COURT FEE Rs.10 TEN RUPEES CANCELLED

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

Writ Petition (227) No. 122 of 2015

PETITIONERS Plaintiffs :

1. Ashok Kumar Jain son of Shri Madan Chand Jain, aged 40 years,

2. Smt. Kusum Jain wife of Shri Madanchand Jain, aged about 55 years,

Both are resident of Shri Vidyasagar General Sales, Khasra/Plot No. 321, Azad Market Risali, Bhilai, District-Durg (C.G.)

WP 227/122/15

Token 3634/15

Presented by Shri A. Khetrapal

20/2/15

VERSUS

RESPONDENTS Defendants :

1. The Manager, Central Bank of India, Branch Nurjahan (wrongly mentioned as Narjahan) Complex, in front of Polytechnic College, G.E. Road, Durg, District-Durg (C.G.)

2. R.L. Kori, Authorized Officer, Central Bank of India, Regional Office, Bombay Market, G.E. road, Raipur, District-Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

(34)

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (227) No.122 of 2015

PETITIONERS		Ashok Kumar Jain and another
	Versus	
RESPONDENTS		The Manager, Central Bank of India and another

Shri Goutam Khetrapal, counsel for the petitioners.

SINGLE BENCH : HON'BLE SHRI PRASHANT KUMAR MISHRA, J.

ORAL ORDER
(24/02/2015)

1. Petitioners/plaintiffs have assailed the legality and validity of the impugned order passed by the First Additional District Judge, Durg dismissing their appeal which in tern had arisen out of the order passed by the trial Court on 04/07/2013 refusing to register the suit in view of the bar contained under Section 34 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, *'SRFAESI Act'*).

2. Petitioners have filed a suit for declaration and permanent injunction against the Central Bank of India-defendant. Admittedly petitioner obtained a loan of Rs.5 Lakhs from the Bank. On account of default in repayment of loan, the defendant-Bank has proceeded against the petitioner under Section 13 of the SRFAESI Act. The present suit is preferred to seek a declaration that the said proceeding under the SRFAESI Act is null and void and the Bank be restrained from proceeding with the auction of the mortgage property and not to interfere with the plaintiffs' possession over the suit property.

3. Section 34 of the SRFAESI Act provides that 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. Section 35 of the SRFAESI Act further provides that the provisions of SRFAESI Act shall have overriding effect over other laws.

4. Referring to the observation made by the Supreme Court in para 51 in the case of ***Mardia Chemicals Ltd. & Others vs. Union of India and others, (2004) 4 SCC 311***, Shri Khetrapal would submit that the suit was maintainable and the trial Court should have registered the suit for trial. He would submit that once it has been observed by the Supreme Court that Civil Court jurisdiction can be invoked, to a very limited extent, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever, the suit should at least have been registered to examine whether the allegations made in the plaint is worth adjudication.

5. After hearing learned counsel for the petitioners and on perusal of the pleadings raised in the plaint it does not appear to this Court that the nature of allegations contained therein would construe a case of fraud in its literal sense. To make a suit of such nature maintainable despite the provisions contained under Section 34 of Code of Civil Procedure it would need pleadings where on bare perusal of the plaint the element of fraud is oozing. The allegations in the present suit are only to the extent that despite having made repayment of Rs.1,03,634/- on 11/02/2013 the Bank proceeded under Section 13(4) of the SRFAESI

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Act in June 2013 without issuing a notice under Section 13(2). The purport of this pleading is that the Bank committed procedural illegality by proceeding against the petitioner without issuing notice under Section 13(2) of the SRFAESI Act and that the petitioner was made to deposit an amount of Rs.1,03,634/- in February, 2013 without informing him that a proceeding under the SRFAESI Act is in contemplation.

6. This Court is afraid, such pleading does not make out a case of commission of fraud by the Bank so as to require the trial Court to register the suit, issue notice to the defendants and hold a trial, in view of the Bar under Section 34 of the Act, 2002.

7. It is settled law that a person who commit fraud should not be allowed to reap benefit of fraud and in this context it is observed by the Supreme Court that if the Bank has played fraud on the borrower it may not be permitted to proceed under SRFAESI Act and thus in such a case the borrower or any other person who is a victim of Bank's fraud would be entitled to initiate action in the Civil Court, however, there is no element of fraud in the proceeding initiated by the Bank against the petitioner, even if the entire plaint allegation is accepted as it is.

8. In the considered opinion of this Court, the trial Court and the Appellate Court have not committed any illegality or perversity in refusing to register the plaint.

9. Accordingly, writ petition is dismissed.

Sd//-
Prashant Kumar Mishra
Judge

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