

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.392 of 2018**

Ravindra Prabhakar Chavan,
Through POA, Maheshwar
Namdev Divkar .. Petitioner

Vs.

Authorized Officer, Syndicate
Bank, Mapusa and 6 Ors .. Respondent

Shri Arjun Naik, Advocate for the petitioner.

Shri Ajay Kumar, Advocate for the respondent nos.1 and 2.

CORAM :- C. V. BHADANG, J.

Date : 21st December, 2018

ORAL ORDER :

Heard for some time.

2. The petitioner was granted interim relief by the Trial Court on 12/03/2018, which was vacated by the impugned order dated 23/03/2018 in the following terms :

“Heard Ld. Adv. Ajay Kumar and Ld. Adv. A. Naik. In view of reply filed to application dated 9-3-2018 and since it prima facie appears that the Bank has resorted to action under the SARFAESI Act and that prima facie the jurisdiction of Civil Court in the matter concerning action under SARFAESI Act is barred the order dated 12/03/2018 is not extended. Application is rejected.”

3. The learned Counsel for the petitioner submits that the petitioner has made out a case of fraud and as such, in view of the decision of the Supreme Court in the case of ***Mardia Chemicals Vs. Union of India***; (2004)4 SCC 311, the suit would be maintainable.

4. On the contrary, it is submitted by the learned Counsel for the respondent nos.1 and 2 that the petitioner, if at all, aggrieved, has a remedy under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) before the Debt Recovery Tribunal.

5. The record discloses that a detailed reply, raising objection to the maintainability of the suit as well as the application for Temporary Injunction, was filed before the Trial Court. However, the order as reproduced above, does not show consideration of any of the rival contentions. This is certainly not a sound state of affairs in the matter of present nature. The Trial Court is expected to pass a reasoned order, which should demonstrate that the rival contentions have been considered in the light of the applicable provisions.

6. In such circumstances, the learned Counsel for the parties submit that the application can be sent back to the learned Trial Court for deciding it afresh in accordance with law. In that view of the matter and by consent of parties, the following order is passed :

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned order dated 23/03/2018 is hereby set aside.
- (iii) The learned Trial Court shall decide the application for Temporary Injunction as well as the application for rejection of plaint as expeditiously as possible and in any case, within a period of eight weeks from the receipt hereof.
- (iv) Rival contentions of the parties are left open.
- (v) Ad interim relief, already operating in this petition, shall continue for a period of eight weeks from the date of receipt of this order by the Trial Court.
- (vi) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

SMA