

2022 LiveLaw (SC) 545

IN THE SUPREME COURT OF INDIA
AJAY RASTOGI; VIKRAM NATH, JJ.

Special Leave to Appeal (C) No(s). 13241- 13242/2019; 11-05-2022

KOTAK MAHINDRA BANK LIMITED versus DILIP BHOSALE

Constitution of India; Article 226 - When a remedy under the statute is available filing of a writ petition under Article 226 of the Constitution is to be discouraged by the High Court.

(Arising out of impugned final judgment and order dated 08-04-2019 in WP No. 3702/2019 and 30-04-2019 in RP No. 3/2019 passed by the High Court for the State of Telangana at Hyderabad)

For Petitioner(s) Mr. Pallav Saxena, Adv. Ms. Shweta Kapoor, Adv. Ms. Kheyali Singh, AOR

ORDER

The present petitions have been filed by the secured creditor assailing the order dated 8th April, 2019 followed by order dated 30th April, 2019.

The respondent/borrower after committing default and his account becoming NPA, proceedings were initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the Act”) and on an application filed under Section 14 of the Act, the authorized officer along with the Commissioner on 29th January, 2019, took over the physical possession of the secured asset and that came to be challenged by the respondent/borrower in WP No.3702 of 2019 and thereafter further action was initiated by the petitioner in publishing the auction-cum-sale notice dated 27th February, 2019. Later WP No.7806 of 2019 came to be filed assailing the auction notice.

It reveals from the record that after filing of the writ petitions, the respondent/borrower approached the Debt Recovery Tribunal with an appeal SA No.109 of 2019 along with an application for stay on auction, a conditional order came to be passed by the Debt Recovery Tribunal dated 28th March, 2019 directing the petitioner bank to proceed with the auction sale, but not to confirm the same.

The High Court, taking note of the conditional order of DRT dated 28th March 2019, passed under the order impugned dated 8th April, 2019 with a further direction to the petitioner to return the possession of the subject property to the respondent/borrower and by a subsequent order dated 13th April, 2019 made certain modifications in regard to payment of instalments that became the subject matter of challenge at the instance of the petitioner bank by filing of the instant petitions.

While issuing notice on 3rd July, 2019, this Court granted interim relief to the petitioner and directed the parties to maintain status quo. Pursuant thereto, the subject property in question on which security interest is created by the petitioner remained in possession of the petitioner and it is not disputed that the possession of the secured assets (subject property) is still with the petitioner.

It is informed to this Court that the securitization application filed by the Respondent borrower came to be dismissed in default on 16th July, 2019 and no steps were taken for its restoration by the respondent.

Since the substantive issue was to be examined by the DRT in the pending SA No.109 of 2019 and since the respondent/borrower has remained a defaulter and after the account became NPA, possession of the secured assets was taken over by the petitioner bank, in this backdrop, nothing further survives to be examined in this petition and the special leave petition has become infructuous.

Before parting with the order, we would like to observe that this Court is consistent of the view and can be noticed from the judgment in ***United Bank of India vs. Satyawati Tandon & Ors. (2010) 8 SCC 110***, that when a remedy under the statute is available and in the instant case which indeed was availed by the respondent/borrower, filing of a writ petition under Article 226 of the Constitution is to be discouraged by the High Court.

Consequently, the special leave petitions in the light of the above observations are dismissed as having become infructuous.

Pending application(s) if any, shall stand disposed of.

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