M/s Esjaypee Impex Private Limited v. Asst. General Manager and Authorized Officer Canara Bank (SC)

2021 PLRonline 5209 [#5410402]

SUPREME COURT OF INDIA

Before : Justice Sanjay Kishan Kaul , Justice Dinesh Maheshwari and Justice Hrishikesh Roy.

M/s Esjaypee Impex Private Limited – Petitioners

Versus

Asst. General Manager and Authorized Officer Canara Bank – Respondents

Petition(s) for Special Leave to Appeal (C) Nos.24164 of 2019 With SLP(C) No. 29752-29754 of 2019 (XII), SLP(C) No. 29756-29759 of 2019 (XII).

5.1.2021.

Registration Act, 1908, Section 17(2) (xii) read with Section 89(4)- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Section 14 –Confirmation of sale – Sale certificate – Registration Act, 1908 only required the authorised officer of the bank under the SARFAESI Act to hand over the duly validated sale certificate to the auction purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act. [Para14]

For the Petitioners :- Ms. Shalini Kaul. For the Respondents :- Mr. M.L. Ganesh, Mr. K. V. Vijayakumar, Mr. S. Nagamuthu, Sr. Adv., Mr. P. Krishnan, Mr. M.A. Chinnasamy, Ms. C. Rubavathi.

ORDER

The proceedings in the present matter emanate from the failure of the appellant M/s Esjayee Impex Pvt. Ltd. To repay a loan to Canara Bank and the consequent proceedings initiated by the Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act). The Chief Metropolitan Magistrate passed an order under Section 14 of the said Act on 24.02.2019 qua handing over possession of secured assets to Canara Bank in respect of an immovable property being Old Door No. 23, New Door No. 2, Rajarathinam Street, Kilpauk, Chennai-600010 as security to the Bank.

2. The appellant, aggrieved by this order, filed SA No. 139 of 2019 before the Debt Recovery Tribunal-1(hereafter referred to as “DRT”), Chennai in which a status quo order was passed dated 28.05.2019. The continuation of these proceedings on status quo order resulted in the Canara Bank in approaching Madras High Court by filing W.P. No.23573 of 2019.

3. The bank stated that it had already sold the secured assets to the auction purchaser namely, M/s Realty Associates. The possession could not be transferred because of the status quo order. The auction purchaser had paid Rs. 5.11 crores as against auction price of Rs.20.44 crores.

4. The auction purchaser also filed W.P. No. 34653 of 2018 seeking refund of the deposit with interest. It may be noticed that the auction purchaser had requested for time to pay the balance 75% of the amount on account of criminal proceedings filed by the borrower, but was informed that there was no stay against the same and thus, the demand was reiterated by the Bank. The aforesaid two writ petitions were dealt with by the impugned order dated 16.09.2019. Interim directions were passed staying the status quo order passed by the DRT. An interim direction was also issued to the auction purchaser to deposit the entire balance auction amount and the possession was to be taken over and handed over to the auction purchaser on the balance amount having been paid with stipulation for police aid, if need arises. Simultaneously, the DRT was directed to pass the final orders on merits on the SA filed by the borrower under Section 17 of the said Act after giving opportunity to all concerned that order be transmitted to the High Court.

5. The appellant borrower assailed this order in the present proceedings. An interim order was passed on 06.12.2019 directing the private respondent not to create any third party interest in the property in question. The auction purchaser made a grievance on 27.07.2020 that despite the deposit of the amount he was being deprived of enjoyment in view of this interim order and thus the matter was directed to be taken up on 18.08.2020.

6. On the said date, it was recorded that to say the least it was an unusual order passed by the High Court taking into consideration the nature of relief prayed for. The submission of the learned senior counsel for the auction purchaser was also recorded that there was no difficulty in confining the relief to refund of the amount which was alleged to have been forfeited. However, he submitted that the subsequent amount deposited (with interest) as well as the earnest money should be returned to him in which eventuality the auction purchaser would not claim any interest in the properties. Since the Bank had already appropriated the amounts, they did not have much to say. The borrower and the guarantor, being husband and wife, sought time to obtain instructions whether they could deposit the aforesaid amount so that the Bank could get the same amount or something more than what they have and the auction purchaser could get refund of the amount as set out in the said order.

7. On 11.09.2020, the appellant sought two months' more time to come up with the money in terms of order dated 18.08.2020. Last opportunity was granted to the appellant to deposit the amount, accordingly the interest rate which would be payable on the amount deposited by the auction purchaser was fixed at 9% simple interest excluding the initial amount of Rs.5,00,00,000/-. The appellant was granted time till 16.11.2020 to deposit the amount which was to be released to the auction purchaser and it was observed as under:

"Needless to say if the amount is not so deposited, nothing would survive in the present petitions which will stand dismissed."

8. However, on 20.11.2020, once again a request was made that in view of COVID problem faced by the appellant one further opportunity should be granted and it was only the Covid situation which persuaded us to extend the time till 31.12.2020 to do the needful failing which, the special leave petitions shall stand dismissed without the requirements of any further orders from this Court.

9. When the matter has come up today learned counsel for the appellant very fairly concedes that the amount has not been deposited but a purchaser has been located who would give part of the amount. In our view this would neither subserve the purpose nor is it in compliance with our orders and for that matter the peremptory nature of the last order would come into play.

10. We, however, have heard learned counsel for the appellant who eloquently endeavoured to persuade us to give further extension of time. We are not persuaded in view of the orders passed from time to time, more so, in view of what we have recorded in the last order. The natural consequence would be dismissal of the special leave petitions.

11. We have, however,also considered the further directions sought by the auction purchaser M/s Realty Associates that the sale certificate be forwarded to them duly validated so that their title is perfected having paid the full amount.

12. The aspect of possession by the auction purchaser was already taken care of by our order dated 11.09.2020 recording that possession was handed over to the auction purchaser in pursuance to a letter dated 06.11.2019 but the backside portion was being used to store goods of the original owners preventing full enjoyment of the property. We had also noticed that in case the auction purchaser was to continue to enjoy the property and the petitioner(s) defaulted, one week’s time would be granted to remove what has been stored in the back portion. Thus, the bank will ensure that those goods are removed within one week from today to facilitate unhindered enjoyment of the possession by the auction purchaser.

13. Learned counsel for the Bank agreed that the sale certificate has to be further validated and assured that the needful will be done within two weeks. However, a submission was made that the sale certificate was then to be handed over to the registering authority for registration and payment of stamp duty.

14. We are of the view that the mandate of law in terms of Section 17(2) (xii) read with Section 89(4) of the Registration Act, 1908 only required the authorised officer of the bank under the SARFAESI Act to hand over the duly validated sale certificate to the auction purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act.

15. The SLPs are dismissed in terms aforesaid.

16. Pending applications stand disposed of.