

(2016) 10 AHC CK 0088

ALLAHABAD HIGH COURT

Case No: Civil Misc. Writ Petition No. 30899 of 2016.

Kotak Mahindra Bank Ltd. -
Petitioner @HASH State of U.P.
And 4 Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 21, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 14(1), Section 17, Section 18

Citation: (2016) 11 ADJ 82 : (2017) 170 AIC 951 : (2017) 2 AILLJ 20 : (2016) 6 AllWC 6450 : (2017) 120 ALR 17 : (2017) 2 BC 711 : (2017) 1 CivilJ 18 : (2017) 134 RD 449 : (2017) 1 RJ 222

Hon'ble Judges: Arun Tandon and Naheed Ara Moonis, JJ.

Bench: Division Bench

Advocate: Om Prakash Misra and Sudeep Harkauli, Advocates, for the Petitioner; C.S.C., Kartikey Saran and Raj Kumar Tiwari, Advocates, for the Respondents

Final Decision: Allowed

Judgement

1. Heard Shri Sudeep Harkauli and Shri O.P.Misra, Advocates on behalf of the petitioner, respondents no. 1 and 2 are represented by the learned Standing Counsel and respondents no. 3, 4, and 5 are represented by Shri Shashi Nandan, Senior Advocate assisted by Shri Kartikeya Saran, Advocate.

2. This writ petition has been filed by Kotak Mahendra Bank Ltd. Against the order of the District Magistrate, Allahabad passed in Case No. 233 of 2012-13-16 in alleged exercise of powers under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred to as the Act, 2002).

3. The facts relevant for deciding the writ petition lie in a very narrow compass :-

Respondent no. 3 (Shalini Asha Chopra) is the wife of respondent no. 4 (Harinder Singh Chopra) while respondent no. 5 (M/s. Chopra Fabricators & Manufacturers Pvt. Ltd) is the Company of which the respondent no. 4 is the Managing Director and respondent no. 3 is one of the Director.

4. It is not in dispute that the Company had taken loan from the State Bank of India and had committed default in re-payment. For non-payment of the loan amount proceedings were initiated by the State Bank of India before the Debt Recovery Tribunal, Allahabad by means of Suit No. 539 of 1993 which on establishment of the Debt Recovery Tribunal at Allahabad was transferred for adjudication under the provisions of the Debt Recovery Tribunal Act, 1993 and was registered as T.A. No. 112 of 2000 (State Bank of India v. Chopra Fabricators & Manufacturers Pvt. Ltd. The aforesaid case was decreed in favour of the bank vide order dated 12.05.2006. Appeal filed by the borrowers against the said order of the Debt Recovery Tribunal was also dismissed.

5. In order to keep the record straight it may be noticed that the State Bank of India assigned the aforesaid financial assistance of Chopra Fabricators through a deed of assignment on 16.01.2006 in favour of Kotak Mahindra Bank Ltd. The property subject matter of dispute was equitably mortgaged as security for the loan, therefore, with the reference to the order passed on 12.05.2006, Kotak Mahindra Bank Ltd. initiated recovery proceedings under the Act, 2002.

6. According to the bank the borrowers in the meantime after getting free-hold rights over the property subject matter of said proceedings also transferred some portion of the property to some private persons. Kotak Mahindra Bank Ltd. Published a notice under the Act, 2002 on 17.02.2012 in various newspapers and thereafter made an application under Section 14 of the same Act before the District Magistrate for providing police assistance in the matter of taking of possession of the secured assets. This application was registered as Application No. 223 of 2012-13 (Kotak Mahindra Bank Ltd. v. Shalini Asha Chopra).

7. The District Magistrate after hearing the parties passed a reasoned order dated 24.06.2013 for providing police assistance to the bank in the matter of taking possession of the secured assets. In compliance thereto on 30.12.2013 the authorised officers of the Kotak Mahindra Bank Ltd. took possession of the secured assets after complying with the provisions of Act, 2002 and security guards were employed for protecting the property. After the possession of the property was taken, notice for auction sale of the secured assets was also published in various newspapers on 11.01.2014. Possession notice was sent to the borrowers and was also published.

8. Faced with the aforesaid proceedings, the borrower and guarantor filed Securitisation Application No. 218 of 2013 (Shalini Asha Chopra & Others v. Kotak Mahindra Bank Limited) before the Debt Recovery Tribunal, Allahabad on

30.01.2014. This application was dismissed by the Debt Recovery Tribunal on 30.01.2014. The Debt Recovery Tribunal specifically recorded that the borrowers have not approached the Tribunal with clean hands. They had sold the mortgaged property fraudulently. Accordingly the Tribunal dismissed the application. As a result whereof the proceedings taken by the bank in terms of the order of the District Magistrate dated 24.06.2013 and the auction notice published stood approved under the order of the Tribunal.

9. It is surprising to note that after the application was dismissed by the Debt Recovery Tribunal, the borrowers instead of approaching the Appellate Authority under Section 18 of the Act, 2002 decided to approach the District Magistrate by way of recall application. The District Magistrate entertained the aforesaid application despite specific objection having been raised by the bank that no power of review has been conferred upon the District Magistrate under the Act, 2000 and further that the order of the District Magistrate was subjected to challenge before the Debt Recovery Tribunal as noticed above and the appeal has been dismissed.

10. The District Magistrate after re-appreciating the contention of the parties has proceeded to recall the order dated 24.06.2013 vide his order dated 30.06.2016. Taking benefit of the order of the District Magistrate, the borrower have forcefully broken the locks of the Bank put over the secured assets. It had also been directed in his order dated 30.06.2016 by the District Magistrate that police protection should be provided to the borrower for resuming the possession.

11. Counsel for the petitioner submitted that the order of the District Magistrate is wholly without jurisdiction and abuse of the powers vested. The Act, 2002 confers no power of review. It is further pointed out that the Appeal filed by the borrower before the Debt Recovery Tribunal was rejected on the ground that they had not approached the Tribunal with clean hands. If they felt aggrieved, they had the statutory remedy of Appeal under Section 18 of the Act, 2002 which they failed to avail. The findings that part of the mortgaged property had been sold illegally by the borrowers despite being aware of the decree of the competent Court in respect of the loan amount is not disputed before us. It is submitted that because of such order of the District Magistrate not only the interest of financial institutions/banks is put in jeopardy, the very purpose of Act, 2002 has been frustrated. It is, therefore, submitted that this Court must intervene in the matter and that the status quo as was prevailing on 30.06.2016 be restored back.

12. Shri Shashi Nandan on the contrary submits that the earlier order of the District Magistrate proceeded on non-consideration of law laid down in the case of **State of U.P. v. United Bank of India reported in 2016 (2) SCC, 757** wherein it has been held that the lease land cannot be mortgaged, therefore, entire exercise under the Act, 2002 is bad.

13. The judgment in the case of State of U.P. v. United Bank of India (Supra) has been delivered in the year 2016 and the original order of the District Magistrate is of the year 2013.

14. Be that it may, we are of the considered opinion that the District Magistrate has absolutely no jurisdiction to review his order dated 24.06.2013 passed under the Act, 2002 specifically when the order was subjected to challenge before the Debt Recovery Tribunal and such application was dismissed by a reasoned order holding therein that the borrower had not approached the Tribunal with clean hands. If they were not satisfied they had the remedy of approaching the Appellate Tribunal under Section 18 of the Act, 2002. We are, therefore, more than satisfied that such order of the District Magistrate cannot be permitted to stand on record. The order of the District Magistrate dated 27.04.2016 and dated 30.06.2016 are hereby quashed.

15. Status quo as was prevailing on 30.06.2016 shall be maintained and the District Magistrate is directed to ensure compliance of this order with the help of the police forthwith. Parties are at liberty to seek recourse to law.

16. Writ petition is allowed.