*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%   **Date of decision: 5th December, 2019**

\+   **<u>CS(OS) No.633/2019, IA No.17123/2019 & IA No.17124/2019</u>**

SARVINDER SINGH & ANR.   .... Plaintiffs

Through: Mr. Abhishek Aggarwal, Advs.

Versus

THE CHIEF MANAGER, PUNJAB NATIONAL BANK & ORS.   ......Defendants

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The two plaintiffs viz. Sarvinder Singh and Arindra Singh, have instituted this suit for (i) declaration that the notices dated 10th July, 2019, 23rd November, 2019 and the order dated 2nd November, 2019 of the Court of Chief Metropolitan Magistrate (CMM), Central, Tis Hazari Courts, Delhi, are invalid, non est and illegal, (ii) permanent injunction restraining the defendants viz. (a) The Chief Manager, Punjab National Bank (PNB), New Rajinder Nagar, New Delhi, (b) Vikram Badhwar, HUF through its Karta Vikram Badhwar, and (c) Beechams Ace Mart Pvt. Ltd. from interrupting in the peaceful possession of the plaintiffs or from taking over possession of the property No.27, Rajpur Road, Civil Lines, Delhi or any part thereof and from showing the said property or any part thereof to be their own property, and, (iii) mandatory injunction directing the Chief Manager, PNB to cease to take any action whatsoever against the said property of the plaintiffs.

2. The suit is listed subject to office objection as to valuation and court fees paid. The said objection shall be dealt with in the course of the order.

3. The suit as filed against the Chief Manager, PNB is not maintainable in law. Chief Manager, PNB is an office and suit against an office, which is not a legal entity does not lie. Reference in this regard can be made to ***Chief Conservator of Forests, Govt. of AP Vs. Collector*** (2003) 3 SCC 472; ***Samadhan Swinming Club Vs. Union of India*** 2018 SCC OnLine Del 10782 (DB); ***J. Kuppanna Chetty, Ambati Ramayya Chetty & Co. Vs. Collector of Anantpur*** AIR 1965 AP 457 (DB); ***P.B. Shah & Co. Vs. Chief Executive Officer, Corporation of Calcutta*** AIR 1962 Cal 283 (DB); ***The Sheriff of Bombay Vs. Hakmaji Motaji & Co.*** AIR 1927 Bom 521 (DB); ***V. Rajaraman Vs. Hindustan Brown Boveri Ltd.*** AIR 1974 Del 200; ***Sanadhan Swimming Club Vs. Union of India*** MANU/DE/1562/2016; ***ICICI Bank Ltd. Vs. Satish Kumar Sehrawat*** 2018 SCC OnLine Del 10727; ***NW Ry. Administration Vs. Nw. Ry. Union, Lahore*** AIR 1933 Lah 203; ***Sarkar-E-Aali Zaria Nazim Vs. Athor*** AIR 1957 AP 714 (FB); ***Manahem S. Yeshoova Vs. Union of India*** AIR 1960 Bom 196. The suit would lie only against PNB and which has not been made a party.

4. It is the case of the plaintiffs, that (i) the father of the plaintiffs was the part owner of property No.27, Rajpur Road, Civil Lines, Delhi; (ii) the father of the plaintiffs died in the year 1988 leaving the plaintiffs as his sons and Nirmal Satyendra Singh as his widow; (iii)

Nirmal Satyendra Singh died on 24th November, 1994 leaving the plaintiffs only as her heirs; (iv) the plaintiffs have been residing abroad for over 50 years; however their mother Nirmal Satyendra Singh refused to leave India; (v) the plaintiffs had appointed one Vipul Tandon as the caretaker of their mother; (vi) after the demise of mother of the parties, the plaintiffs learnt that the said Vipul Tandon had obtained probate of a document claimed to be the validly executed last Will of the mother of the plaintiffs and on the basis thereof was attempting to dispose of the said property; (vii) the plaintiffs got the probate recalled and the petition for probate dismissed; (viii) the plaintiffs thereafter filed CS(OS) No.2453/2015 for recovery of possession of property from the said Vipul Tandon and in which suit a decree was passed in favour of the plaintiffs and against the said Vipul Tandon, of recovery of possession of the property; (ix) the plaintiffs recovered possession of the property on 6th December, 2018 in execution of the said decree; (x) the defendant no.2 Vikram Badhwar, on 7th December, 2018 filed an application in the proceedings for execution, claiming to be the owner of certain portion of the property of the plaintiffs, by virtue of Sale Deed executed in his favour by Vipul Tandon aforesaid; along with the said application, documents showing mortgage of the property with the defendant no.1, to secure the loan granted to Beechams Ace Mart Pvt. Ltd. were also filed; the said application is still pending consideration; (xi) since Vipul Tandon has been held to be not having any rights in the property, under a Sale Deed executed by him, no rights could be created in favour of Vikram Badhwar, HUF and Vikram Badhwar, HUF not having any rights in the property, could not have mortgaged the property; (xii) now the plaintiffs have learnt of the Chief Manager, PNB having affixed notices on the door of the property and from which the plaintiffs have learnt that on default of Beechams Ace Mart Pvt. Ltd. in repaying the dues of the bank, the bank has started proceedings for redeeming the mortgage; and, (xiii) it is mentioned in the said notices that the possession of the property will be taken on 13th December, 2019.

5. A perusal of the notices put up on the door of the property shows, (i) notice dated 10th July, 2019 to be under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, informing borrower Beechams Ace Mart Pvt. Ltd. and guarantor Vikrant Badhwar that the bank had taken possession of the property in exercise of powers under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) and cautioning Beechams Ace Mart Pvt. Ltd., Vikrant Badhwar and general public not to deal with the property; (ii) notice dated 23rd November, 2019 to be of the Court Receiver appointed by the Court of the CMM to take possession of the property with the assistance of the police, on 13th December, 2019; and, (iii) order dated 2nd November, 2019 of the CMM being on the application of PNB under Section 14 of the SARFAESI Act.

6. The plaintiffs have valued the suit for the purposes of jurisdiction at Rs.2.50 crores and for the reliefs of declaration at Rs.200/- and for permanent and mandatory injunction at Rs.500/- and have paid court fees of Rs.2,200/- only on the plaint. On the Registry

of this Court raising objection qua valuation of the suit, the counsel for the plaintiff relied on ***Bombay Ammonia Vs. Raj Kumar*** (2004) 115 DLT 609, holding that in a suit for simple declaration, fixed court fees of Rs.200/- is payable and on injunction it is Rs.13/- but the valuation for the purpose of jurisdiction is the value of the property and insisted on the suit being listed subject to office objection.

7. Section 7(iv)(c) of the Court Fees Act, 1870 provides that a suit to obtain a declaratory decree or order where consequential relief is claimed, shall be valued at the amount at which the plaintiff values the suit, with ad valorem court fees paid thereon. Section 8 of the Suits Valuation Act, 1887 provides that the valuation for the purposes of jurisdiction shall be same as the valuation for the purposes of court fees. Thus if the suit were to be for declaration with consequential relief, the plaintiff having valued the suit for the purpose of jurisdiction at Rs.2.50 crores, the valuation for the purpose of court fees has to be the same and ad valorem court fees payable thereon. Conversely, if the plaintiff values the suit at Rs.200/- as done for the purpose of court fees, the valuation for the purpose of jurisdiction has to be the same and as per which valuation, the suit would be below the minimum pecuniary jurisdiction of this Court.

8. However, Article 17(iii) of Schedule II to the Court Fees Act provides that a suit to obtain a declaratory decree where no consequential relief is prayed, the court fees payable would be fixed i.e. Rs.20/-. Such a suit can be valued differently for the purpose of jurisdiction.

9. The question to be determined thus is, whether the present is a suit for declaration simpliciter, in which case the same would lie before this Court, or is a suit for declaration with consequential relief, in which case either the plaintiffs will have to pay the deficit court fees or the plaint rejected / returned for the reason of being below the minimum pecuniary jurisdiction of this Court.

10. Though the counsel for the plaintiffs has not made any arguments in this regard but I may record that the plaintiffs appear to have valued the suit, being under the impression that since physical possession of the property has not been taken from them, they can do so. The plaintiffs however forget that vide notice dated 10th July, 2019 supra the bank is in deemed possession of the property and the said argument also is thus not available to the plaintiffs. In any case, the plaintiffs here, besides the relief of declaration as null and void of the notices of the bank and of the order of the CMM, are also claiming the consequential relief of injuncting the bank from taking action in pursuance thereto and the present suit thus by no stretch of imagination qualifies as a suit for declaration simpliciter.

11. The question having been dealt with exhaustively in ***Hans Raj Kalra Vs. Kishan Raj Kalra*** 1976 SCC OnLIne Del 113; ***S.M. Gulati Vs. Dream Land House*** 1994 SCC OnLine Del 643; ***Sujata Sharma Vs. Mani Gupta*** 2010 SCC OnLine Del 506; ***Anita Anand Vs. Garg Kapur*** (2019) 256 DLT 84; ***Arun International Vs. Oriental Bank of Commerce*** 2018 SCC OnLine Del 12411; and, ***Sushil Malge Vs. Raj Singh Bhatti*** 2019 SCC OnLine Del 7485, need to reiterate the same

here is not felt. Reference in this regard may also be made to ***Suhrid Singh Vs. Randhir Singh*** (2010) 12 SCC 112.

12. A suit for injunction simpliciter, as per Section 7(iv)(d) of the Court Fees Act, is to be valued for the purpose of court fees, again as per the statement of the plaintiff, at the amount at which the plaintiff values the relief sought and ad valorem court fees paid thereon and vide Section 8 of the Suits Valuation Act, the valuation thereof for the purpose of jurisdiction is to be the same.

13. There is however a common perception amongst the lawyers, that a suit for injunction simpliciter can be valued differently for the purpose of jurisdiction and court fees, with umpteen suits for injunction, with court fees of Rs.13/- only, being filed in this Court.

14. Thus the suit is not valued according to law, for the purpose of court fees and jurisdiction and appropriate court fees not paid on the plaint.

15. However the need to act further on the said aspect is not felt as the suit otherwise also is not found to be maintainable and the jurisdiction of this Court is found to be barred by Section 34 of the SARFAESI Act.

16. From the impugned notices and order of the CMM it is evident that the same are in exercise of powers under Sections 13(4) and 14 of the SARFAESI Act. Section 34 of the said Act bars the jurisdiction of the Civil Court to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal (DRT) or the Appellate Tribunal is empowered by or under the said Act to determine and

further provides that 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 the said Act or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

17. Attention of the counsel for the plaintiffs has been drawn to Section 17 of the SARFAESI Act, which entitles any person including borrower, aggrieved by any of the measures referred to in Section 13 (4) of the Act, taken by the secured creditor for enforcement of the security, to make an application to the relevant DRT to consider whether the measures taken are in accordance with the provisions of the Act and the Rules made therein and to, if finds to not be so, restore possession of the secured asset to the person entitled thereto.

18. I have asked the counsel for the plaintiff, whether not the remedy of the plaintiffs is thereunder.

19. The counsel for the plaintiffs has drawn attention to the order dated 23rd March, 2015 of a Co-ordinate Bench in CS(OS) No.768/2015 titled ***Lt. Gen. R.K. Mehta (Retd.) Vs. Naveen Malhotra***, while admitting a suit, directing *status quo* to be maintained qua property.

20. Such *ex parte* orders, without discussing any law, do not constitute a precedent, to be cited at the bar.

21. The counsel for the plaintiffs has then referred to paragraph 42, 50 & 51 of ***Mardia Chemicals Ltd. Vs. Union of India*** (2004) 4 SCC 311 holding that, (i) a full reading of section 34 shows that the jurisdiction of the 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 or to be taken in pursuance of any power conferred under this Act; (ii) 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 13(4); (iii) therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof; and, (iv) however to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe whatsoever or to the extent it is permissible to bring action in the Civil Court in the cases of English mortgages.

22. The counsel for the plaintiffs states that since actual possession has not been taken from the plaintiffs and is to be taken on 13th December, 2019, the suit is maintainable.

23. I am unable to agree.

24. Rather I have in ***Davinder Kaur Vs. Punjab & Sindh Bank*** 202 (2013) DLT 103 and ***Neha Aggarwal Vs. PNB Housing Finance Ltd.*** 2016 SCC OnLine Del 3765 held to the contrary. Reference may also be made to ***Radnik Exports Vs. Standard Chartered Bank*** 2014 SCC OnLine Del 3404 (RFA(OS) 139/2014 preferred whereagainst was dismissed as withdrawn on 10th October, 2014).

25. As far as exception carved out in ***Mardia Chemicals Ltd.*** supra is concerned, it is not even the case of the plaintiff that PNB has acted fraudulently or that its claim is absurd or untenable.

26. Thus whichever way one looks at, suit before the Civil Court is not maintainable and is dismissed, leaving the parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

DECEMBER 05, 2019
'gsr'..