

Appeal Dy. No. 324/2021
Date: 05.10.2021

Bal Govind Vs. Bank of Baroda & Another

Present: Shri Sudhanshu Mishra, counsel for the appellant,
Shri Shashibhushan Singh, counsel for the respondent No. 1-Bank,
None for the respondent No.2,

Heard the learned counsels for the parties on the issue of pre deposit.

Learned counsel for the appellant submits that as against the demand notice of Rs. 11.78 lacs, the borrower has deposited Rs. 2.95 lacs. The borrower is facing financial hardship because of the impact of Covid-19, therefore, the rest requirement of pre deposit be waived.

On the other hand, the learned counsel for the respondent-Bank submits that the borrower be directed to pay 50% of the dues before entertaining the interim relief.

Considered the arguments and perused the record.

The present appeal is against the interim order dated 16.09.2021, whereby the interim relief was declined. Thus, it is a type of misc. appeal. The borrower has deposited Rs. 2.95 lacs, which is about 30% of the dues. There is overall impact of Covid-19 during these days. Thus, considering the facts of the matter, the waiver of remaining amount is allowed. Accordingly, the waiver application is disposed off.

Also heard the learned counsels on the interim relief.

Learned counsel for the appellant submits that the Tehsildar of the respondent no. 2 has issued a letter directing the appellant to handover the possession by 5.10.2021 i.e. today, otherwise, it will be taken with the police force. The D.M. has not given any opportunity of hearing to the appellant before passing the order dated 23.09.2019 under section 14 of the SARFAESI Act. Thus the said order is not valid, as laid down by the Hon'ble Allahabad High Court in **Writ –C No. 38578 of 2018-Kumkum Tentiwal Vs. State of U.P. & Ors., decided on 11.12.2018.** The Tribunal below has not considered these aspects, therefore, the respondents be restrained from taking physical possession of the property in question.

On the other hand, the learned counsel for the respondent-Bank submits that there was no requirement of such notice and the S.A. filed by the appellant is highly barred by time. He has argued this issue before the Presiding Officer, DRT, but the issue of limitation has not been decided and even his arguments were not recorded in the impugned order, therefore, the appellant is not entitled for the interim relief.

Considered the arguments and perused the record.

The record reveals that the Tehsildar, Alapur has issued a letter to the appellant for compliance of the order dated 23.09.2019 of the D.M., Ambednagar directing him to handover the possession, otherwise to take with police force. It is mentioned in the order of the D.M. that no notice was required to be served to the opposite party i.e. the appellant here in this appeal. Thus, there is prima facie case in favour of the appellant to restrain the respondents from taking possession under the garb of this letter, particularly in view of the judgment passed by the Hon'ble Allahabad High Court in **Kumkum Tentiwal Vs. State of**

U.P.(Supra). The said argument was also made before the Tribunal below, but it appears that the Tribunal below deemed it not proper to grant the interim relief. If the possession is taken in compliance of this order, further complication in the matter will crop-up, whereas if the possession is deferred till the decision of the S.A., then it would not cause any inconvenience to the opposite party. Thus, the balance of convenience is also in favour of the appellant. The argument that the appeal is barred by limitation, cannot be considered in the present appeal filed against the interim order, but the respondents are free to raise this issue before the Tribunal below. The Tribunal below is also expected to decide the limitation aspect before proceeding further in the S.A. on merits.

In view of the above, the respondents are directed to maintain the status quo qua the possession of the property in question as it exists today till the decision of the S.A. Except this interim relief, no other issue is involved in the present appeal, therefore, the appeal is disposed off in the above terms with no order as to costs.

Parties shall appear before the DRT on the date fixed for further proceedings in the matter.

A copy of this order be sent to the parties as well as to the DRT concerned and be also uploaded on the e-DRT portal.

R. S. KULHARI
CHAIRPERSON

VN Giri