

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION No.1866 OF 2019

AND

C.R.P. Nos.6337, 6351, 6362 AND 6399 OF 2018

COMMON ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

The petitioners, who claim to be third parties in possession and enjoyment of the property that is claimed to be a secured asset by the Cooperative Bank, have come up with the above writ petition challenging an order passed by the learned Chief Metropolitan Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

2. It appears that the petitioners have a dispute with their original vendor, who is the 3rd respondent in the writ petition, which dispute is pending adjudication in a civil suit in O.S. No.9 of 2003 on the file of the learned X Additional Chief Judge, City Civil Court, Hyderabad. In the said suit, the petitioners in the writ petition had taken out four (4) interlocutory applications, all of which got dismissed forcing the petitioners to come up with the four (4) civil revision petitions on hand.

3. In the light of the nature of disposal that we proposed to make, we directed the civil revision petitions also to be tagged along with this writ petition and hence they are before us.

4. Heard Mr. V. Hari Haran, learned counsel for the petitioners in the writ petition and the civil revision petitions, Mr. Vedula Srinivas, learned counsel appearing for the bank, and Mr. I. Gopal Reddy, learned counsel for the 3rd respondent in the writ petition and for respondent No.1 in the revision petitions.

5. Notice to the other respondents was ordered in the writ petition and the service is complete. But, no one appears for them. In any case, the order that we propose to pass may not be prejudicial to the unofficial respondents.

6. It appears from the plaint in O.S. No.9 of 2003 filed by the petitioners against the 3rd respondent in the writ petition that there are serious disputes with respect to right of the petitioners to specific performance of an agreement of sale. The bank has also been impleaded as 2nd defendant in the suit.

7. The date of the alleged agreement of sale between the 3rd respondent in the writ petition and the petitioners is said to be 28.02.1998 and the date of creation of mortgage is said to be 30.07.1998. Therefore, lot of factual details is involved.

8. While the bank invoked arbitration under the Cooperative Societies Act in A.R.C. No.21 of 2000, and also obtained an order of attachment, the Cooperative Tribunal seems to have set aside the attachment, but the same was reversed in a writ petition by this Court.

9. Apart from the suit that is now pending, there is also an appeal in S.A. No.1404 of 2017 filed by the petitioners herein before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. The Debts Recovery Tribunal is stated to have granted a stay.

10. But, on the ground that the stay has already expired, the bank went before the learned Chief Metropolitan Magistrate and obtained an order for possession under Section 14 of the SARFAESI Act on 25.01.2019, which has triggered the filing of the above writ petition.

11. In the light of the complicated facts, which are pending adjudication, both before the civil Court and before the Tribunal, we are of the view that the only way to put an end to the litigation is to allow the suit and the S.A. to be disposed of within a timeframe and to put on hold the attempt of the bank to take possession in the meantime. The civil suit is now sixteen (16) years old. The four (4) applications, out of which the four (4) civil revision petitions arise, pray for (1) reopening of the evidence, (2) recalling of the witness (3) marking of certain documents, and (4) summoning of certain documents.

12. In order to put an end to the disputes at the interlocutory level, we went through the list of documents that the petitioners wanted either to summon or to produce. The list contains about eight (8) documents. Out of them, some relate to the documents which the petitioners used to confront the witnesses on the side of the defendants. But, the witnesses seem to have denied the documents.

However, the petitioners have already made a point that there are contradictions and hence the filing of the same as documents on the side of the petitioners is only procedural.

13. There are some other documents in respect of which, the petitioners can always claim adverse inference, if they have served notices on the respondents to produce and if the respondents are said to be in possession. Therefore, we do not think that seven (7) out of eight (8) documents that the petitioners want to summon or mark, need to protract the proceedings. But, one of the documents is certified copy of the judgment passed by this Court in a batch of writ appeals. We think that without recalling the witness, the same can be marked as an exhibit on the side of the petitioners. This will enable the trial Court to take the suit itself for arguments, without wasting further time on interlocutory applications.

14. Therefore, the Writ Petition and the Civil Revision Petitions are disposed of to the following effect:

- (1) The Civil Revision Petitions are dismissed with the only condition that the certified copy of the judgment in W.A. Nos.1426, 1427 and 1428 of 2013 shall be allowed to be straight away marked as an exhibit, without calling anyone to the witness box, on the side of the petitioners.
- (2) The trial Court shall dispose of the suit in O.S. No.9 of 2003 within a period of four (4) months from the date of receipt of a copy of this order.

- (3) The Tribunal shall also dispose of S.A. No.1404 of 2017 within a period of three (3) months from the date of receipt of a copy of this order.
- (4) Till the disposal of O.S. No.9 of 2003 and S.A. No.1404 of 2017, the bank shall not take actual physical possession of the property in question. In case, the petitioners are guilty of protracting the proceedings, it is always open to the bank to come up with necessary applications for modification.

As a sequel thereto, Miscellaneous Petitions, if any pending, in the writ petition and the civil revision petitions stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

T. AMARNATH GOUD, J

April 16, 2019.

PV