

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 104 of 2015

M/s. SHV Engery Private Limited, SDE Serene Chambers, 17th Floor,
8-2-354, Road No. 7, Banjara Hills, Hyderabad-34, (Andhra Pradesh),
through its Authorized Officer, Ravinder Sharma (Manager-Legal)

---- Appellant
Plaintiff

Versus

1. Punjab National Bank, Circle Officer, Raipur (C.G.), through Chief Manager and Authorised Officer.
2. M/s. ABS Steels Ltd, through its Director Anil Agrawal and Sunil Agrawal, Central Jail, through Jail Superintendent, Durg (C.G.)
3. M/s. ABS Metals Private Ltd, through its Director Anil Agrawal and Sunil Agrawal, Central Jail, through Jail Superintendent, Durg (C.G.)

-----Respondents
Defendants

For the Appellant	:-	Mr. Devershi Thakur, Advocate
For the Respondents	:-	Mr. Priyanshul Gupta, Advocate on behalf of Mr. S.S. Rajpur, Advocate

Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board By
Prashant Kumar Mishra, J.

06.10.2018

1. This is a plaintiff's appeal assailing the judgment and decree of the trial Court dismissing his suit for permanent injunction.
2. Facts of the case briefly stated are that the defendant Nos. 2 and 3 have a steel plant at light industrial area bhilai. In the said plant of

defendant Nos. 2 and 3 the plaintiff has installed one LPG tank for its use by defendant Nos.2 and 3. On default committed by defendant No. 2 and 3 in repayment of loan amount to the defendant No.1 bank, the bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as the SARFAESI Act) and has obtained possession of the entire plant and machinery together with the LPG tank, therefore, the plaintiff preferred the suit for permanent injunction to restrain the bank from obtaining possession of the LPG tank in course of recovery of the loan. The suit has been dismissed on the ground, amongst others, that it is barred under section 34 of the Act, 2002.

3. Having heard learned counsel for the parties, we are satisfied that there is no scope for interference with the impugned judgment and decree passed by the trial Court in view of the law stated by the Supreme Court in the matter of **Jagdish Singh vs Heeralal & Ors, (2014) 1 SCC 479**, wherein the following has been held.

22. The scope of Section 34 came up for consideration before this Court in *Mardia Chemicals Ltd. (supra)* and this court held as follow:

“50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub- section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the civil

court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13 . It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13."

4. Accordingly, the appeal deserves to be and is hereby dismissed at the admission stage.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Vimla Singh Kapoor