**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**C.R.P. Nos.4386 & 4389 of 2018**

**COMMON ORDER:**

These Revisions arise between the same parties out of the same suit and so they are being disposed of by this common order.

2. Petitioners in both the revisions are third parties to the suit O.S.No.292 of 2010 on the file of the XXVI Additional Chief Judge, City Civil Court, Hyderabad.

3. The said suit was filed by respondents 1 and 2 against the 3rd respondent for specific performance of an Agreement of Sale dated 18.01.2010 in respect of suit schedule property.

4. The property in question even prior to the execution of the said agreement of sale was admittedly mortgaged to the Vijaya Bank, Vijaynagar Colony Branch (for short 'the Bank') by depositing title deeds thereof, as a security for a loan taken by a third party M/s.Sohan Engineering Constructions and in the Agreement of Sale this fact was also mentioned.

5. During the pendency of suit, it appears that the said bank initiated recovery proceedings of the loan amount against the 3rd respondent/D.1 before the Debt Recovery

Tribunal invoking the provisions of Securitization and Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 (for short 'SARFEASI Act') and initially the suit schedule property was auctioned and the 2nd respondent became the highest bidder in the auction, but the auction was not finalized, though the bid amount was deposited by the 2nd respondent into the account of the said Bank.

6. Thereafter, the petitioners herein who are the daughter-in-law and son-in-law of the 3rd respondent/D.1 came into picture. The 3rd respondent then approached the Debt Recovery Tribunal to permit the loan amount to be paid by petitioners. The petitioners then paid the loan amount and the suit property was released in their favour through a sale certificate issued by the bank. These events took place during the pendency of the suit O.S.No.292 of 2010.

7. Respondents 1 and 2 then filed I.A.No.42 of 2018 under Order 1 Rule 10 CPC to implead petitioners as defendants 2 and 3 in the suit.

8. In the affidavit filed in support of the application they stated the above facts and contended that the petitioners are claiming title under the sale certificate issued by the Bank which was registered on 07.05.2014 in the Office of

the Sub-Registrar, Chikkadpally; that the said transaction is collusive, illegal and not binding on them; and also the transaction has occurred during the pendency of the suit; and therefore petitioners are proper and necessary parties to the suit. They also sought for amendment of plaint by adding para 6(b) as under:

> *"The plaintiff submits that during the pendency of the suit the defendant No.2 and 3 got transferred title of the suit schedule property and their names under registered sale certificate issued by M/s.Vijaya Bank and it is humbly submitted that the defendant No.1 to frustrate the claim of the plaintiff who collude in the defendant No.2 and 3 got the sale certificate executed in favour of the respondent No.2 and 3 herein and suffice to state that the said transaction is illegal null and void", and also sought for amendment of prayer portion by adding the words defendants 1 to 3 instead of defendant.*

9. They also filed I.A.No.41 of 2018 under Order VI Rule 17 CPC to amend the plaint by adding para 6(b) and the prayer portion of the plaint.

10. These two applications were opposed by the petitioners. They contended that the respondents 1 and 3 were aware that the suit property was mortgaged by the 3rd respondent/D.1 with Vijaya Bank, Vijayanagar branch at the time of availing loan; that the Authorized Officer of the Bank initiated action under the SARFEASI Act in 2011; that the subsequent proceedings occurred before the Debt Recovery Tribunal, Hyderabad and the petitioners have

deposited Rs.4,75,00,000/- pursuant to the direction of the Debt Recovery Tribunal and thereafter they obtained Sale Certificate which was registered on 07.05.2014 in their favour. They contended that only the Debt Recovery Tribunal can decide the issues of liability or the correctness of the proceedings taken under the SARFEASI Act; that the proceedings initiated under the Act were through Authorized Officer and was therefore a statutory action was initiated on behalf of the creditor bank and not by the 3rd respondent.

11. Petitioners also contend that they were not necessary or proper parties since a challenge to the issuance of the Sale Certificate was already pending before the Debt Recovery Tribunal, Hyderabad at the instance of the 2nd respondent; that they are not parties to the suit Agreement of Sale and so they cannot be impleaded as parties to the suit.

12. Reference is also made to Section 34 of the SARFEASI Act and a contention was raised that the Civil Court has no jurisdiction in respect of any matter, which a Debt Recovery Tribunal or an Appellate Tribunal is empowered by or under SARFEASI Act to determine; and so, the action of the Authorized Officer in issuing the Sale Certificate and registering in favour of the petitioners cannot be questioned in the Civil Court. It is thus contended that amendment

seeking to challenge the validity of Sale Certificate and its registration after it is issued by the Authorized Officer of the Bank under the provisions of SARFESI Act, cannot be permitted.

13. The 3rd respondent also supported the stand of the petitioners.

14. By separate orders, the Court below allowed both I.A.No.41 of 2018 and 42 of 2018 on 24.04.2018.

15. In the impugned orders, the Court below held that in the suit, petitioners had not challenged any order passed by the Debt Recovery Tribunal and the suit itself was filed prior to the debt recovery proceedings and so Section 34 of the SARFEASI Act does not bar the suit. It further observed that purchasers of the property i.e., petitioners are none other than the daughter-in-law and son-in-law of the 3rd respondent; though the respondents 1 and 2 have participated in the auction and deposited the bid amount, the petitioners were permitted to pay amount and get release of the schedule property in their favour. It therefore held that *prima facie* since the title to the property appears to be in the name of the petitioners, and this event happened after filing of the suit; they are necessary and proper parties to the suit; and in their absence, the issues relating to specific performance and delivery of possession

cannot be decided. It further held that once the petitioners are impleaded as defendants 2 and 3, necessarily plaint requires to be amended by not only including their names but also by incorporating appropriate pleadings in the plaint in the appropriate place. Therefore, it allowed not only the impleadment petition but also the application for amendment of the plaint.

16. Aggrieved by the order dated 24.04.2018 in I.A.No.42 of 2018 in CRP.No.4386 of 2018 is filed by the petitioners and aggrieved by the order passed in I.A.No.41 of 2018, they filed CRP.No.4389 of 2018.

17. Sri A.Suryanarayana, Senior Counsel appearing for the petitioners has sought to contend that the petitioners are not necessary parties to the suit since the relief of specific performance was sought for only against the 3rd respondent; that the suit property was transferred to the petitioners by the Vijaya Bank under the provisions of the SARFEASI Act pursuant to the order of the Debt Recovery Tribunal and said transfer was not by the 3rd respondent; and therefore, the suit against the petitioners is not maintainable before the Civil Court challenging the proceedings under the SARFEASI Act, in view of Section 34. He also contended that the application for amendment was wrongly presumed by the Court to be only for the change of cause title; and other aspects relating to the claim for

amendment such as whether the Sale Certificate could be challenged, which cannot be gone into by the Civil Court by Section 34 of the Act, had not been considered by the Court below. He also contended that judgment of the trial Court is contrary to the decision of the Supreme Court in ***State Bank of Patiala vs. Mukesh Jain and Another***[1].

18. Counsel for the respondents 1 and 2 supported the order passed by the Court below and contended that since there is a *lis pendens,* transfer pending the suit, the Court below had rightly impleaded the petitioners and the contention of the petitioners regarding Section 34 of the SARFEASI Act is a contention touching the merits of the amendment and such aspect cannot be gone into while deciding whether or not to permit the amendment of the plaint.

19. I have noted the contentions of both sides.

20. From the facts narrated above, it is clear that the suit for specific performance was filed in the year 2010 by the respondents 1 and 2 against the 3rd respondent on the basis of Agreement of Sale executed by the 3rd respondent in their favour on 18.01.2010. Admittedly, even by that time, the property has been mortgaged to the Vijaya Bank by the 3rd

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[1] (2017) SCC 53

respondent and the said fact was also mentioned in the Agreement of Sale.

21. Subsequent there to, on account of default in payment of loan to the Vijaya Bank, the proceedings under the SARFEASI Act were initiated by the said bank and auction was also conducted by the bank before the Debt Recovery Tribunal, Hyderabad.

22. Though the 2nd respondent participated in the auction, and deposited bid amount into the account of the Bank, his bid was not confirmed.

23. Later, the petitioners entered into the picture and the 3rd respondent requested the Tribunal to permit the petitioners to pay the loan amount to the Bank. They accordingly paid and Bank executed a Sale Certificate in their favour as per the orders of the Tribunal.

24. This sale certificate was also challenged by the 2nd respondent before the Debt Recovery Tribunal and the said proceeding is said to be pending before the Debt Recovery Tribunal as of date.

25. Counsel for the petitioners states that he does not wish to make any submissions in CRP.No.4386 of 2018 wherein the order of impleadment of petitioners is challenged.

26. Therefore, the CRP.No.4386 of 2018 is dismissed as withdrawn with a direction that the Court below shall decide the suit uninfluenced by any observation made by it regarding applicability of Section 34 of SARFEASI Act about maintainability of the suit against the petitioners as well as granting of relief to the petitioners.

27. Coming to CRP.No.4389 of 2018, wherein the amendment of the plaint is under challenge, I am of the opinion that post impleadment of the petitioners in the suit, the amendment was rightly permitted by the Court below, though the observations of the Court below in I.A.No.42 of 2018 regarding applicability of the SARFEASI Act were unnecessary for it to make.

28. This is because for deciding whether or not to permit amendment to a pleading, the correctness of the case set up in the amendment i.e., the merits of the amendment cannot be gone into. (*See Gorantla Kondala Rayudu vs. Marvel Organics*[2] and *Edla Shoba Rani vs. Yegurla Rambabu*[3]).

29. Since, admittedly, the trial in the suit has not commenced when the application for amendment was filed by the respondents 1 and 2, no prejudice would be caused to the 3rd respondent since, Order VI Rule 17 CPC would have no application. Therefore, the Court below has to

[2] 1997 (5) ALT 663
[3] 2005 (2) ALD 40

permit petitioners to file written statement, permit 3rd respondent to amend his written statement and frame appropriate issues and proceed further.

30. Accordingly, CRP.No.4389 of 2018 is also dismissed. No costs.

31. Consequently, miscellaneous petitions pending, if any, in both the Revisions shall stand dismissed.

**M.S.RAMACHANDRA RAO, J**

26.03.2019
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