

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

A.S.No.561 of 2016
and C.M.P.No.14123 of 2016

Rajamani .. Appellant

Vs

1.Bank of Baroda
rep. by its Chief Manager,
Namakkal Branch,
No.107, Paramathi Road,
Namakkal Town and District.

2.Sengodagounder
3.Murugesan

... Respondents

Appeal filed under Section 96 of CPC r/w Order 41 Rules 1 and 2 CPC against the fair and decretal order dated 28.07.2015 in I.A.No.227 of 2015 in O.S.No.27 of 2015 on the file of the Principal District Judge, Namakkal.

For Appellant .. Mr.S.Muthukrishnan

For Respondents.. Mr.V.Bhiman
for M/s.Sampathkumar Associates
for R1
Mr.K.Nagarajan for R2 & R3

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JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is preferred against the order dated 28.07.2015 in I.A.No.227 of 2015 in O.S.No.27 of 2015, by which, the application filed under Order 7 Rule 11 C.P.C. to reject the plaint was allowed.

2.The appellant filed a suit for partition and separate possession in O.S.No.27 of 2015 interalia alleging that without consent and knowledge, defendants 1 and 2 viz., the father and brother mortgaged the suit properties and the said properties being the joint family properties, he is entitled for his separate share.

3.The first respondent, who is the secured creditor, filed an application in I.A.No.227 of 2015 raising a legal plea that the suit is barred by express provision contained under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short 'SARFAESI Act'). The learned trial Judge allowed the application and therefore, the present appeal has been filed.

4.Learned counsel appearing for the appellant submitted that in the suit, the appellant has not challenged the proceedings of the first respondent. Though the first respondent has been arrayed as party defendant, the relief sought for is only for partition. Thus, the rigour of Section 34 of the SARFAESI Act is not available so as to prevent the adjudication on merit. The power of the Civil Court is plenary in nature and therefore, unless there is either an express or implied bar, the same cannot be taken away. In support of the above contention, reliance has been made on the judgment of the learned single Judge of this Court in K.Deenadayalan Vs. N.Sathish Kumar ((2015) 1 MLJ 170).

5.Mr.V.Bhiman, learned counsel appearing for the first respondent submitted that proceedings have been initiated before the Debts Recovery Tribunal over the properties mortgaged in the year 2011. The contesting parties viz., defendants 2 and 3/respondents 2 and 3 did not appear. Therefore, exparte decision was made. An appeal was filed, in which, the conditional order was passed. Even the said conditional order has not been complied with. In any case, the import of Section 17 of the SARFAESI Act being very wide coupled with the embargo under Section 34 of the said Act, the learned trial Judge has rightly allowed the application by rejecting the plaint. In support of the contention, reliance has been made on the following judgments:

(i)Agarwal Tracom Pvt. Ltd., Vs. Punjab National Bank and Others (Civil Appeal No.19847 of 2017 dated 27.11.2017)

(ii) M/s. Sree Anandhakumar Mills Ltd., Vs. M/s. Indian Overseas Bank and Others (Civil Appeal Nos. 7214-7216 of 2012 dated 03.05.2018)

(iii) Authorised Officer, State Bank of India Vs. Allwyn Alloys Pvt. Ltd., and Others (2018(5) CTC 225)

6. By way of reply, learned counsel for respondents 2 and 3/defendants 2 and 3 submitted that the conditional order has been complied with and therefore, the submission made by the learned counsel for the first respondent is not correct. It is further submitted that a sum of Rs. 66,42,000/- has been deposited on 28.12.2016.

7. We are concerned with the maintainability of the suit only. Admittedly, proceedings have been initiated before the Debts Recovery Tribunal in the year 2011. The present suit has been filed in the year 2015. Though the relief sought for in the suit is only for partition, after going through the entire averments, particularly the fact that the first respondent has also been a party defendant, we have no difficulty in holding that the apparent intention is to prevent the first respondent from proceeding further. As rightly submitted by the learned counsel for the first respondent, the scope of Section 17 of the SARFAESI Act is rather wide. It is not as if respondents 2 and 3/defendants 2 and 3 are also not contesting the matter. They are also very much contesting the matter. In this connection, we would like to quote the following passages in the judgment of the Apex Court in Agarwal Tracom Pvt. Ltd., Vs. Punjab National Bank and Others (Civil Appeal No. 19847 of 2017 dated 27.11.2017):

28. The reason is that Section 17(2) empowers the Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower. The expression "provisions of this Act and the Rules made thereunder" occurring in sub-sections (2), (3), (4) and (7) of Section 17 clearly suggests that it includes the action taken under Section 13(4) as also includes therein the action taken under Rules 8 and 9 which deal with the completion of sale of the secured assets. In other words, the measures taken under Section 13 (4) would not be completed unless the entire procedure laid down in Rules 8 and 9 for sale of secured assets is fully complied with by the secured creditor. It is for this reason, the Tribunal has been empowered by Section 17(2), (3) and (4) to examine all the steps taken by the secured creditor

with a view to find out as to whether the sale of secured assets was made in conformity with the requirements contained in Section 13(4) read with the Rules or not?

29. We also notice that Rule 9(5) confers express power on the secured creditor to forfeit the deposit made by the auction purchaser in case the auction purchaser commits any default in paying installment of sale money to the secured creditor. Such action taken by the secured creditor is, in our opinion, a part of the measures specified in Section 13(4) and, therefore, it is regarded as a measure taken under Section 13(4) read with Rule 9(5). In our view, the measures taken under Section 13(4) commence with any of the action taken in clauses.

(a) to (d) and end with measures specified in Rule 9.

30. In our view, therefore, the expression "any of the measures referred to in Section 13(4) taken by secured creditor or his authorized officer" in Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section 13(4).

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.....

33. In *United Bank of India vs. Satyawati Tondon & Ors.*, (2010) 8 SCC 110, this Court had the occasion to examine in detail the provisions of the SARFAESI Act and the question regarding invocation of the extraordinary power under Article 226/227 in challenging the actions taken under the SARFAESI Act. Their Lordships gave a note of caution while dealing with the writ filed to challenge the actions taken under the SARFAESI Act and made following pertinent observations which, in our view, squarely apply to the case on hand:

"42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under

Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective."

8.The Apex Court, in the aforesaid case, reiterated the position of law on the scope and ambit of Sections 17 (1) and 34 of the enactment. We may note that in the said case, Article 226 of the Constitution of India has been invoked, where the powers of this High Court are wide. However, despite the same, the Apex Court was pleased to hold that the writ petition is not maintainable.

9.In a subsequent decision in *Authorised Officer, State Bank of India Vs. Allwyn Alloys Pvt. Ltd., and Others* (2018(5) CTC 225), once again considering the scope of Section 34 of the SARFAESI Act, has held as follows:

6. After having considered the rival submissions of the parties, we have no hesitation in acceding to the argument urged on behalf of the Bank that the mandate of Section 13 and, in particular, Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the 2002 Act"), clearly bars filing of a civil suit. For, no civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under this Act to determine and no injunction can be granted by any Court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.....

10.Thus, in the light of the above pronouncements and after going through the provisions governing, we are of the view that the order passed by the trial Court does not require any interference. The decision of the learned single Judge relied upon by the learned counsel for the appellant in *K.Deenadayalan Vs. N.Sathish Kumar* ((2015) 1 MLJ 170) will not help his case. In the said case, the issue was with respect to the proceedings against the dead person. Thus it has got no relevancy to the case on hand.

11.In the light of the above discussion, we have no hesitation in holding that the decision of the trial Court in allowing the application by rejecting the plaint is perfectly valid in law. This is nothing but an attempt to pre-empt the first respondent from proceeding further pursuant to the action initiated for recovery of the amount due. Accordingly, the Appeal Suit stands dismissed. However, we give liberty to the appellant to approach the Debts Recovery Tribunal, if so advised. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mmi

To

The Principal District Judge,
Namakkal.

Copy To
The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.S.Muthukrishnan, Advocate SR.No.12770

+2cc to M/s.Sampathkumar Associates, Advocate SR.No.12116

A.S.No.561 of 2016

MP (CO)
GMY (27/07/2020)

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