IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.No.2224 of 2020
in
C.S.No.130 of 2020

1.State Bank of India,
Stressed Assets Management Branch,
"Red Cross Building",
Egmore, Chennai – 8.

2.IDBI Bank,
No.115, Anna Salai,
Saidapet, Post Bag No.1306,
Chennai – 600 015.

3.Axis Bank,
Door No.450/774, Symphony Palace,
Kilpauk, Chennai – 600 010.

4.Karur Vysya Bank,
Devs Ark, AD-79, 80,
5th Avenue, Anna Nagar,
Chennai – 600 040. ... Applicants/Defendants 2 to 5

Vs.

1.Rahoul Jain
2.Manmohan Singh Jain ... Respondents

Prayer: Application filed under Order XIV, Rule 8 of O.S.Rules r/w Order 7 Rule 11 of CPC, to reject the plaint on the ground of territorial jurisdiction as well as in terms of Section 34 of SARFAESI Act and Section 18 of Recovery of Debts and Insolvency Act.

For Applicants : Mr. M.L.Ganesh

For Respondents : Mr. Rahoul Jain

ORDER

This application has been filed for rejection of the plaint on the ground of territorial jurisdiction as well as in terms of Section 34 of SARFAESI Act and Section 18 of Recovery of Debts and Insolvency Act.

2. This application has been taken mainly on the ground that the suit has been filed in collusion between the father and son to non-suit the action taken by the State Bank of India in consort with the Bank which has already issued a possession notice on 16.11.2019.

3. Before dealing with the application, this Court is inclined to record the brief facts of the plaint and prayer sought in the suit.

4. It is the contention of the learned counsel for the plaintiff that the first defendant being the father, engaged in the business of manufacturing of M/s. Kiran Global Chem Limited, the plaintiff was looking after the premises for his family and business. The first defendant offered to rent the plaintiff a commercial space that is the suit property and entered into a lease agreement dated 30.03.2013 with the first defendant and using the subject property as residential property premises for running the corporate office of M/S.Capricorn Food Products India Limited. The lease was originally entered for a period of 11 months in subsequent to be entered at the end of incident. Hence, it is the contention of the learned counsel for the plaintiff that the plaintiff is in possession of the above property as a lessee of the first defendant. The first defendant in order to expand his business, raised more than Rs.100 crores from the second defendant to fifth defendant bank and to secure the loans, the first defendant has executed mortgage and pledged all his

shares, accounts receivable etc., of the M/S.Kiran Global Chem ltd., in favor of the second defendant to fifth defendant. In the year 2017, there was a family arrangement between the first defendant on one side and family members on the other side. The settlement agreement dated 25.10.2017 was entered between the first defendant, family members and plaintiff and the first defendant agreed to release the properties from the clutches of the defendants 2 to 5 and also agreed to execute a settlement deed in favour of the plaintiff. However, the first defendant has defaulted in payments and not recovered or redeemed the mortgages. Hence, the suit, seeking direction to direct the first defendant to redeem the subject properties from the second defendant to the fifth defendant and consequently, to direct the first defendant to come forward and register the Settlement Deed dated 03.11.2017 and other reliefs.

5. At this stage, the application has been taken out by the Bank mainly on the ground that the suit has been filed in collusion to defeat the rights of the consortium banks, the State Bank and the other bank and the property has been mortgaged in the year 2009 for more than

Rs.128,45,69,581.34/-, the loan has also become NPA and the possession notice is also issued and possession also taken. At this stage, the suit has been filed to defeat the rights of the bank from further proceedings for bringing the property for sale.

6. It is contended by the learned counsel for the respondents that the present suit is filed for specific relief against the first defendant herein and it is not against the consortium of banks. The suit has been filed to enforce the agreement entered between the first defendant and family members and no way connected with the enforcement of security interest or mortgage etc. Therefore, the suit cannot be non-suited either under Section 34 of the SARFAESI Act and Section 18 of the Debt Recovery Act and it is also contended that the plaintiff is in the possession of the property as lessee and continued his possession. Hence, it is contention that the suit is not barred by any other law. It is also stated in the counter that the plaintiff cannot have any remedy either under Section 17 and 18 of the RDDBFI Act nor SARFAESI Act. The relief provided under Section 17 is not exhausted and the same cannot be

expanded. Hence, prayed for dismissal.

7. Mr.M.L.Ganesan, learned counsel appearing for the applicant submitted that the entire suit has been filed only to prevent the bank from bringing the property for sale. Admittedly, the loan amount is more than Rs.128 crores. The loan has been borrowed not only from the State Bank of India but also other four banks and declared as NPA and it is the contention that Rule nos.8 and 7 of Security Interest Rules 2012, make it clear that whenever the property is brought for sale, the encumbrance has to be disclosed by the bank. The encumbrance includes pendency of the suit. When the property has been subject matter of any suit and the same is disclosed, it is very difficult for the bank to bring the property for sale. Only to take advantage of such rule, the present suit has been filed as if, its no way connected with the mortgaged property or enforcing a securities by the bank. A clear drafting made in the pleadings to maintain the suit, to defeat the very object of the SARFAESI Act and recover the huge due from the first defendant. Hence, it is the contention that the suit has to be rejected in entirety.

8. Whereas, the learned counsel Mr.Vinay Mehta, submitted that the suit has nothing to do with the enforcement of security rights and admittedly, it is his contention that from the year 2013 onwards, the plaintiff is running a Company in the name of M/S.Capricon Food Products India Limited, and its corporate office is situated in the suit property and the above property was taken on lease in the year 2013 and when the settlement has reached between the first defendant and family members wherein, the first defendant agreed to settle the entire property of the first defendant to the plaintiff. It is the duty of the first defendant to redeem the mortgages and make the properties free of encumbrance. As the first defendant has failed to clear the mortgages and failed to execute the settlement deed as agreed between them, the suit has been filed only to enforce the agreement, for direction to register the settlement deed and not to prevent the bank from enforcing the mortgage etc. Hence, it is the contention that since the plaintiff is in possession of the property, the rights cannot be defeated without giving an opportunity. Therefore, he prays for dismissal of the application.

9. I have perused the entire materials. It is not in dispute that the plaintiff is the son of the first defendant. It is also not in dispute that the father of the plaintiff namely first defendant has availed loans from various Banks namely State Bank of India, IDBI Bank, Axis Bank and Karur Vysa Bank. The amount due as on date is more than Rs.128 crores. The above allegation is not even disputed by the plaintiff. It is also not disputed that not only the suit property but the other properties have been mortgaged. The State Bank being the consortium of the other bank have issued possession notice on 16.11.2019 and possession also taken and sale notice also issued on 08.07.2020. It is the contention of the plaintiff that the suit property was leased to him in the year 30.03.2013. It is an admitted fact that the properties have been mortgaged and the title deeds have been deposited on 12.10.2013. Now, it is the contention of the plaintiff that there was an earlier lease dated 31.03.2013. It is to be noted that the very plaint itself indicate that from the year 2009, the father has availed a huge loan from the various banks. Therefore, the contention that he was inducted as a tenant in respect of subject property, there was no reason as to why the registered deed of

lease was not registered at the relevant point of time. It is also to be noted that it is the main contention of the plaintiff that as per the memorandum of understanding between the family members, entire property was settled and the father namely first defendant had agreed to clear all the loans borrowed by him.

10. Much reliance has been placed on the family agreement between the father and son dated 21.05.2017. It is to be noted that the agreement came into existence much after the property had been mortgaged with the bank and mere perusal of the agreement dated 25.10.2017 makes it clear that it created rights in praesenti not only in respect of movable properties but also immovable properties and shares etc. There were persons claiming right on the basis of the agreement. This Court is of the view that such right cannot be claimed by a mere unregistered document, which is inadmissible in the eye of law. It is to be noted that the subject property is admittedly an immovable property. The main contention of the plaintiff is that the property has been settled and he has been a tenant of the same property for many years. When a

person contends that the property has been settled by way of an agreement, the agreement will not come to the aid of the plaintiff since it has not been registered. Even the contention of the plaintiff that the agreement of lease was in existence much prior to the mortgage, it is to be noted that as per Section 17 of the SARFAESI Act, such dispute also can be decided only by the DRT not by the Civil Court. Section 17(4)(A) has been inserted by the Act 44 of 2016. Wherein the same clearly indicates that where any person claims any lease hold right upon the secured asset the debt recovery tribunal has jurisdiction to examine the lease or existence of tenancy.

11. In such view of the matter, this Court is of the view that when the agreement itself appears to be a created one particularly between the father and son, where the father have a huge outstanding amount payable to the consortium of banks, the question of settling the property by unregistered deed in favour of the son is also highly improbable. Moreover, merely because no relief claimed against bank, it cannot be stated that the suit is maintainable. Mere clever and astute

pleadings, cannot be permitted to defeat the very object of the Act, which was enacted to protect interest of the secured credit. If such suit is allowed to continue merely on the ground that no reliefs whatsoever sought against the bank, the pendency of the suit will have a serious impact on the banks while bringing the property for sale. Since the Security Interest Rules also mandate that all the encumbrance should be disclosed at the time of sale, the encumbrance includes pendency of the suit also. In such view of the matter, if the pendency is allowed, prospective buyers will always be reluctant to purchase the property. Ultimately, the sufferers are only secured creditors in realising the amount. As such, the suit has been filed to defeat, the very purpose of the Act namely SARFAESI Act in realising the debts by taking action against the secured assets, I am of the view that the suit is certainly barred by law.

12. Accordingly, the application is allowed and the suit is rejected.

09.12.2020

AT

N.SATHISH KUMAR,J.

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