HC-KAR
CNR: KAHC010086982018

NC: 2026:KHC:42543-DB
WP No. 28181 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

WRIT PETITION NO. 28181 OF 2018 (GM-DRT)

BETWEEN:

1. MR. R. PRASHANTH
   S/O. T. RUDRAPPA,
   AGED ABOUT 37 YEARS,

2. MR. R. PRAVEEN
   S/O. T. RUDRAPPA,
   AGED ABOUT 37 YEARS,

   BOTH R/AT NO.380/10,
   101, SHIVAN APARTMENTS,
   17TH CROSS, UPPER PALACE
   ORCHARDS, BENGALURU-560 080

...PETITIONERS

(BY SRI. GIRISH KUMAR B.M., ADVOCATE)

AND:

1. THE GRAIN MERCHANT CO-OPERATIVE
   BANK LIMITED, NO.2, PAMPA MAHAKAVI
   ROAD, CHAMRAJAPET,
   BENGALURU - 560 018,
   REPRESENTED BY ITS
   AUTHORIZED OFFICER.

2. MEKAL ENGINEERING WORKS
   A PARTNERSHIP FIRM HAVING

ITS ADDRESS AT NO. 91/19,
TANK BUND ROAD,
BENGALURU - 560 018,
REPRESENTED BY ITS PARTNERS,

(I) S. PAPANNA,
SINCE M. S. PAPANNA IS DECEASED
BY LEGAL HEIRS,

(A) SMT. SHANTHAMMA
WIFE OF LATE M. S. PAPANNA,
MAJOR,

(B) SRI. M. P. SRINIVAS
SON OF LATE M. S. PAPANNA,
MAJOR,

(C) SMT. A. MEERA
DAUGHTER OF LATE M. S. PAPANNA,
MAJOR,

(D) SMT. P. MANJULA
DAUGHTER OF LATE M. S. PAPANNA,
MAJOR,

ALL RESIDING AT
NO.66/1, 7TH CROSS,
8TH MAIN, R.M.V. EXTENSION,
BENGALURU - 560 080.

(E) SMT. PADMAMMA
SINCE DECEASED BY HER
LEGAL HEIRS

(I) SRI. M. S. MALLAPPA,
SON OF LATE SRINIVASALU,
AGED ABOUT 78 YEARS,
RESIDING AT NO.66/1,
7TH CROSS, 8TH MAIN,
R.M.V. EXTENSION,

BENGALURU - 560 080.

(II) SRI. M. S. MALLAPPA (PARTNER)
SON OF LATE SRINIVASALU,
AGED ABOUT 78 YEARS,
RESIDING AT NO.66/1,
7^{TH} CROSS, 8^{TH} MAIN,
R.M.V. EXTENSION,
BENGALURU - 560 080.

...RESPONDENTS

(BY MS. LAKSHMI .M., ADVOCATE FOR
SRI. P. ANAND, ADVOCATE FOR R1
SRI. GIRI .K., ADVOCATE FOR R2(1) (A, B AND D)
R2(1)(C) SERVED AND UNREPRESENTED
SRI. RAAM PRASAD B.S., ADVOCATE FOR R2(1)(E)(2)
(M.S. MALLAPPA IS COMMON PARTY APPEARING AS BOTH R2(1)(E)(1) AND R2(I)(E)(2))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 16^{TH} MAY, 2018 PASSED BY THE DEBTS RECOVERY APPELLATE TRIBUNAL, CHENNAI IN RA(SA) 48/2017, PER ANNEXURE-X; AND QUASH THE FINAL ORDER DATED 23^{RD} FEBRUARY 2017 PASSED BY THE DEBT RECOVERY TRIBUNAL, BANGALORE IN S.A.NO.65/2017 PER ANNEXURE-R; AND ETC.,

THIS WRIT PETITION, COMING ON FOR HEARING - INTERLOCUTORY APPLN, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL ORDER

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This Writ Petition is directed against the order dated 16.05.2018 passed by the Debt Recovery Appellate Tribunal, Chennai[1] in R.A SA 48/2017 (Annexure-X) and the final order passed by the Debt Recovery Tribunal, Bengaluru[2] dated 23.02.2017 in SA 65/2017 (Annexure-R).

2. Facts in short to file the present Writ Petition are as under:

2.1 The petitioners were before the DRT against the order passed under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[3], in

[1] DRAT, for short
[2] DRT, for short
[3] 'SARFAESI Act', for short

taking physical possession of the appeal schedule property on 25.01.2017 and to restore the physical possession of the property to them.

2.2 The petitioners claim that they are bonafide purchasers under a registered Sale Deed dated 19.02.2004 from respondent No.2 and now carrying on a Small Scale Industry in the schedule property in the name and style of Perfect Electrodes. To their dismay, on **31.08.2016**, they were supplied with a copy of Sale Notice by one of the representatives of respondent No.1 – Bank, indicating that the sale of the property was scheduled to be held on 31.08.2016 for recovery of outstanding dues in a sum of Rs.1,54,16,207/- together with interest and costs from 2002.

2.3 Subsequently, on 22.08.2016, a copy of the notice was affixed on the property, directing the petitioners to handover the vacant possession of the schedule property. It was further contended that, respondent No.1 - Bank despite notice that the appellants are the owners of the property, who have nothing to do with the loan transaction, forcibly took possession of the schedule property and thus, locked the running industrial unit with all machinery, raw materials and finished products locked inside the premises, stating that the Bank had obtained order from the Magistrate on 18.09.2012 in Crl.Misc.No.6210/2012 to proceed against the schedule property.

2.4 The petitioners claim that they are the bonafide purchasers of the property under a registered Sale Deed executed by respondent No.2, without knowledge of the alleged loan transaction of the vendor with respondent No.1 - Bank, and that they are in possession of original title deed executed by the Karnataka Industrial Area Development Board[4], in favour of respondent No.2 at the earlier point of

[4] KIADB, for short

time i.e., in the year 2000 and no valid mortgage was created and as such, there was no valid mortgage created in favour of respondent No.1 - Bank. Hence, there is no security interest warranting an action under Section 13 of the SARFAESI Act and that the respondent Bank has failed to act with prudence.

2.5 They further contend that respondent No.1 Bank has failed to act with prudence and diligence in not taking the sale deed into their custody. The solitary document which was deposited by way of creating equitable mortgage is only Possession Certificate and the same is not document of title. In that view of the matter, the Bank has no lien or charge over the machinery or raw material or finished products that are presently lying in the property, which are belonging exclusively to the petitioners. With this, the petitioners sought the impugned action of respondent No.1 Bank required to be declared as invalid and possession be restored back to them.

2.6 The contentions of the petitioners were refuted by respondent No.1 - Bank by filing statement of objections, in which it was contended that the partners of M/s. Mekal Engineering Works have sold the said property without knowledge of the Bank, in the teeth of equitable mortgage created by means of deposit of title deeds of lease hold rights/ Possession Certificate. The mortgage was registered on 02.03.1998 for Rs.15,00,000/- and the registered Mortgage Deed dated 27.03.1999 by the second respondent is valid and in accordance with the law. In that view of the matter, the Sale Deed executed by the second respondent in favour of the petitioners is subject to earlier Mortgage and the property was conveyed under registered sale deed on the basis of leasehold rights earlier executed. As such, the petitioners are liable to pay the amount due by the second respondent.

2.7 The Bank further submitted that the Possession Certificate and Lease cum Sale Agreement constitutes documents of title and on those documents constituted Mortgage by deposit of Title Deeds in favour of respondent No.1 - Bank. The claim of the Bank is well within the time. As such, the petitioners are not entitled to restoration of the possession and the petition be dismissed with costs.

2.8 The DRT having considered the rival submissions, was of the opinion that the contentions of the petitioners that they are the bonafide purchasers of the schedule property, but without knowledge of the loan transaction, has no legs to stand, in view of disclosure made in the Certificate of Encumbrance about the mortgage created in favour of the Bank. Further, DRT was of the opinion that the contention of the petitioners that the mortgage is defective, because what was mortgaged was only an Agreement of Sale and Possession Certificate and they cannot be treated as title deeds and it is only the Sale Deed executed by said Board in favour of the petitioners is the title deed, also termed to be unsustainable, since the mortgage was created by deposit of the Agreement of Lease cum sale deed, which contained a specific clause giving a right to the borrower to create such mortgage.

2.9 It was further observed by the DRT that in view of specific Clause-Q at Page No.12 of the Agreement, wherein the KIADB had permitted the Lessee - borrower to mortgage the right, title and interest in the premises in favour of any Bank, for the loan that may be availed by the borrower. In that view of the matter, in view of the specific Clause in the mortgage created by the Lessee - Borrower in favour of respondent is held to be valid. Besides that, the DRT holds that the mortgage was duly registered with the concerned Sub-Registrar office. Under these circumstances, it operates as a notice to the public in general including the present petitioners. In view of disclosure made in the Encumbrance Certificate, the contention of the petitioners that they are bonafide purchasers of the said property without knowledge was held to be unsustainable.

2.10 The DRT further holds that even if the mortgage were found to be defective on various grounds raised by the petitioners, it is still a mortgage and the present petitioners have no legal right to challenge the said mortgage created by borrower in respect of said loans. The mortgage was created by the borrower with a specific Clause with a written consent under the same Agreement of Lease executed by the KIADB in their favour.

2.11 The DRT further observed in so far as the contention of the petitioners that the Certificate of Encumbrance issued by concerned Sub-Registrar does not reflect the mortgage in favour of the Bank, cannot stand to any reason, for any omission by the Sub-Registrar reflecting the said registered deed in the Encumbrance Certificate, cannot be a sole ground to contend that the petitioners are the bonafide purchasers, as the office of the Sub-Registrar is responsible for such omission and the remedy of the petitioners lies else where and not before the Tribunal.

2.12 The DRT in unequivocal terms held that, the Bank shall not be held responsible for such an omission by the office of the Sub-Registrar to contend that the petitioners are bonafide purchasers, they must be in a position to place on record that there were not put on notice with the earlier transaction, but the DRT has clearly observed that it is not so in the case on hand.

2.13 The Certificate of Encumbrance produced by the Bank did reflect the said transaction. In that view of the matter, the DRT turned down the contention of bonafide purchaser raised by the petitioners, as well as the contention of defective mortgage deed. However, the DRT was of the view that, the movables found in the subject premises belongs to them is not disputed by the Bank. In that regard, the Tribunal has observed that the Bank shall conduct a joint inspection on the premises in the presence of the duly authorized persons of petitioners, make a inventory and handover all the movables found in the present premises of the petitioners against proper acknowledgment on or before 28.02.2017.

2.14 So far as other challenge of petitioners that, there is a delay in taking action by respondent No.1 - Bank i.e., in taking order and execution of same for taking physical possession of schedule property is concerned, the DRT held that the same are beyond the scope of the appellants to challenge the same. The DRT was of the opinion that, even otherwise, such an alleged delay will not vitiate the mortgage of the property in favour of the Bank and thus, it is not clearly shown as time barred under the concerned provisions of law.

2.15 The Tribunal further held that the aspect of delay will not come in the case on hand, as the Bank has taken action within the period of limitation. The mortgage of the subject matter was created in the year 1999 and the proceedings initiated in the year 2006 itself by issuing a demand notice after considering the loan as NPA on 02.03.2006, as required under Section 13(2) of the SARFAESI Act, which was followed by Possession Notice under Section 13(4) of the SARFAESI Act. In that view of the matter, it cannot be said that the Bank has taken action beyond the period of limitation. Accordingly, the DRT proceeded to dismiss SA 65/2017, however directed respondent No.1 - Bank to conduct a joint survey which we have already stated afore.

2.16 Aggrieved by the order passed by the DRT, the petitioners were before the DRAT, Chennai, in appeal provided under Section 18 of the SARFAESI Act. The petitioners as well as Bank reiterated the very same submissions before the DRAT. The DRAT though observed that one of the directors of the Bank with undue influence on the Bank, got the loan sanctioned, however at the very same time, the DRAT observed that, this cannot be taken as a ground in advantage by the subsequent purchasers who were not diligent, and meticulously not made any effort regarding flow of title and risked in purchasing the property. In that view of the matter, dismissed the appeal holding that the DRT has properly considered the entire material placed on record. It is these orders passed by both the Tribunals are called in question in this Writ Petition.

3. Heard, Sri.Girish Kumar.B.M, learned counsel appearing for the petitioners, Ms.Lakshmi.M, learned counsel appearing for Sri.P.Anand, learned counsel for respondent No.1, Sri.Giri.K, learned counsel appearing for respondents 2(1)(A, B & D) and Sri.Raam Prasad.B.S, learned counsel appearing for respondent No.2(1)(E)(2).

4. Learned counsel appearing for the petitioners argued that this case is a clear case of Fraud, the DRAT even after observing at Paragraph Nos.13 to 18 of its order that, one of the borrower was the Director, who brought undue influence on the Bank and there may be chances of collusion in getting the loan sanctioned, ought not have sustained the order passed by the DRT. Learned counsel further submitted that there was no security interest created in respect of the property. The Sale Deed

itself was executed in 2000 by the KIADB conveying the property in favour of respondent No.2 and respondent No.2 thereafter in 2004, conveyed the property under registered Sale Deed in favour of the petitioners. The actions contemplated under the SARFAESI Act started under Section 13(2) of the SARFAESI Act in the year 2006. In that view of the matter, the Bank cannot proceed against the property of the petitioners who are not at all concerned with the loan borrowed by respondent No.2. In that view of the matter, the order contemplated under Section 13(2) and 13(4) of the SARFAESI Act gets vitiated by means of fraud, as the signature on the alleged mortgage created are not that of the person who has signed it. The DRAT though observed that one of the borrower was a Director in the Bank at the time of sanction of the loan ought not to have dismissed the appeal, on the other hand, ought to have allowed the same setting aside the order passed by the DRT and sought to allow the petition.

5. Learned counsel appearing for the Bank argued in support of the order passed by the DRT as well as DRAT and submits that the Bank is dealing with the public money and the amount of loan is not denied by respondent No.2 - Borrower. A security was created long ago under a equitable mortgage by means of deposit of title deeds i.e., Lease hold rights and the Possession Certificate, which are the documents in respect of the very same property. The Sale Deed executed is just a continuation of the earlier Lease cum Sale Agreement. In that view of the matter, once the property has already secured, becomes a secured interest. Once the property is secured under the mortgage by deposit of Title Deeds, the security interest is created. The same has been reflected in the Encumbrance Certificate produced by the Bank before the DRT, which has been taken into consideration by the DRT, while disposing of the application filed by the petitioners. In that view of the matter, the order passed

by both the Tribunals does not suffer from any infirmities and sought to dismiss the petition.

6. We having considered the rival submissions, perused the entire Writ Petition papers.

7. So far as the contention that the rights in respect of properties conveyed only under the sale deed exeucted in the year 2000 is concerned, cannot be countenanced, the reason being as rightly pointed out by learned counsel for respondent No.1 Bank it is a continuation of Lease cum Sale Agreement. The said agreement was executed by the KIADB in respect of the property bearing Plot No.314 in Sy.No.46 of Industrial Area, which is clearly found place in the business loan application in respect of property offered as security in Item Nos.9, 10 and 11. The description of the property is the very same property found in Sale Deed executed by the KIADB in favour of respondent No.2.

8. In the Lease cum Sale Agreement, there is a clear averment/ stipulation regarding the term of Lease, for a period of 11 years computed from 13.01.1992, unless the lease is determined early under Clause-4. The Lessor shown in the said document is the purchaser under the registered Sale Deed of the year 2000. The Lease cum Sale Agreement was executed along with certain conditions which are required to be complied and upon payment of the entire amount agreed therein under, the sale deed comes to be executed in favour of the Lessee.

9. The terms of the Lease cum Sale Agreement also permits, especially at Clause-Q that, the Lessee is permitted to raise loans for the purpose of construction of building on the premises, by creating mortgage in the right, title and interest in the premises. The language used in the said Clause clearly presupposes that the lease cum sale agreement and the Possession Certificate thereon are the title documents in respect of the property. In view of creation of equitable mortgage by deposit of the said Title

deeds, loan was obtained by respondent No.2, now it is not open for the petitioners to contend that the said documents cannot be construed as Title Deeds to create any security interest in favour of the Bank. In the teeth of these documents, we are not in a position to comprehend the contention of the petitioners that there was no security interest created by means of mortgage earlier to sale deed in their favour. A security interest created in favour of the Bank, earlier to issuance of Sale Deed by means of creating equitable mortgage by deposit of title deeds in the year 1999 itself. In that an eventuality, the claim of the petitioners does not survive for any consideration.

10. That apart, the claim of the petitioners of fraud and other things are not amenable to the jurisdiction of the Tribunal and even if they are taken as it is, they are not available for the petitioners to raise in view of creation of security interest in respect of the property under registered deed which is also reflected in the Certificate of Encumbrance, produced by the Bank at Annexure-R20,

clearly depicting that encumbrance created in favour of the Bank. In that view of the matter, the contention of the petitioners that they are bonafide purchasers without notice cannot be countenanced. Therefore, we find no infirmities in the order passed by the DRT and the DRAT and fully concur that the order passed by the DRT as well as DRAT. In that view of the matter, the petition sans merits and is accordingly, ***dismissed***.

11. In view of dismissal of the Writ Petition, pending interlocutory applications, if any, stand disposed of.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(T.M.NADAF)
JUDGE

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