

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

C.R.P.PD.No.3524 of 2018

1.M/s.Pegasus Asset Reconstruction Pvt. Ltd.,
Having its registered office at
55-56, 5th Floor, Free Press House,
Nariman Point, Mumbai – 400 021
and inter-alia having its Branch Office at
Door No.54, Ekdalia Road, 1st Floor,
Kolkata – 700 019.

2.The Authorized Officer,
M/s.Pegasus Asset Reconstruction Pvt. Ltd.,
having its registered office at 55-56,
5th Floor, Free Press House,
Nariman Point, Mumbai – 400 021
and inter-alia having its Branch Office at
Door No.54, Ekdalia Road, 1st Floor,
Kolkata – 700 019.

... Petitioners

Vs

सत्यमेव जयते

1.M/s.Fair Deal Supplies Ltd.,
Rep. by its Authorized Representative,
having its office at 4, BBD Bag (East),
Room No.5, First Floor,
Stephen House,
Kolkatta – 700 001.

2.M/s.Allahabad Bank,
Rep. by its Authorized Signatory,
Door No.2, Netaji Subbas Road,
Kolkatta – 700 001.

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying for a direction to direct the Hon'ble District Munsif Court, Mettupalayam for a speedy disposal of the petition filed by the petitioner to reject the plaint under Order VII Rule 11 of CPC in I.A.No.253 of 2018 in Civil Suit in O.S.No.60/2018 within a time frame of four weeks that may be fixed by this Hon'ble Court.

For Petitioners : Mr.V.Karthick
Senior Counsel
for Mrs.Abitha Banu

ORDER

The 2nd defendant in O.S.No.60 of 2018 on the file of the District Munsif cum Judicial Magistrate Court, Mettupalayam, is the revision petitioner before this Court.

2.The grievance of the revision petitioner is that inspite of the express bar in respect of Civil Court's jurisdiction with reference to Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "SARFAESI Act"), the Subordinate Court is granting adjournments time to time, without deciding the Interlocutory Application filed by the revision petitioner, for rejection of plaint.

3.The learned Senior Counsel appearing on behalf of the petitioners made a submission that the property in question was already dealt with, by the

2nd defendant bank, viz. M/s.Allahabad Bank, under the provisions of the

SARFAESI Act. This apart, the order passed by the authorities competent, has been adjudicated before the Debt Recovery Tribunal-III, Kolkata, in Securitisation Appeal No.547 of 2017. The order of the Debt Recovery Tribunal dated 22.02.2018, made in the said S.A.No.547 of 2017, has not been challenged before the Debt Recovery Appellate Tribunal and hence, the said order became final.

4. However, the learned Senior Counsel is of an opinion that even in such a case, the parties aggrieved shall appeal before the Debt Recovery Appellate Tribunal and certainly, a civil suit cannot be initiated before the Civil Court, in view of the express bar contemplated under Section 34 of the SARFAESI Act, where the jurisdiction of the Civil Courts are ousted expressly. Since there is an express bar, no suit is maintainable under Section 9 of the Code of Civil Procedure. Thus, entertaining the suit itself, is impermissible and therefore, there cannot be any unnecessary adjournments while dealing with the Interlocutory Application filed by the revision petitioner for rejection of plaint itself.

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5. This Court is of an opinion that when such grounds are raised regarding the very maintainability of the civil suits before the Civil Courts with reference to the express bar in a special Act, the Courts must be cautious and such applications are to be decided without any lapse of time. The parties who are all filing such suits without noticing the express bar provided under the

special Act, cannot be allowed to protract and prolong the issues, which is certainly impermissible.

6.The learned Senior Counsel contends that the facts regarding the initiation of action by the bank under the SARFAESI Act and the order passed by the Debt Recovery Tribunal-III, Kolkata were suppressed by the plaintiff at the time of institution of the civil suit. Therefore, the very suit is liable to be rejected on the ground of suppression of facts also. This apart, the revision petitioner had also filed an Interlocutory Application for rejection of plaint in I.A.No.253 of 2018 in O.S.No.60 of 2018. However, the learned District Munsif cum Judicial Magistrate, Mettupalayam, is granting adjournments without deciding the preliminary issue raised in respect of the maintainability of the civil suit with reference to Section 34 of the SARFAESI Act.

7.Considering the facts and circumstances of the case and the express bar contemplated under Section 34 of the SARFAESI Act, this Court is inclined to consider the present revision petition.

8.Accordingly, the learned District Munsif cum Judicial Magistrate, Mettupalayam, is directed to dispose of the Interlocutory Application in I.A.No.253 of 2018 in O.S.No.60 of 2018, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above direction, this Civil Revision Petition is allowed. No costs.

08.11.2018

Note : Registry is directed to issue copy of this order by 12.11.2018.

mkn
To

The District Munsif cum Judicial Magistrate,
Mettupalayam.



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S.M.SUBRAMANIAM, J.

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