

Reserved on : 17.12.2020

Pronounced on : 23.12.2020

A.No.3347 of 2017

in

C.S.No.42 of 2011

MS. R.N.MANJULA, J.

The applicant is the second defendant/Bank in C.S.No.42 of 2011. The respondents 1 & 2 are the plaintiffs in the suit and the third respondent is the first defendant in the suit.

2. Brief facts set out in the application are as follows:-

The applicant/Bank has filed an Original Application No.346 of 2007 before the Debts Recovery Tribunal against the first defendant/3rd respondent and others and obtained a recovery certificate for the sale of certain properties including plaint "A" schedule property for realizing the amounts declared to be dues. The plaintiffs are the sons of the first defendant and this suit has been filed for claiming partition of their alleged

share in the said property, as per section 34 of the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, [hereinafter referred to as the 'Act' for short], no Civil Court shall have the jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by under this Act to determine and no injunction shall be granted by any Court in respect of any action taken or to be taken in pursuance of any power conferred under this Act or under the Recovery of Debts due to Banks and Financial Institutions Act, 1993. Hence, it is prayed that the plaint may be rejected as not maintainable.

3. Brief facts set out in the counter are as follows:-

The respondents 1&2/plaintiffs have filed the suit for partition and separate possession of their 2/3 share in the "A" and "B" schedule properties. The recovery certificate is obtained in connection with a loan availed by a Company called M/s. Kandan Trading Private Limited, Chennai (old name M/s.Andane Enterprises Private Limited) and certain credit facilities extended by the applicant/bank to the above said

Company. It does not have any connection to the Joint Family comprising of the plaintiffs 1&2 and their right over the "A" schedule property.

Section 34 of the Act, will not be a bar for the suits filed to adjudicate the civil rights of the parties. Hence, the respondent prays to dismiss the above petition.

4. Heard the submissions of the learned counsels for both sides and the records also perused.

5. The applicant/second defendant has filed an Original Application No.346 of 2007 before the Debts Recovery Tribunal, Chennai and got an order for recovery certificate in respect of the 'A' schedule property. So he

has chosen to file this application to reject the plaint by relying on the

decision of the Hon'ble Supreme Court reported in **(2014) 1 SCC 479 (Jagdish Singh v. Heeralal and Ors.)**. It is submitted by the learned

counsel for the petitioner/second defendant that the respondents

1&2/plaintiffs have indirectly challenged the orders of the Debts Recovery

Tribunal passed in O.A.No.346 of 2007 under the guise of this suit for

partition.

6. The respondents 1&2/plaintiffs seem to have got the knowledge about the orders passed in O.A.No. 346 of 2007 for issuance of recovery certificate in respect of "A" schedule property and it has been pleaded in their plaint also. The respondents 1&2/plaintiffs, would submit that the recovery proceedings taken by the Debts Recovery Tribunal pertains to the loan availed by a Company and hence their rights over the "A" schedule property cannot be denied.

7. Sec. 34 of the SARFAESI Act, bars Civil Courts to entertain any suit or proceedings in respect of any action taken by the Debts Recovery Tribunal under the SARFAESI Act. Section 34 of the Act, reads as follows:-

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 (51 of 1993).

8. The respondents 1&2/plaintiffs would claim that Section 34 will not debar any suits which have been filed to settle the civil rights of the parties concerned. In support of their contention, the learned counsel for the respondents 1&2 submitted the decision reported in **CDJ, 2007 MHC 3767 (The Authorised Officer, Corporation Bank v. Minor Sathiya and Ors.,)**. And the learned counsel for the respondents drew the attention of this Court to para 16 of the judgment.

16. “....However, such bar under Section 34 of he SARFAESI shall not come in the way of adjudication of the civil rights, like declaration of title of the suit

properties, partition rights in the ancestral properties etc., which are mortgaged, because such claims/rights made are outside the jurisdiction and adjudication of the Debts Recovery Tribunal or Appellate Tribunal under the said Debt Recovery Acts. However, in such suits the civil courts have no jurisdiction to grant either interim stay or interim injunction restraining the secured creditor/bank which is at liberty to proceed with the mortgaged properties for realization of the amounts in view of the express bar contained under Section 34 of the SARFAESI Act, constitutional validity of such provision has been upheld by the Hon'ble Apex Court.”

9. In Jagdish Singh v. Heeralal and Ors., reported in **2014 (1)**

SCC 479, the Apex Court has settled the law on this point and held that even a suit for partition will not be maintainable once the recovery proceedings have been initiated on a secured asset under the SARFAESI

Act and the remedy for the aggrieved lies only under Section 17 of the Act. The said legal position has been crystallized under para 24 of the judgment, which reads as follows:-

24. 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, sub-section (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 realising 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 the 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. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of

those matters which fall under sub-section (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.

10. So the object of the SARFAESI Act itself is to expedite the adjudication of the dues to the banks and financial institutions and to accelerate the recovery proceedings. Once an order has been passed, by the Debts Recovery Tribunal, the aggrieved has to seek his remedy only by way of challenging the same before the Debts Appellate Tribunal by invoking Section 17 of the Act and not by way of filing a civil suit. This is obviously for the reason that if many suits are allowed to be filed subsequent to the initiation of proceedings under the SARFAESI Act either by the Debtor or by his relatives that will stall the recovery proceedings. Such types of suits would ultimately defeat the very object of the SARFAESI Act.

11. In the matter in hand, the property in "A" schedule of the plaint has already been given as security for the loan availed from the applicant/second defendant and hence the second respondent has a secured interest on the same. The measures for enforcing the secured interest has

been taken by the applicant bank by invoking the relevant provisions of SARFAESI Act and orders for issuance of recovery certificate has also been passed by the Debts Recovery Tribunal.

12. Anyone aggrieved of such orders is not deprived of any remedy and he can seek his recourse by way of challenging such orders before the Debts Appellate Tribunal. The Division Bench of the Supreme Court confirms this legal position in *Jagdish Singh v. Heeralal and Ors.*, reported in *2014 (1) SCC 479 (as stated supra)*. So the plaintiffs of this suit ought to have invoked the remedy available to them under Sec. 17 of the Act, if they are aggrieved of the recovery proceedings and if they claim any right or interest over the property on which recovery proceedings has been initiated.

13. The above said legal position settled by the Supreme Court has been reaffirmed in the case of *Sree Anandhakumar Mills Limited v. Indian Overseas Bank and Ors.*, reported in *(2019) 14 SCC 788*. In *para*

4 of the said judgment, the *ratio decidendi* of Jagadeesh Singh case has

been discussed and adopted.

4. The matter need not engage the Court in any great detail as in view of the law laid down by this Court in *Jagdish Singh v. Heeralal* and others it would be clear and evident that the suit filed by the second respondent (i.e. O.S. No.106 of 2009) is not maintainable. In *Jagdish Singh* (supra) this Court after an elaborate consideration of the provisions of the *SARFAESI Act*, particularly, *Section 2(zf), 2(zc), 13(1), 17, 18 and 34*, took the view, on almost similar facts, that a suit for partition would not be maintainable in a situation where proceedings under the *SARFAESI Act* had been initiated. It was also held that the remedy of any person aggrieved by the initiation of proceedings under the *SARFAESI Act* lies under *Section 17* which provides for an efficacious and adequate remedy to a party aggrieved. Para 24 of the Report in *Jagdish Singh*

(supra) which makes the above position clear may be usefully extracted below: (SCC p. 489).

“24. 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, sub-section (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 realising 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 the 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. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (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.”

5. Beyond the above, we do not consider it expedient and prudent to record any findings in view of the final direction that we propose to pass. But for the purpose of the present controversy it would suffice to say that our view as recorded above with regard to the issue of maintainability of the suit would be an adequate reason to set aside the order of the High Court and maintain the sale and possession of the appellant – auction purchaser.”

14. The judgement relied on by the learned counsel for the Respondents 1 and 2/ plaintiffs reported in ***CDJ, 2007 MHC 3767 (The Authorised Officer, Corporation Bank v. Minor Sathiya and Ors.,)*** has been subsequently adopted in an another judgement of this Court in ***Indian Overseas Bank Vs Nandini (2010 SCC Online Mad 5495)***. But the judgement of the Supreme Court in ***Sree Anandhakumar Mills Limited v. Indian Overseas Bank and Ors.,((2019) 14 SCC 788)*** has

reversed the judgement of this Court in *Indian Overseas Bank Vs Nandini* (2010 SCC Online Mad 5495). So it is now settled that the overriding effect of Section 34 of the SARFAESI Act, includes the suits triable under Section 9 of CPC also. For the sake of convenience Sec.9, is extracted as below:-

“Sec.9. Courts to try all civil suits unless barred.- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

[Explanation I].- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II].- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]”

15. It is seen from the pleadings of the plaint of the suit that the plaintiffs have knowledge about the recovery proceedings taken in respect of the "A" schedule property and only because of the said fact the second respondent has been added as a party to the proceedings. Hence the plaintiffs are precluded from filing any suit and in respect of the properties over which secured interest has already been created in favour of the applicant bank and the recovery proceedings have also been initiated by the orders of the Debts Recovery Tribunal.

16. In view of the said reasons this suit is not maintainable as against "A" schedule property. But the respondents 1&2/plaintiffs are given with the liberty to file appropriate application with regard to 'A' schedule property and agitate before the Debt Recovery Tribunal within 45 days

from the date of receipt of the copy of this order.

17. The relief with regard to "B" schedule property has been valued at Rupees 15 lakhs and hence it does not fall within the pecuniary jurisdiction of this court. So the plaintiffs are at liberty to file a fresh suit for partition in respect of 'B' schedule property before the appropriate jurisdictional Court.

18. In the result, the application is allowed and the Court fee paid is ordered to be returned. No costs.

23.12.2020

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Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order : Yes/No

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