



C.R.P.No.3315 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.07.2023

Pronounced on : 27.09.2023

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3315 of 2018

IDBI Bank,
Salem Branch,
rep. by its Manager,
Mr.V.Gopalakrishnan,
No.3, K.T. Tower,
Omalur Main Road,
Four Road,
Salem Town.

... Petitioner
/6th Defendant

Vs.

1.Minor Sri Hari Aadharsh
2.Minor Geetha Sri
Minors represented by their
next friend grandmother
Tmt.T.Gandhimathi



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3.K.Venkatraman

4.Dineshkumar

5.Suganya

6.Prabavathi

7.Gayathri

... Respondents 3 to 6/
Defendants 1 to 5

Prayer: Petition filed under Article 227 of the Constitution of India as against the Fair and Decretal Order dated 12.06.2018 passed by the learned Principal District Judge, Namakkal, in I.A.No.534 of 2017 in O.S.No.115 of 2017 and consequently, allow the same in the interest of justice, equity and good conscience.

For Petitioner : Mr.K.Balamurali
for Mr.Shivakumar and
Mr.Suresh

For Respondents : Mr.N.Suresh
for R1 and R2

Not ready in notice
regarding R3 to R7



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ORDER

This Civil Revision Petition arises against the Fair and Decretal Order passed under Order 7 Rule 11(d) of the Code of Civil Procedure by the learned Principal District Judge, Namakkal, in I.A.No.534 of 2017 in O.S.No.115 of 2017.

2.O.S.No.115 of 2017 has been presented for the following reliefs:

“(அ)தாவா சொத்துக்களை 9 சம்பாகங்களாக பிரிவினை செய்து அவ்வாறு பிரிவினை செய்யப்பட்ட சம்பாகங்களில் 2 சம்பாகங்களை மைனர் வாதிகளுக்கு தனி சுவாதீனத்துடன் அடைய முதல்நிலை தீர்ப்பாணை உத்திரவு பிறப்பித்து நீதி வழங்கியும்,



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(ஆ)1,2 மற்றும் 4, 5 பிரதிவாதிகள் பெற்ற
கடனுக்காக மைனர் வாதிகளின் தாவா சொத்தில்
ஏற்பட்டுள்ள 9ல் 2 பாக சொத்தின் 6ம் பிரதிவாதி
எந்த காலத்திலும் மற்றும் எவ்விதத்திலும்
நடவடிக்கை எடுக்க கூடாது என நிரந்தர
உறுத்துக்கட்டளை தீர்ப்பாணை உத்திரவு பிறப்பித்து
நீதி வழங்கியும்,

(இ)தாவா செலவு தொகையை வாதிக்கு
பிரதிவாதிகளால் கிடைக்கும்படிக்கு உத்திரவு
பிறப்பித்து நீதிவழங்கியும்

(ஈ)நீதிமன்றத்தார் அவர்களுக்கு யுக்கதமாக
தோன்றும் இன்னபிற பரிகாரம் மற்றும் பரிகாரங்கள்
அளித்த உத்திரவு பிறப்பித்து நீதிவழங்கியும்
தீர்ப்பாணை பிறப்பிக்க மைனர் வாதிகள் வணக்கமாய்



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பிரார்த்திக்கிறார்கள்.”

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3.The suit is one for partition and separate possession. It is the case of the 6th defendant/IDBI Bank, Salem Branch that the defendants 1, 2 and 5 had obtained loan from the petitioner/Bank on 15.11.2016. They failed to repay the dues to the Bank and hence, the said loan was declared as Non Performing Assets. Notice was issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as the SARFAESI Act) on 30.12.2016. In spite of notice sent to the defendants 1, 2 and 5, they did not repay the amount. Hence, the petitioner/Bank took possession under Section 13(4) of the SARFAESI Act on 26.04.2017. It is the further case of the Bank that the defendants 1, 2 and 5 had filed a petition before the Debts Recovery Tribunal, Madurai, in I.A.No.1131 of 2017 in S.A.No.217 of 2007 to stay further



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proceedings of the Bank pursuant to the notice of possession. The

Debts Recovery Tribunal had passed a conditional order. Since the conditional order was not complied with, the Stay order was cancelled automatically. According to them, in order to defeat the 6th defendant from taking possession of the suit property under Section 13(4) of the SARFAESI Act, the present suit for partition had been filed. It was argued that Section 34 of the SARFAESI Act is a bar to the suit and therefore, a petition for rejection of Plaint was filed alleging that from the statement made in the Plaint, the suit is barred.

4.A counter was filed to this application stating that as per Section 6(4) of the Hindu Succession Act, 2005, the minor coparcener is not bound to pay any debt due by his father and his grandfather. It is also stated that the DRT has no jurisdiction to deal with a claim as in a suit for partition. The minor petitioners stated that they have filed the suit only with respect to their shares



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of the property. They stated that the Bank had given an assurance that they will not take further steps with respect to the agricultural properties. It was further pleaded that as per Order 7 Rule 11 of CPC, no document filed by the defendant can be looked into.

5.The learned Trial Judge after hearing the arguments on both sides dismissed the application.

6.Originally, this Civil Revision Petition was listed before this Court during pandemic lockdown. Though the respondents had been served, they had not entered appearance. Consequently, this Civil Revision Petition came to be allowed. Thereafter, an application was filed in C.M.P.No.4366 of 2023 to set aside the said order Under Order 41 Rule 21 of CPC. By an order dated 20.07.2023, the order, in which the respondents did not participate was set aside and this Civil Revision Petition was restored to file. It is now being heard on its merits.



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7.I heard Mr.K.Balamurali, learned counsel for the petitioner and Mr.N.Suresh, learned counsel for the respondents 1 and 2.

8.A primary issue that has to be resolved is whether the suit is barred by virtue of Section 34 of the SARFAESI Act. I have to necessarily extract Section 34 of the SARFAESI Act in order to appreciate its scope and content. Section 34 of the SARFAESI Act reads as follows:

“34.Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).”



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9.The essential words are that the Civil Courts will not have the power to entertain any suit or proceedings with respect to matters in which a DRT or DRAT is empowered, by or under this Act or RDDB Act, entitled to determine an issue.

10.Bar of jurisdiction of Civil Court has to be read strictly. The learned counsel for the petitioner would cite several judgments in support of his contention. The question of bar of jurisdiction of the Civil Court has consistently arisen before this Court and other High Courts on several occasions. The position has been laid down in **Dhulabhai and others v. The State of Madhya Pradesh and another [AIR 1969 SC 78]**. The Court after referring to several authorities came to the following conclusions:

“35.The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-

(1)Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such



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provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2)Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

...

(7)An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

11.This view of the Constitutional Bench has held the field for more than fifty years. Interpreting a similar provision, this Court in

Periathambi Goundan v. The District Revenue Officer,



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Coimbatore and others [AIR 1980 Mad 180 (FB)] was pleased to

hold as follows:

“36.The next aspect to be considered, the ascertainment of the ambit, amplitude and the extent of the interdict imposed by S. 16-A of the Act, on the exercise of jurisdiction by a Civil Court. We have already extracted S. 16-A. Two things are clear from the language of the section. One is, the interdict is on the jurisdiction of the matters which by or under the Act have to be determined by the Record Officer, the District Collector or other officer or authority empowered by the Act. The section itself does not enumerate as to what those matters are. The second is, the interdict is not on any particular proceeding in the Civil Court, but only on the exercise of the jurisdiction in respect of matters. Controversies that come before a court or a tribunal cannot be either pigeon-holed or put in strait-jackets. They may be of different varieties as well as different standards. For the purpose of I deciding the main controversy, the court or the Tribunal may have incidentally to decide a number of subsidiary questions or controversies. Therefore, when the section itself does not enumerate the matters in respect of which the jurisdiction of the Civil Court is ousted, one will have to ascertain the said matters, with reference to the other provisions of the Act conferring power or jurisdiction on the authorities functioning under the Act. Similarly a suit or proceeding in a Civil Court may involve the determination of several matters, some of which may be



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within the jurisdiction of the authorities functioning under the Act and some others outside the jurisdiction. In such a case, the suit or proceeding as such cannot fail unless it is of such a nature that it can be terminated solely on the determination of the matter falling within the jurisdiction of the authorities functioning under the Act. Since the section itself does not bar the institution of the suit or a proceeding, it is unnecessary to labour the second aspect any further.”

12.I do not want to multiply the authorities on this point other than referring to the judgments which arose under the RDDB /SARFAESI Acts. In **Arasa Kumar and another v. Nallammal and others [2004 (4) CTC 261]**, this Court after an extensive analysis of all the previous cases took the view as follows:

“30.Section 9, C.P.C. and bar of jurisdiction created under relevant Sections in respect of the Co-operative Societies Act, Arbitration and Conciliation Act, 1996 and also Section 29 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and under Rule 40 of the Income Tax (Certificate Proceedings) Rules, 1962 and also the bar under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 were all considered by this Court and the Apex Court as referred supra and now, it is manifestly clear that the power under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act is not absolute and



the same is subject to certain restrictions, they are:

(1)that the parties, who filed the suit must be a party to the liabilities created in favour of the secured creditor,

(2)the disputes between the parties could be resolved under the provisions of the Act itself,

(3)that if the claim made by the parties is outside the jurisdiction of the Debts Recovery Tribunal or the appellate tribunal or any action taken or to be taken under this Act and also under the Recovery of Debt due to Banks and Financial Institutions Act, 1993 and the dispute raised by the parties can not be adjudicated by any of the tribunal or authority, created under the act or under any other Act, the right of the parties to approach the Civil Court for appropriate relief cannot be deprived and taken away.

31. Admittedly, in our case, the petitioners have filed the suit for partition including the item, in respect of which, the 3rd respondent taken out proceedings to bring the same for sale without the intervention of the Court and till the rights of the parties are determined by the Civil Court, and the Civil Court alone could decide and determine the rights of the parties in respect of their respective claims in the suit for partition, the 3rd defendant, though a secured creditor, cannot bring the property for sale by invoking the bar under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act or the bar under Section 13 of the Act. The Court below has not taken into consideration of these aspects and as a matter of fact, these salient features were not brought to the notice of the Court below, which resulted in passing of an erroneous order, which is liable to be set aside."



13. It is pertinent to refer to the Judgment of the Supreme Court in **Nahar Industrial Enterprises Limited v. Hong Kong & Shanghai Banking Corporation [2009 (8) SCC 646]** wherein it was called upon to consider the scope of exclusion of the jurisdiction of the Civil Court. The Supreme Court held that the jurisdiction of the Civil Court is not completely ousted with respect to the bar under Sections 17, 18 and 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Supreme Court was pleased to hold as follows:

“118. The liabilities and rights of the parties have not been created under the Act. Only a new forum has been created. The banks and the financial institutions cannot approach the Tribunal unless the debt has become due. In such a contingency, indisputably a civil suit would lie. There is a possibility that the debtor may file preemptive suits and obtain orders of injunction, but the same alone, in our opinion, by itself cannot be held to be a ground to completely oust the jurisdiction of the civil court in the teeth of Section 9 of the Code. Recourse to the other provisions of the Code will have to be resorted to for redressal of his individual grievances.



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119. It is also difficult to accept the contention of learned counsel for the banks that the civil court's jurisdiction is not in consonance with the Act. We do not find the same to be correct. On the ground of inconsistency in the procedures contained in the two Acts alone, the jurisdiction of the civil court cannot be said to have been ousted."

14.Following the said view, a learned Single Judge of this Court in **L.Nithish Krishna v. P.Sakunthala and others [CDJ 2020 MHC 2727]** had held that the Civil Court may not have the right to decide on the validity or otherwise of the creation of Security, but can pronounce upon the entitlement of the parties to a share without touching upon the binding nature of the securities so created in favour of the Bank or financial institutions. The learned Judge also held that it would be still open to the Bank to agitate that if the sharers should redeem the mortgage, it has to be in full.

15.The very same learned Single Judge had dealt with this issue in detail in **State Bank of India, SAM Branch, Egmore,**



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represented by its Chief Manager, G. Moorthi and others [CDJ

2019 MHC 3455] and had held that what is to be seen is whether the bar imposed under Section 17 of the Recovery of Debts Due to Bank and Financial Act, 1993, or under Section 34 of the SARFAESI Act, would cover the relief sought for in the suit. The learned Judge held that if the answer is “no”, the suit cannot be rejected as barred by law.

16.I also take inspiration from the recent judgment rendered by the Supreme Court in **Bank of Rajasthan Limited vs. VCK shares & Stock Broking Services Limited**, [CDJ 2022 SC 1255], whereunder the Supreme Court was pleased to hold as follows:

“There is no question of a counterclaim or a transfer or any other manner other than trial of the suit instituted by the respondent. In the absence of any such power existing in the Civil Court, an independent suit filed by the borrower against the bank or financial institution cannot be transferred to be tried along with application under the RDB Act, as it is a matter of option of the defendant in the claim under the RDB Act. However, the proceedings under the RDB Act will not be impeded in any manner by filing of



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a separate suit before the Civil Court."

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17.Though the learned counsel for the Bank wanted to draw my attention to certain documents that had been filed in the typedset of papers, I cannot do so because the Bank did not produce the documents before the trial Court and no application as required under Order 41 Rule 27 of CPC was filed before this Court.

18.Apart from that, at the time of consideration of an application for rejection of Plaint, I only have to read the Plaint and the documents filed along with the same. A reading of the Plaint shows that the properties are ancestral in nature. For an ancestral property, every co-parcener is given right by birth. This right can be enforced by way of a suit for partition. If a suit for partition is entertainable before the DRT or DRAT then most certainly jurisdiction is barred. In none of the authorities cited by the



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counsel for the petitioner, the Court has held that the suit for partition can be maintained before the DRT or DRAT. On the contrary, the direct judgment of this Court and of the Supreme Court in **Nahar Industrial Enterprises Limited v. Hong Kong & Shanghai Banking Corporation [2009 (8) SCC 646]** go on to show that wherever the Tribunal is not empowered to grant such a decree, a suit is maintainable.

19.The learned counsel for the petitioner placed heavy reliance on the judgement in **Jagdish Singh v. Heeralal and others [2014 (1) SCC 479]**. A careful perusal of the said judgment in para 12 would go to show that the suit itself is one instituted without cause of action because no claim at any point of time had been made that the property is a HUF property. On the contrary, all the properties were purchased in the year 1998 and 1999 by way of individual Sale Deeds and the suit itself came to be filed only in the year 2007. It was in the light of such finding that the Court had held that the plea raised by the parties is a false one. In our case on



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hand, no such fact has been made available to the Court by the

Bank. Therefore factually the judgment in **Jagdish Singh v. Heeralal and others [2014 (1) SCC 479]** is inapplicable to this Case.

20.The other judgment cited by the learned counsel for the petitioner is **Sri Chandru and another v. K. Nagarajan and another [2012 (3) CTC 785]**. A reading of this case would go to show that the suit had not been dismissed on the ground that the suit is barred but it was a judgment rendered in a regular appeal filed before this Court as against the dismissal of the suit after trial. The appeal suit was dismissed and the decree was confirmed. Similarly, the judgment reported in **V.Thulasi v. Indian Overseas Bank [2011 (3) CTC 801]** is not applicable to the case because the suit was for declaration that the guarantee created by the plaintiff was null and void. A guarantor is also treated as borrower within the meaning of the Act and therefore, any relief for the guarantor can be claimed only before the DRT.



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21.The bar of jurisdiction of the Civil Court would arise only if the relief sought before the Civil Court challenges any one of the measurers that is initiated under Section 34 of the SARFAESI Act. A suit for partition does not fall within the scope of Section 13(4) of the Act and consequently, the suit is not barred.

22.The last of the judgment that was relied upon by the learned counsel for the petitioner is **M/s.State Bank of India, Vadavalli Branch, Coimbatore, now at State Bank of India, Streessed Assets Management Branch v. Minor Krithaanyaa rep. By its mother/guardian G.Rekha [2012 1 MLJ 952]**. That was an appeal against an interlocutory order of injunction granted under Order 39 Rules 1 and 2 of CPC. The Court vacated the order of injunction, but however, did not reject the Plaint. That itself is a marker to show that the Courts have held the suit to be maintainable. It was only the grant of interim injunction that has been denied. In any event, the order passed at an Interlocutory stage does not determine whether the Plaint should be rejected or



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23.The learned counsel for the petitioner would seek for rejection of the plaint insofar as the 6th defendant is concerned. Code of Civil Procedure does not know of partial rejection of Plaints. The Plaint is either rejected in full or it is not rejected at all. Rejection insofar as one party is concerned, not being covered under Order 7 Rule 11 of CPC, I am not inclined to grant this relief.

24.In any event the case projected before the trial Court was that the suit is barred under the provision of Order 7 Rule 11(d) of CPC. Having come to the conclusion that the suit is barred, I am not in a position to grant the relief that has been sought by the petitioner.

25.In the present case, the relief that has been sought for is partition. Neither the DRT under the RDDB Act, 1993, nor the authorities under the SARFAESI Act of 2002, can grant a partition



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decree with respect to ancestral properties. This implies that the SARFAESI Act does not empower the DRT or DRAT to grant such a decree.

26.By reading Section 34 of the Act, I have to conclude that Civil Court will have the jurisdiction with respect to the matters which the DRT or DRAT are not empowered to grant. A decree for partition being one such relief, I have no other option than to confirm the order and decreetal order of the learned Principal District Judge, Namakkal, in I.A.No.534 of 2017 in O.S.No.115 of 2017 dated 12.06.2018.

Accordingly, this Civil Revision Petition is dismissed. No Costs.

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Index : Yes/No
Speaking Order : Yes/No



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To

The Principal District Judge,
Namakkal.



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V. LAKSHMINARAYANAN, J.

mps

Pre-Delivery Order in
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