Smt. Vimala Bhushan Vs Authorised Officer Yes Bank Limited

Court: Karnataka High Court

Date of Decision: Jan. 30, 2019

Acts Referred: Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 â€" Section 13(4), 14(1), 14(3), 14, 17(1), 17, 17(4)(A), 18
Constitution of India, 1950 â€" Article 141, 226, 227

Hon'ble Judges: Alok Aradhe, J

Bench: Single Bench

Advocate: H.S.Dwarakanath, Prasanna Kumar R S, V.Suresh, Amit Deshpande, M.A.Rajendra

Final Decision: Disposed Off

Judgement

1. Mr.H.S.Dwarakanath for Mr.Prasanna Kumar R.S., learned counsel for the petitioner. Mr.V.Suresh and Mr.Amit Deshpande, learned counsel for

the respondent No.1.

2. The writ petition is admitted for hearing. With consent of the parties, the same is heard finally. On admitted facts, the issue which arises for

consideration in this writ petition is whether against an order passed under Section 14 of the Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (hereinafter referred to as Ã¢â‚¬Ëœthe ActÃ¢â‚¬â„¢ for short), an aggrieved person has the remedy under Section

17 of the Act.

3. The facts leading to filing of the writ petition lie in a narrow compass. The petitioner claims to have contributed from her savings and invested in

property in question, which is evident from the recitals contained in the sale deed dated 14.07.2003. It appears that in respect of the property in

question, a security interest was created in favour of the respondent-Bank. An order under Section 14 of the Act was passed by the Chief

Metropolitan Magistrate on 01.09.2017 which was subject matter of challenge at the instance of the petitioner under Section 17 of the Act before the

Debt Recovery Tribunal (hereinafter referred to as Ã¢â‚¬Ëœthe TribunalÃ¢â‚¬â„¢ for short). The Tribunal by an order dated 12.02.2018 dismissed the

application preferred by the petitioner. The petitioner has assailed the validity of the orders dated 01.09.2017 passed by the Chief Metropolitan

Magistrate and order dated 12.02.2018 in this writ petition.

4. Learned counsel for the respondent raised an objection that the petitioner should be relegated to the alternative remedy of an appeal under Section

18 of the Act as the order passed by the Tribunal dated 12.02.2018 is appealable before the Debt Recovery Appellate Tribunal under Section 18 of

the Act. It is further submitted that the petitioner herself had approached the Tribunal against the order dated 12.02.2018 passed by the Chief

Metropolitan Magistrate under Section 17 of the Act. Therefore, at this stage, she cannot be heard to contend that the petitioner does not have the

remedy under Section 17 of the Act against an order passed under Section 14 of the Act by the Chief Metropolitan Magistrate. In support of aforesaid

submissions, reference has been made to decisions in Ã¢â‚¬Ëœ STANDARD CHARTERED BANK VS. NOBLE KUMAR AND ORS.Ã¢â‚¬â„¢,

MANU/SC/0874.2013, Ã¢â‚¬Ëœ DEEPAK APPARELS PVT. LTD. AND ORS. VS. CITY UNION BANK LTD. AND ORS.Ã¢â‚¬â„¢, LAWS (KAR)-

2016-3-110, Ã¢â‚¬Ëœ SHRI.NARENDRA JAGDISH PALSE VS. INDIABULLS HSG.FINANCE LTD. AND ORS.Ã¢â‚¬â„¢, W.P.NO.5379/2018 and

Ã¢â‚¬Ëœ P.MANJUNATH KUMAR & ANR. VS. DEPUTY COMMISSIONER AND ANR.Ã¢â‚¬â„¢, III (2018) BC 173 (KAR).

5. On the other hand, learned counsel for the petitioner has invited the attention of this Court to Section 14(3) of the Act and has submitted that the

aforesaid provision attaches finality to the order passed by the Chief Metropolitan Magistrate under Section 14 of the Act and therefore, the petitioner

does not have the remedy under Section 17 of the Act. It is submitted that the effect of Section 14(3) has not been considered by the Supreme Court

in the decisions in Ã¢â‚¬Ëœ UNITED BANK OF INDIA VS. SATYAVATI TONDON AND ORS.Ã¢â‚¬â„¢, (2010) 8 SSCC 110, Ã¢â‚¬Ëœ KANAIYALAL

LALCHAND SACHDEV AND OTHERS VS. STATE OF MAHARASHTRA AND OTHERSÃ¢â‚¬â„¢, (2011) 2 SCC 782 and Ã¢â‚¬Ëœ AUTHORIZED

OFFICER, STATE BANK OF TRAVANCORE AND ANOTHER VS. MATHEW K.CÃ¢â‚¬â„¢, (2018) 3 SCC 85. It is pointed out that Supreme

Court in Ã¢â‚¬Ëœ HARSHAD GOVARDHAN SONDAGAR VS. INTERNATIONAL ASSETS RECONSTRUCTION COMPANY LIMITED AND

OTHERSÃ¢â‚¬â„¢, (2014) 6 SCC 1 by taking note of Section 14(3) of the Act has held that decision of the Chief Metropolitan Magistrate/District

magistrate can be challenged before high Court under Articles 226 & 227 of the Constitution of India. Therefore, the reliance placed on HARSHAD

GOVARDHAN SONDAGAR supra is of no assistance to the petitioner. Apart from this, the law laid down by the Supreme Court is binding on this

Court in view of Article 141 of the Constitution of India. It is further submitted that decisions in the cases of Ã¢â‚¬Ëœ UNITED BANK OF INDIA,

KANAIYALAL LALCHAND SACHDEV AND OTHERS and AUTHORIZED OFFICER, STATE BANK OF TRAVANCORE AND

ANOTHER supra are per incuriam has in the aforesaid decisions the Supreme Court has not taken into account the effect of Section 14(3) of the Act

and in respect of decisions which are rendered per incuriam it cannot be said that the Supreme Court has declared the law on a given subject matter.

In this connection reliance has been placed on Ã¢â‚¬Ëœ HYDER CONSULTING (UK) LTD., VS. STATE OF ORISSA, (2015) 2 SCC 189.

6. I have considered the submissions made by learned counsel for the parties and have perused the record. The provisions of the Act were amended

by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016. Before proceeding

further it is apposite to take note of relevant extract of Section 14(1) & 14(3) of the Act, which read as under:

Ã¢â‚¬Å“14(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be

sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of

any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured

asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case

may be, the District Magistrate shall, on such request being made to him Ã¢â‚¬

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor. Xxxxx

Provided further that on receipt of the affidavit from the Authorized Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case

may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a

period of thirty days from the date of application.

14(3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorized by the Chief Metropolitan Magistrate or District

Magistrate done in pursuance of this section shall be called in question in any court or before any authority.Ã¢â‚¬â€‹

7. Thus, it is evident that the bar under Section 14(3) of the Act is prescribed in respect of an act of Chief Metropolitan Magistrate or the District

Magistrate in pursuance of Section 14 of the Act. From perusal of second proviso to Sub-Section (1) of Section 14, it is evident that Chief

Metropolitan Magistrate or the Magistrate after satisfying the contents of the affidavit passed suitable orders for purposes of taking possession of the

secured asset. If he takes any action for taking possession of the secured asset in pursuance of an order under Section 14(1) of the Act, the aforesaid

act is precluded from challenge in any court or before any authority. However, the same would not exclude the powers of judicial review of this Court

under the Constitution of India. Therefore, the contention that in view of the bar contained in Section 14(3) of the Act, the recourse cannot be had to

the remedy provided under Section 17 of the Act cannot be accepted.

8. The Supreme Court in Ã¢â‚¬Ëœ UNITED BANK OF INDIA VS. SATYAVATHI TONDON AND OTHERSÃ¢â‚¬â„¢, (2010) 8 SCC 110 while dealing

with the scope of interference under Article 226 of the Constitution of India in case of an alternative remedy in the context of the Act has held that

expression Ã¢â‚¬Ëœany personÃ¢â‚¬â„¢ used in Section 17(1) of the Act is of wide importance and any person who may be aggrieved by an action taken under

Section 13(4) of the Act or an order passed under Section 14 of the Act can take recourse to the remedy under Section 17 of the Act. It was further

held that while dealing with petition involving challenge to the action taken for recovery of public dues, the High Court must keep in mind the

legislations enacted by Parliament and State Legislature for recovery of such dues, which contain comprehensive procedure for recovery of dues but

also envisage constitution of quasi- judicial bodies for redressal of grievance of any aggrieved person. It was also held that High Court in such a case

must insist that before availing the remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant

statute. Similar view was taken in Ã¢â‚¬ËœKANAIYA LAL CHAND SACHDEV & ORS. VS.STATE OF MAHARASHTRA AND OTHERSÃ¢â‚¬â„¢,

(2011) 2 SCC 782 and AUTHORIZED OFFICER STATE BANK OF TRAVANCORE AND ANOTHER VS. MATHEW K.C. (2018) 3 SCC 85.

9. For yet another reason, the petitioner cannot be permitted to contend that against an order passed under Section 14 of the Act, she has no remedy

under Section 17 of the Act, even assuming the stand of the petitioner to be correct, as the petitioner has elected the remedy available to her by

challenging the order passed under Section 14 of the Act by way of an application under Section 17 of the Act and her application under Section 17 of

the Act has been dismissed by the Tribunal. It is not the case of the petitioner that under certain misconception of law she had filed an application

under Section 17 of the Act before the Tribunal. Deeming the contention of the petitioner to be correct, the petitioner had the remedy of filing the writ

petition before this Court. However, the petitioner did not avail of the same and approached the Tribunal by filing an application under Section 17 of

the Act. Therefore, in view of the Doctrine of Election of remedy petitioner cannot be permitted to approbate or reprobate and to contend that remedy

under Section 17 of the Act was not available to him. [SEE:Ã¢â‚¬â„¢TRANSCORE VS. UNION OF INDIAÃ¢â‚¬â„¢, (2008) 1 SCC 125]. Therefore, the

petitioner has the remedy of filing an appeal under Section 18 of the Act against the impugned order.

10. The contention of the petitioner that the aforesaid decisions of the Supreme Court are per incuriam cannot be accepted. It is pertinent to note that

in the aforesaid decision, the Supreme Court was dealing with the claim of the tenants against whom an order under Section 14 of the Act was passed

and the provisions of Amendment Act of 2016 had not come into force. Now, Section 17(4)(A) of the Act specifically provides for a remedy to a

tenant or a lessee. Therefore, the said decision has no application to the obtaining factual matrix of the case. The ratio of the aforesaid decisions is

that an aggrieved party has the remedy against an order under Section 13(4) of the Act and an order under Section 14(1) of the Act, under Section 17

of the Act. The aforesaid ratio is binding on this Court in view of Article 141 of the Constitution of India and merely because Section 14(3) of the Act

which has no bearing on the issue involved in this petition, it cannot be said that the aforesaid decisions of the HonÃ¢â‚¬â„¢ble Supreme Court are per

incuriam. It is pertinent to mention here that reliance in this regard has been placed on a stray sentence mentioned in the minority view of the Supreme

Court in HYDER CONSULTING (UK) LTD supra which is not the ratio of the case. Therefore, the aforesaid decision is of no assistance to the

petitioner. So far as reliance placed in the case of HARSHAD GOVARDHAN SONDAGAR supra is concerned suffice it to say that the said

decision is an authority for the proposition that decision of Chief Metropolitan Magistrate or District Magistrate can be challenged before this Court

under Articles 226 & 227 of the Constitution of India by any aggrieved party.

11. In view of preceding analysis, it is held that against an order under Section 14 of the Act the aggrieved person has a remedy under Section 17 of

the Act and in the fact situation of the case the petitioner has the remedy to challenge the impugned order dated 12.02.2018 under Section 18 of the

Act. The petitioner is at liberty to avail off the aforesaid alternative remedy under Section 18 of the Act.

Accordingly, the petition is disposed of.