
(2011) 05 KL CK 0081

High Court Of Kerala

Case No: W.A. No. 573 of 2011

Sivadas C. and Viji C.S.

APPELLANT

Vs

Allahabad Bank and
The Chief Manager and
Authorised Officer

RESPONDENT

Date of Decision: May 31, 2011

Hon'ble Judges: Jasti Chelameswar, C.J; Antony Dominic, J

Bench: Division Bench

Advocate: Pearson S. Fernandez, for the Appellant; Vivek Varghese P.J., for the Respondent

Final Decision: Dismissed

Judgement

J. Chelameswar, C.J.

Aggrieved by an order dated 12th April, 2011 in I.A. No. 6588 of 2011 in WP(C). No. 7850 of 2011, the unsuccessful Petitioners preferred the instant appeal. When the matter was listed in the vacation court, notice on admission was ordered and confirmation of sale of the Appellants' property was stayed for a period of two weeks on the undertaking given by the Appellants that he was prepared to deposit an amount of Rs. 5,00,000/- within five days. The Appellants did not fulfil their undertaking. Further, they filed an application, I.A. No. 340 of 2011 with the prayer as follows:

For the reasons stated in the accompanying affidavit, it is humbly prayed that this Honourable Court may be pleased to extend 10 more days for remitting the said sum of Rs. 5,00,000/- ordered to paid in pursuance to the direction of this Honourable Court dated 17/5/'11.

2. The Appellants availed a loan from the Respondent-Bank to the tune of Rs. 19.5 lakhs for the construction of house and defaulted payment of instalments due on the said loan. Consequently, the Respondent-Bank invoked the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act 54 of 2002) and brought the house property of the Appellants for sale. Aggrieved by the

same, the Appellants approached the Tribunal constituted under the Act. The Tribunal granted interim order subject to the condition that the Appellants will deposit an amount of Rs. 6,00,000/-. The Appellants did not comply with the condition. After giving the Appellants more than one opportunity to comply with the conditional order, the Tribunal, eventually, vacated the conditional interim order on 5th April, 2011, as the condition was not complied with by the Appellants. The house property of the Appellants was brought to sale and a third party become the successful bidder for an amount of Rs. 26,05,000/- and the bidder also deposited one-fourth of the said amount.

3. Complaining that the Tribunal did not grant any interim relief- an assertion which is misleading made after suppressing the relevant facts, the Appellants approached this Court by way of filing WP(C). No. 7850 of 2011.

4. The Respondent-Bank filed a counter affidavit bringing true facts of the case to the Court. The learned Judge initially passed an order dated 14th March, 2011 keeping the sale, if any, took place in abeyance subject to the condition that the Appellants will deposit an amount of Rs. 5,00,000/- within a period of three weeks from that date. However, on being appraised of the facts and circumstances, which led to say by the Bank by order dated 12th April, 2011, the learned Judge modified the order, which reads as follows:

Petitioner is seeking extension of time for compliance of the interim order dated 14.3.11, on the premise that he had already remitted a sum of Rs. 2,50,000/- (Rupees Two lakhs fifty thousand only). The prayer is opposed by the counsel appearing for the Respondent bank contending that the property was already sold for a sum of Rs. 26,05,000/- on 15.3.2011 and the bidder has already deposited 25% of the amount. It is further contended that the Petitioner had failed to comply with the condition stipulated in the interim order issued by the Debts Recovery Tribunal and the Securitization Application is still pending. Under the above circumstances, I do not find it proper and justified to interdict with the proceedings. However, further proceedings pursuant to sale shall be kept in abeyance subject to condition of the Petitioner remitting a sum of Rs. 20,00,000/- (Rupees Twenty lakhs only) within one month.

Hence this appeal.

5. It is also brought to our notice that before admission, this Court recorded an undertaking of the Appellants that they will deposit an amount of Rs. 5,00,000/- within a period of five days from the date of the order. The Appellants failed to honour the undertaking given by them. Apart from that, the facts narrated above and the conduct of the Appellants, in our view, do not justify any indulgence being granted to the Appellants.

The Writ Appeal is, therefore, dismissed, in the circumstances, with costs quantifying Rs. 25,000/- payable to the Respondents.