

Vijay Kumar Gupta vs Development Credit Bank Ltd. And Ors on 16 January, 2019

Author: Vibhu Bakhru

Bench: Vibhu Bakhru

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 353/2019 and CM Nos. 1671/2019 & 1672/2019

VIJAY KUMAR GUPTA

..... Petitioner

Through: Mr Pardeep Gupta, Mr Parinav Gupta,
Ms Mansi Gupta, Mr Wazir Singh
Malik and Mr Moazzam Ali,
Advocates.

versus

DEVELOPMENT CREDIT BANK LTD.

AND ORS.

..... Respondents

Through: Mr P. B. A. Srinivasan and Mr Parth
Tandon, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 16.01.2019

1. The petitioner has filed the present petition impugning an order dated 15.12.2018 (hereafter "the impugned order") passed by the learned CMM, South-East District, Saket under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereafter „SARFAESI Act "). By the impugned order, the learned CMM has appointed a receiver to take the physical possession of the property described as "Stilt Parking Ground Floor, Second Floor with Roof Rights of property No. L-8, Situated at Kalka Ji Residential Scheme, Delhi-110019" (hereafter „the property ").

2. The petitioner claims to be engaged in the business of promoting development and construction of real state. It is stated that he had entered into a property development agreement dated 21.02.2013 with the owner (one Mrs Verma) of the property (L-8, Kalka Ji, New Delhi) land measuring 300 sq. yards.

3. The petitioner states that Mrs Verma and her husband had availed of loan from respondent no.1 (hereafter „DCB Bank ") against security of the property.

4. The petitioner claims that in terms of the said property development agreement, he has constructed the entire property. In terms of the said property development agreement, the second floor of the dwelling unit alongwith one Car Park and proportionate undivided share in the plot of land was allocated to the petitioner. The petitioner on its part was required to reconstruct the entire building consisting of the basement and four floor and in addition also pay a sum of 1,15,00,000/- to the owners. The petitioner had constructed the building and also paid the agreed amount to the owner (Mrs Verma) of the property. Thereafter, the owner had sold the third floor, first floor and the basement of the property in question to third parties. However, she had failed to transfer the second floor of the property to the petitioner.

5. It is the petitioner's case that DCB Bank and the owner had colluded for defrauding the petitioner, inasmuch, as DCB Bank had permitted the owner to sell the built up property falling to her share without depositing the consideration received from the DCB Bank.

6. In view of the above, the petitioner has filed the suit (Civil Suit No. 3103/2015) in this Court, inter alia, praying for a decree of specific performance against Mrs Verma (arrayed as defendant no.1 in the suit) to execute the sale deed in favour of the petitioner (petitioner therein). The petitioner has further prayed for a decree restraining the defendants therein (which includes DCB Bank) from displacing the petitioner from the second floor or other portions of the property as mentioned in the plaint.

7. During the pendency of the aforesaid suit, DCB Bank has assigned its rights under the loan agreement along with security interest to respondent no.2 (hereafter „ARCIL“) which has instituted proceedings under the SARFAESI Act for enforcement of the security interest.

8. The learned counsel appearing for the petitioner contends that the said proceedings are in violation of the order dated 29.10.2015 passed by this Court in the aforementioned suit wherein this Court had, inter alia, directed that "Till the next date no coercive steps be taken with respect to the second floor of the suit property i.e. L-8, Kalkaji, New Delhi."

9. He earnestly contended that since, the petitioner has alleged fraud, this Court would have jurisdiction to restrain ARCIL from taking any coercive steps. He also referred to the decision of the Supreme Court in *Nitin Gunwant Shah v. Indian Bank and Ors.*: (2012) 8 SCC 30 and *J.P. Builders and Another v. A. Ramadas Rao and Another*: (2011) 1 SCC 429 in support of its contention.

10. The learned counsel appearing for the respondents has countered the aforesaid submission. He submitted that the proceedings under the SARFAESI Act are not in violation of the order dated 29.10.2015 as the said order was operative only till the next date of hearing and had not been extended. He further relied upon an order dated 30.11.2016 passed by this Court in the aforementioned suit and two other connected suits.

11. The contention that the action initiated by ARCIL violates the orders dated 29.10.2015 passed in CS(OS) 3103/2015 is unmerited. In the subsequent orders, the Court had expressed its prima facie view that the plaintiff (the petitioner herein) cannot injunct the bank from taking proceedings in

accordance with law for enforcement of its rights in the property. It had further clarified that pendency of the suits would not come in the way of DCB Bank exercising its right in law. The relevant extract of the order dated 30.11.2016 passed by the Court in CS(OS) 3103/2015; CS(OS) 21/2016 and CS(OS) 73/2016 is set out below:-

"5. I have inquired from the counsel for DCB Bank Limited whether it has initiated any step for recovery of its dues which are claimed to be secured by mortgage of the entire property. I am Prima facie of the view that the plaintiff in CS(OS) No.21/2016 cannot so injunct the bank from taking proceedings in accordance with law for enforcement of its rights in the property.

6. Making it clear that the pendency of the suits will not come in the way of DCB Bank Limited exercising its rights in law, the parties to appear before the Mediation Cell of this Court on 12th December, 2016.

7. List for report before this court on 13th February, 2017.

8. It is made clear that if no settlement is arrived at by then, the suits shall be proceeded with on the next date of hearing.

9. Interim orders wherever in force to continue."

12. The contention that interim orders would continue against DCB Bank is unpersuasive, since it was expressly clarified that the pendency of the suits would not come in the way of DCB Bank, in exercising its rights.

13. The decisions of the Supreme Court in Nitin Gunwant Shah (supra) and J.P. Builders and Another (supra) are of little assistance to the petitioner. The decision in Nitin Gunwant Shah (supra) was rendered in the context of Recovery of Debts due to Banks and Financial Institutions Act, 1993 and is not an authority in the proposition that the banks could be interdicted from enforcing their security interest under the SARFAESI Act. Similarly, the decision of the Supreme Court in J.P. Builders and Another. (supra) is also rendered in the context of the Recovery of Debts due to Banks and Financial Institution Act, 1993, and the Court had clarified that provisions of the said Act do not bar the Civil Court from granting relief for Marshalling under Section 56 of the Transfer of Property Act.

14. SARFAESI Act is a Special Act. The Supreme Court has held in number of decision that it is a complete code for providing an expeditious recovery of dues by enforcement of security interest. It is also well settled that the Courts would not ordinarily interfere with the said proceedings under Article 226 of the Constitution of India. (See: United Bank of India v. Satyawati Tondon and Ors.: (2010) 8 SCC 110 and Authorized Officer, State Bank of Travancore and Anr. v. Mathew K.C.: Civil Appeal No. 1281/2018).

15. At this stage, it is also relevant to refer to Section 34 of the SARFAESI Act, which reads as under:-

"34. Civil court not to have jurisdiction.--No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."

16. In terms of the aforesaid provision, no injunction can be granted by any Court or other authority in respect of an action to be taken in pursuance of the powers conferred under the SARFAESI Act. Thus, ARCIL cannot be interdicted from pursuing its remedies under the SARFAESI Act.

17. The petition is, accordingly, dismissed. The pending applications are also disposed of.

18. It is clarified that this order would not come in the way of the petitioner pursuing any of its remedies including remedies against DCB Bank. All rights and contentions of the parties are reserved.

VIBHU BAKHRU, J JANUARY 16, 2019 RK