3) It appears that the petitioner bank advanced loans to a company by name Sumohan Engineers Private Limited, way back in November, 2013. Respondents 4 and 5 herein, who were third parties, offered their residential house in Flat No.315 in Sy.No.361/1, 2 and 368/1 of Jawahar Nagar Co-operative Housing Society, Moulali, as security for the due repayment of the loan to the petitioner bank. It appears that the documents of title were

deposited on 27.11.2013 and a Memorandum of deposit of title deeds was also executed evidencing the deposit. The Memorandum of deposit of title deeds, was registered on 03.05.2014 in the office of the 2nd respondent-Sub-Registrar.

4) Since the borrower company committed default, the petitioner-bank initiated proceedings under the Securitization Act, 2002 and brought the property to sale. A sale certificate was issued in favour of the highest bidder on 29.06.2017. According to the petitioner-bank, the 2nd respondent-Sub-Registrar refused to allow the registration of the sale deed on the ground that there was already an order of injunction operating against the alienation of the property. The order of injunction is said to have been passed in an arbitration proceedings initiated at the instance of the 6th respondent-Kotak Mahindra Bank, as against respondents 4 and 5 and the borrower. The background relating to this injunction order is as follows.

5) According to the counter affidavit filed by the 6th respondent, the same borrower company availed credit facility from Kotak Mahindra Bank under an agreement dated 27.04.2014. The agreement also contained a clause for arbitration. Since the borrower committed default and the respondents 4 and 5 in the writ petition were the guarantors, an arbitration was initiated in Arbitration No.493 of 2015. The sole arbitrator is said to have passed an interim order on 12.12.2016 in IA No.36 of 2015 restraining the guarantors, who are respondents 4 and 5 herein,

from alienating the property. This interim order passed by the sole arbitrator was brought to the notice of the Sub-Registrar on 02.01.2017.

6) Therefore, it is claimed by Mr.K.Sairam Murthy, learned counsel for the 6th respondent-bank that the 6th respondent also has a claim over the property.

7) But apart from an order of injunction secured from the arbitrator against the principal debtor and the guarantors, on 12.12.2016, the 6th respondent bank did not secure either an order of attachment or a charge over the property. The very agreement entered into between the 6th respondent and the borrower company was only on 27.04.2014, which was subsequent to the creation of the mortgage by the respondents 4 and 5 infavour of the petitioner bank on 27.11.2013. Infact, the creation of the mortgage on 27.11.2013 by the deposit of title deeds, was subsequently confirmed by a Memo dated 03.05.2014 which was also registered.

8) Therefore, the very loan transaction between the 6th respondent and the borrower-company was subsequent to the creation of the mortgage in favour of the petitioner. As on date the 6th respondent does not have either a charge or an order of attachment. But mere injunction restraining alienation, will not enable the 6th respondent to claim a right over the property.

9) Mr.K.Sairam Murthy, learned counsel for the 6th respondent contended that there is no proof to show that the petitioner

approached the Sub-Registrar and that in any case even if the Sub-Registrar refuses to accept a document, the petitioner has a statutory remedy available under Section 72 of the Registration Act, 1908.

10) But the said contention cannot be accepted in cases of this nature. If we accept such a contention and direct the petitioner to file an appeal under Section 72 of the Registration Act, 1908, we would be relegating the authority under the Registration Act, to the task adjudicating the priorities between the petitioner and 6th respondent, which we shall not do.

11) Therefore, the Writ Petition is allowed and a direction is issued to the 2nd respondent to proceed with the registration of the sale deed. It is always open to the 6th respondent-bank to work out their remedies pursuant to the arbitration award as against the borrower and guarantors.

As a sequel, miscellaneous petitions, if any, pending in the Writ Petition stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

March 26, 2019
gkv