

Court No. - 9

Case :- MATTERS UNDER ARTICLE 227 No. - 10900 of 2023

Petitioner :- Vikas Khanna

Respondent :- Bank Of India And Another

Counsel for Petitioner :- Ravindra Narayan Singh,Vishal Kashyap

Counsel for Respondent :- Vatsala

Hon'ble Rohit Ranjan Agarwal,J.

Heard Sri Ravindra Narayan Singh, learned counsel for the petitioner and Ms. Vatsala, learned counsel appearing for respondent no.1-Bank.

This writ petition has been filed challenging the judgment and order dated 04.10.2023 passed by Commercial Court, Varanasi in Suit No.28 of 2023.

The facts leading to the present case are that the petitioner had taken a loan from the Bank of India. When the petitioner had defaulted in the payment of the loan, a notice under Section 13 (2) of the (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 was issued. The said notice was not replied by the petitioner and the Bank had proceeded to auction the property of the petitioner.

The petitioner before this Court had filed Civil Suit for declaration as well as injunction for declaring the auction sale dated 26.06.2023 as null and void and also prayed for decree of prohibitory injunction. Temporary injunction was granted by the Court below. When the case was contested by the Bank and an application under Order 7 Rule 11 CPC was filed, the same was decided on 04.10.2023 holding that the suit was not maintainable

and is barred under Section 34 of the SARFAESI Act, 2002 read with Section 11 of Commercial Court Act.

Learned counsel for the petitioner has submitted that the Court below had not recorded proper findings and had only on the ground that the notice issued under Section 13(2) of the SARFAESI Act was not replied and against the order passed by the Additional District Magistrate (Finance and Revenue), the only remedy lies by filing an appeal under Section 17(1) of the SARFAESI Act before the Debts Recovery Tribunal.

Ms. Vatsala, learned counsel for the respondent- Bank, opposing the writ petition, has submitted that the suit itself was not maintainable in view of Section 34 of the SARFAESI Act, which is as under:-

"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)."

Learned counsel appearing for the respondent- Bank further contended that Section 11 of the Commercial Court Act further bars the jurisdiction of Commercial Court and Commercial Division for entertaining the suit, application or proceedings in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.

I have heard learned counsel for the respective parties and perused

the material on record.

After hearing counsel for the parties, this Court finds that the proceedings under the SARFAESI Act was initiated by the Bank which culminated in the auction of the property of the petitioner on 26.06.2023. The petitioner had a remedy of filing an application under Section 17(1) of the SARFAESI Act before the Debts Recovery Tribunal. Instead, the petitioner opted by filing the Suit No.28 of 2023 for declaration and prohibitory injunction against the Bank.

Both the SARFAESI Act under Section 34 as well as Commercial Court Act under Section 11 bars the jurisdiction of Civil Court to entertain such suit in which the proceedings under the SARFAESI Act have been initiated and had been brought to its logical end, the remedy available to the petitioner was only before the Debts Recovery Tribunal.

Considering the facts and circumstances of the case, no case for interference is made out in the order dated 04.10.2023 allowing the application filed under Order 7 Rule 11 CPC by the respondent-Bank.

Writ petition is devoid of merits and is, accordingly, dismissed.

Order Date :- 27.10.2023

SK Goswami