

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2469 of 2016 and
CMP No.12842 of 2016

Punjab National Bank
Represented by its Assistant General Manager,
No.54, Sabari Street, Binny Compound,
Tiruppur - 641 601.

...Petitioner

versus

R.Santhosh

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.04.2016 passed in I.A.No.387 of 2015 in O.S.No.220 of 2015 on the file of Subordinate Judge, Sathyamangalam.

For Petitioner : Mr.M.L.Ganesh

For Respondent : Mr.M.Venkatachalapathy
Senior Counsel for
Mr.M.Sriram

ORDER

The petitioner filed an application before the Trial Court invoking Order VII Rule 11 of the Code of Civil Procedure to reject the plaint. The Trial Court dismissed the application with liberty to the petitioner to move the Debts Recovery Tribunal with a request to transfer the suit to the

Tribunal for determination. The order dated 4 April 2016 in I.A.No.387 of 2015 is challenged in this Civil Revision Petition on multiple grounds.

2. Heard the learned counsel for the petitioner and the learned Senior Counsel appearing on behalf of the respondent.

3. The respondent filed the suit in O.S.No.220 of 2015 before the Sub-Court at Sathyamangalam, praying for a decree of declaration and consequential injunction. The suit was in relation to a property, which was mortgaged to the Bank. The Bank, therefore, filed the application to reject the plaint.

4. The petitioner took up a contention before the Trial Court that the proceedings under the SARFAESI Act has already been initiated and as such, the suit is not legally maintainable. According to the Bank, the respondent, ought to have taken up the matter before the Debts Recovery Tribunal.

5. The learned Trial Judge by way of a strange order permitted the petitioner to move the Debts Recovery Tribunal for transfer of the suit. However, the fact remains that the Trial Court has not decided the issue

as to whether the suit of this nature was maintainable before the Civil Court. The Trial Court was expected to consider as to whether in a matter covered by the SARFAESI Act, a suit of this nature is maintainable before the Civil court. Since larger issues were not considered by the learned Trial Judge, the impugned order is liable to be set aside.

6. In the result, the order dated 04.04.2016 is set aside. The application in I.A.No.387 of 2015 is restored to file. The learned Trial Judge is directed to consider the application afresh with opportunity of hearing to the parties. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

7. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

06.10.2016

Index:Yes/No
svki

K.K.SASIDHARAN, J.

(svki)

To

The Sub-Court, Sathyamangalam

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