BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.07.2018
DELIVERED ON : 13.11.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD)(PD) No.1532 of 2018
and
CMP(MD)Nos.6688 and 6689 of 2018

S.Sankar .. Revision Petitioner/Plaintiff

vs

1. Shasikala

2. Indian Bank
   through its Main Branch Manager
   Kovillor Road, Karaikudi. .. Respondents/Defendants

Civil Revision Petition filed under Article 227 of Constitution of India against fair and decretal order dated 23.4.2018 passed in I.A.No. Unnumbered of 2018 in O.S.No.27 of 2018 on the file of the Subordinate Judge, Devakottai.

For Petitioner : Ms.S.Srimathy

ORDER

This revision is directed against the fair and decretal order dated 23.4.2018 passed in unnumbered I.A. in O.S.No.27 of 2018 on the file of the learned Subordinate Judge, Devakottai.

2. The facts in a nutshell are as under: The petitioner herein is the plaintiff, whereas the respondents are the defendants in the suit, being O.S.No.27 of 2018, seeking inter alia, the following reliefs:

(a) to declare that the suit properties absolutely belong to the petitioner and consequentially restrain the defendants from interfering with the peaceful possession and enjoyment of the petitioner; and
(b) to direct the first respondent to pay the cost of the suit to the petitioner.

3. In the above said suit, the petitioner filed an interlocutory application (which is unnumbered) seeking an order of interim injunction restraining the second respondent from bringing

the second item of the suit property for sale.

4. The learned Subordinate Judge, by order dated 23.4.2018 passed order in unnumbered I.A. in O.S.No.27 of 2018, while observing that the suit itself cannot be numbered, rejected the interlocutory application with cost as not maintainable.

5. Assailing the above said order, the present civil revision petition is filed.

6. The learned counsel appearing on behalf of the petitioner submitted that the first respondent, who is the wife of the petitioner, is living separately and had also filed a DVOP petition, which is pending, and with an intention to grab the property, she is not allowing to pay the entire due in one time settlement and it is pleaded that the first respondent had purchased the properties only with the funds sent by the petitioner from abroad, where he was employed, and the second respondent bank in cahoots with the first respondent is facilitating the first respondent to grab the property.

7. The learned counsel further contended that the second respondent bank had issued possession notice and if injunction is not granted and the second respondent bank is not restrained from proceeding further with the possession notice, then the petitioner will be seriously prejudiced, more so, when the petitioner is ready and willing to settle the debts.

8. I heard Ms.S.Srimathy, learned counsel for the petitioner and perused the documents available on record.

9. At the outset, it is apposite to refer to Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, which reads as under:

> *"Section 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."*

10. Looking at the entire purpose and object of the Act, it is evident that the Act provides for various remedies to the secured creditor for recovery of the dues. An effective remedy of making an application to Debts Recovery Tribunal is provided to the aggrieved person under Section 17(1) of the Act and as per section 34 of the Act, the jurisdiction of Civil Court is expressly barred in respect of any matter which Debts Recovery Tribunal is empowered to

determine. It also specifically provides that no injunction can be granted by any Court in respect of any action taken in pursuance of the Act under the Recovery of Debts Dues to Banks and Financial Institutions Act, 1993. Section 35 of the Act further provides that the provisions of SARFAESI Act shall have overriding effect, on provisions of any other law time being in force. Thus, it can be seen that the SARFAESI Act is a complete self-contained Code in itself, which provides effective measures for the banks and financial institutions to recover their dues without intervention of the Courts and adequate remedies are also provided in the Act itself to the persons aggrieved by those measures.

11. In *Jagdish Singh V. Heeralal and others, AIR 2014 SC 371*, while dealing with the scope of Section 34 of the Act, the Hon'ble Supreme Court observed as follows:

> *"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, subsection (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 subsection (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."*

12. A reading of the provisions of Sections 13 and 34 of the Act makes it clear that the bar of jurisdiction of Civil Court under

Section 34 of the Act would operate even before the measures as provided under Section 13(4) are taken. Section 34 of the Act has two limbs. The first limb postulates that no Civil Court shall have jurisdiction to entertain the suit or proceeding in respect of any matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine, whereas the second limb of the provision inhibits the Court from granting injunction 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 the Banks and Financial Institution Act, 1993. In the present case, relief of injunction is sought by the petitioner restraining the second respondent from taking any action in pursuance of the notice issued under Section 13(2) of the Act.

13. The second limb of Section 34 of the Act expressly prohibits the Civil Court from granting injunction in respect of any action taken or to be taken by or under the Act. The issuance of the notice is an action taken second respondent bank under Section 13 (2) of the Act. Hence, as the Civil Court is prohibited from granting any injunction in respect of the notice or future action to be taken under the Act, the jurisdiction of Civil Court is barred.

14. Further, it is an action taken by the bank in pursuance of "*measures*" under Section 13(2) of the Act. Ergo, granting any injunction or declaration restraining the bank from taking measures is also barred under Section 34 of the said Act. On this score alone, the order of the Court below does not warrant any interference.

15. For the foregoing reasons, the civil revision petition is dismissed by confirming the order passed by the Court below. No costs. Consequently, connected miscellaneous petition is closed.

16. This Court is inclined to pass the following orders:

(a) All the Civil Courts in the State of Tamil Nadu is hereby directed not to entertain any Civil Suits filed against the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, since Section 34 of the SARFAESI Act specifically prohibited the Civil Courts from granting any injunction in respect of the notice or future action to be taken under the SARFAESI Act.

(b) the Registrar General of this Court is hereby directed to issue circular to all the Civil Courts by directing them not to entertain any Civil Suits filed against the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Registrar General,
   High Court of Madras, Madras-104.

2. The Additional Registrar General,
   Madurai Bench of Madras High Court,
   Madurai.

3. The Registrar (Judicial),
   Madras High Court, Madras.

4. The Registrar (Judicial),
   Madurai Bench of Madras High Court,
   Madurai.

5. The Subordinate Judge,
   Devakottai.

6. The Section Officer,
   'F' Section,
   Madras High Court, Madras.

7. The Section Officer,
   'F' Section,
   Madurai Bench of Madras High Court,
   Madurai.

+ 1 CC TO Ms.S.SRIMATHY, ADVOCATE IN SR No. 95152

VSV
TE/PM/SAR-4 : 26/11/2018 : 5P/9C

order made in
C.R.P. (MD)(PD) No.1532 of 2018 and
CMP(MD)No.6688 of 2018
13.11.2018