HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 903 of 2017

Smt. Radha Singh, W/o. Dr. Mahendra Pratap Singh, Aged About 65 Years, Occupation Housewife, Caste Kshatriya, R/o. Sarveshari Nagar, Shivaji Ward No.1, Baikunthpur, District Koriya, Chhattisgarh

........Plaintiff

---- Petitioner

Versus

1. Madhusudan Tulsyan, S/o. Shri Sajjan Kumar Agrawal, Aged About 35 Years, R/o. Mahalpara (Baikunthpur), P.S. & Tehsil Baikunthpur, District Koriya, Chhattisgarh ....Defendant No.1(A)
2. Smt. Veenu Agrawal, D/o. Shri Sajjan Kumar Agrawal, Aged About 38 Years, R/o. Near Tulsin- Manas Mandir, Banaras, District Varanasi (U.P.) ....Defendant No.1(B)

   (Respondent No.1 & 2 substituted as Defendant No.1(A) & (B) being Legal Representative of the original Defendant No.1 Smt. Tara Devi Agrawal)
3. Sajjan Kumar Agrawal, S/o. Puranmal Agrawal, Aged About 35 Years, R/o. Mahalpara, Baikunthpur, P.S. & Tehsil Baikunthpur, District Koriya, Chhattisgarh ....Defendant No.2
4. State Of Chhattisgarh, Through Collector Koriya, Baikunthpur, District Koriya, Chhattisgarh ....Defendant No.3
5. The Branch Manager, Central Bank Of India, Manendragarh- Ambikapur Road, Baikunthpur, District Koriya, Chhattisgarh ....Defendant No.4.

---- Respondents

For Petitioner	:	Mr. Kshitiz Sharma, Advocate
For Respondent No.1 to 3	:	Mr. Dhirendra Prasad Shukla, Advocate
For Respondent No.4	:	Mr. Ashish Shukla, Dy. A.G.
For Respondent No.5	:	Mr. Anand Shukla, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

08.03.2018

1. The present petition is against the order dated 14.11.2017 wherein additional issues have been framed that whether the suit which is preferred by the plaintiff is barred by law and if so the effect thereto is to be decided as preliminary issue.

2. Learned counsel for the petitioner submits that the petitioner has filed a suit for specific performance against the respondent

No.1(A), 1(B) & 2 on the ground that an agreement of sale was entered with the seller on 30.08.2010 and for not executing sale deed the suit for specific performance was filed. Subsequently, it was revealed that the suit property was mortgaged with the Bank as such Bank was also joined as a defendant. The Bank after their appearance in suit have filed a written statement and it was averred that the suit land was mortgaged with the Bank and the cash credit limit was obtained by loanee, the other defendant, and till then more than Rs.18 Lakhs was due and recovery measures were already taken. It was submitted that by mere say that measures have been taken, it cannot be contemplated that any suit in respect of the same property is barred under any other law. He submits that the Court has framed the issue that whether the suit is barred under the law and has ordered to decide the same as preliminary issue, the same cannot be decided as preliminary issue. It is stated as preliminary issue requires involvement of number of question of law. He further submits that the Bank has played fraud with the borrower as the loan was of year 2014 and inflated figures as due has been shown. He further submits that he has not challenged any action and measures taken by the Bank for recovery of the amount, but it was only for the specific performance, therefore, the preliminary issue whether the suit is barred cannot be gone into.

3. Per contra, learned counsel for the respondents opposes the argument and submits that the Bank having been impleaded as party after the advertisement was made, specific averments have been made that measures have been taken under Section 13(4) of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short SARFAESI Act) and

notices have been published in paper for auction of the suit property on 30.10.2017. He refers to the application and submits that therefore since measures were taken under Section 13(4) of SARFAESI Act, so any actions in respect of the same property would be barred by virtue of Section 34 of the SARFAESI Act.

4. Heard learned counsel appearing for the parties and perused the documents.

5. Perusal of the order sheet would show that initially the Bank was not made a party but by an order dated 04.10.2017 the Bank was allowed to be made as a party. Though the application under Order 1 Rule 10 of C.P.C. has not been placed on record, however, perusal of the order would show that the Bank was impleaded as defendant for the reason that Bank had taken measures for recovery of the loan to enforce the mortgaged.

6. Section 34 of the SARFAECI Act reads 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.*

7. The application was preferred by the Bank to frame issue on the ground that the civil court shall not have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered and Bank has already taken measures for recovery of the loan. It was

contended that therefore the jurisdiction of the civil court would be barred. On the said application the preliminary issue has been framed. It has been stated in the application that more than Rs.18,93,000/- is outstanding against the borrowers who defaulted to make payments. Section 34 purports that the civil court jurisdiction shall be barred 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 the Act.

8. In this case, the Bank has come out with the plea that measures under Section 13(4) of the SARFAECI Act has been taken for sale of the suit property by coercive method which is permissible under the SARFAECI Act.

9. The Supreme Court in case of ***Mardia Chemicals Ltd. v. Union of India & Others***[1] at para 50 has held that full reading of Section 13(4) of SARFAECI Act shows that the jurisdiction of Civil Court is barred in respect of matters which a Debt Recovery Tribunal or Appellate Tribunal is empowered to determine in respect of any action taken. That means to say the prohibition covers even matters which can be taken cognizance of by the Debt Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It was further held that the bar of jurisdiction in respect of a proceeding which matter may be taken to the Tribunal exits and covers also contemplated measures under Section 13(4) of the SARFAECI Act. Once the provisions under Section 13(4) of the SARFAECI Act has been

1 AIR 2004 SC 2371

taken by the Bank then in such case the effect of Section 13(4) would come into play if the property is so mortgaged.

10. Further as has been held in case of ***Jagdish Singh. V Heeralal & Others***[2] the Supreme Court in para 22 has held as under :

> *"22. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9, CPC as well.*

2 2013 AIR SCW 6378

11. In this case, it is at the instance of the plaintiff/petitioner, the Bank has been arrayed as a party when the publication was made for sale of property in the paper. Consequently, it can always be presumed that it is within the knowledge of the petitioner/plaintiff that measures under Section 13(4) in respect of the matter i.e. suit property has been taken by the Bank as otherwise in a suit for specific performance, the presence of the Bank in the like nature is uncalled for.

12. As a result, when the measures have taken in respect of the matter i.e. the suit property by the Bank is admittedly been taken according to the plaintiff/petitioner. The preliminary issue which has been framed by the Court about the tenability of the suit can always be gone into and any apprehension of petition at this stage is pre-mature. Therefore, I do not find any reason to interfere with such order.

13. Accordingly, the petition being devoid of merit is dismissed at the admission stage itself.

Sd/-
(Goutam Bhaduri)
Judge

Ashok