**HON'BLE SRI JUSTICE R. SUBHASH REDDY**
**AND**
**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**CIVIL MISCELLANEOUS APPEAL No.933 OF 2014**

**JUDGMENT:** (Per Justice R. Subhash Reddy)

This Civil Miscellaneous Appeal is filed by defendant No.3 in O.S.No.131 of 2014 aggrieved by the order dated 27.08.2014 passed in I.A.No.440 of 2014 by the XXVII Addl. Chief Judge, City Civil Court, Secunderabad.

For the sake of convenience, the parties are referred to as arrayed in I.A.No.440 of 2014.

By the aforesaid order, the civil court allowed I.A.No.440 of 2014 filed by the petitioner under Order 39 Rules 1 and 2 read with Section 151 CPC and granted injunction restraining respondent No.3, their agents, associates, GPAs., from ousting the petitioner from her peaceful possession and enjoyment over the petition schedule property till the final disposal of O.S.No.131 of 2014, which is filed by her, for partition of the suit schedule property into three equal shares and to declare the registered gift settlement deed bearing document No.2333/1979 dated 01.08.1979 as null and void and not binding on her. The suit schedule property is a house constructed in an area of 325 sq. yards bearing H.No.12-7-287/1, situated at Mettuguda, Secunderabad. The 1st respondent claimed exclusive title to the said property by virtue of the aforesaid registered gift settlement deed.

M/s. Calyx Bio-Tech Ltd., situated at Plot No.208/09, Phase II, IDA, Cherlapally, Ranga Reddy District, has obtained loan from the 3rd respondent-Union Bank of India. The petitioner stood as guarantor for the loan obtained by the Managing Director of the company. When the loan amount was not paid, the loan account was classified as 'NPA' and further steps were taken under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'). When steps were being taken to take possession of the security interest created in favour of the 3rd respondent-bank, petitioner herein has filed the suit for partition of the suit schedule property, into three equal shares and declare the registered gift settlement deed bearing document No.2333/79 dated 01.08.1979 as null and void and not binding on her, mainly on the ground that the said property belongs to her mother and herself and the 1st respondent are own sisters and 2nd respondent is their brother. .

Pending disposal of the suit, she filed I.A.No.440 of 2014 under Order 39 Rules 1 and 2 to restrain the 3rd respondent and their agents from taking possession of the suit schedule property. The said petition is mainly contested by the 3rd respondent-bank on the ground that in view of the provision under Section 34 of the Act, civil court has no jurisdiction.

The civil court, by recording a finding that as much as the suit is for the purpose of partition and declaration, relief can be claimed from the civil court, has allowed the petition and granted injunction.

In this appeal, it is contended by the learned counsel for the 3rd respondent-bank, that in view of the provision under Section 34 of the Act, civil court has no jurisdiction to interdict steps taken in exercise of powers under the Act. In any event, it is submitted that in view of the interest created by the 1st respondent as guarantor in favour of the

3rd respondent-bank and in whose favour there is registered gift deed for the suit schedule property, the civil court, without examining the prima facie balance of convenience, granted injunction.

On the other hand, it is submitted by the learned counsel for the petitioner that as much as the suit is for partition of 1/3rd share of the suit schedule property claimed by the petitioner, the Debts Recovery Tribunal cannot decide such claims for partition made by the petitioner.

It is to be noted that 1st respondent is the sister of the petitioner and the 2nd respondent is their brother. One

Suresh Kumar, who is the Managing Director of M/s. Calyx Bio-Tech Ltd., has obtained loan from the 3rd respondent-bank and the 1st respondent, as guarantor, has created security interest to recover the loan granted by the

3rd respondent-bank. The very object of the Act is to enable the banks to recover the loans granted by them, without intervention of courts, by taking steps in accordance with the procedure prescribed under the Act itself. Further, if the petitioner is aggrieved by any steps taken by the 3rd respondent-bank, to take possession of the asset on which security interest is created, it is open to the petitioner to move the Debts Recovery Tribunal. Under Section 17 of the Act, any person aggrieved by the measures taken under Section 13(4) of the Act, can approach the Debts Recovery Tribunal. Further, under Section 34 of the Act, 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 under the Act. Even assuming that Debts Recovery Tribunal is not empowered to entertain partition and declaration suits, but, it can definitely examine to the extent of the grievance of the petitioner, viz., whether the petitioner is having any interest in the property on which security interest is created by the 1st respondent. Undisputedly, the 1st respondent claimed title to the property in question based on the registered gift settlement deed dated 01.08.1979. In that view of the matter, and, further, in view of the provision under Section 34 of the Act, while it is open to the petitioner to approach the Debts Recovery Tribunal for redressal of grievance under Section 17 of the Act, but, at the same time, when security interest is created in favour of the bank and when the bank is taking steps to recover the money lent, by disposal of security interest in accordance with law, civil court cannot entertain any suit and interdict the proceedings.

For the aforesaid reasons, the Civil Miscellaneous Appeal is allowed by setting aside the order dated 27.08.2014 passed in I.A.No.440 of 2014 in O.S.No.131 of 2014 by the XXVII Addl. Chief Judge, City Civil Court, Secunderabad. Consequently, I.A.No.440 of 2014 stands dismissed. However, liberty is given to the petitioner to approach the Debts Recovery Tribunal by way of application under Section 17 of the Act. Further, as the petitioner is apprehending dispossession, there shall be a direction to the respondents not to take any further steps with regard to the property in question within a period of four weeks from today.

As a sequel, miscellaneous petitions if any pending shall stand closed.

**R. SUBHASH REDDY, J**

**A. SHANKAR NARAYANA, J**

July 6, 2015

MRR