IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.848 of 2018
and
C.M.P.No.22477 of 2018

1.Minor A.S.Shriya Chithrubi

2.Minor A.Jhanvi Avatharni

Both are represented by their Guardian
and Maternal grandfather K.Natarajan,
No.18-B, Vidyasagar Street,
Gandhi Nagar, Udumalaipettai - 642 154
Tiruppur District. .. Appellants/Plaintiffs

Vs.

1.A.Mohan

2.M.Umadevi

3.A.Archana

4.M/s.Chithrubi Agri Private Limited,
Rep.by its Managing Director,
Having office at No.231,
Puthu Colony,
Singampettai Gate,
Pataval Kalval,
Bhavani Taluk - 638 311
Erode District.

5. The Karnataka Bank Limited,
Rep.by its Senior Manager,
Having office at No.346, D.B.Road,
R.S.Puram,
Coimbatore - 641 002

6. The Karnataka Bank Limited,
Mahaveera Circle,
P.B.No.599, Kankanady,
Mangalore-575 002,
Karnataka State.

7. J.M.Financial Asset Reconstruction Company
Limited,
7th Floor, Cnergy,
Appasaheb Marathe Marketing
Prabhadevi, Mumbai - 400 025.

8. J.M.Financial Asset Reconstruction Company
Limited,
4th Floor, Basappa Complex,
Lavelle Road,
Bangalore. .. Respondents/Defendants

Prayer: Appeal filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 23.07.2018 made in O.S.No.3 of 2017 on the file of the IV Additional District Court, Erode District at Bhavani.

For Appellants : Mr.M.Guruprasad

For Respondents: Mr.Srinath Sridevan
for R7 & R8

No appearance
[For R1 to R6]

J U D G M E N T

The appeal suit is filed against the judgment and decree passed in O.S.No.3 of 2017 dated 23.07.2018. The suit was instituted by the appellants in the appeal suit for partition.

2. The respondents 7 and 8 filed an Interlocutory Application in I.A.No.190 of 2017 in O.S.No.3 of 2017 for rejection of plaint under Order 7 Rule 11 read with Section 151 C.P.C., and the contention of the respondents 7 and 8 in the Interlocutory Applications were that the 4th defendant M/s.Chithrubi Agro Private Limited comprises of two directors, who are Arunkumar and his wife Archana. The said company availed loan facility from Karnataka Bank Limited, R.S.Puram Branch, Coimbatore. The said company has executed loan documents in favour of the bank. The said credit facilities were guaranteed by the guarantors i.e. A.Mohan, M.Umadevi, A.Archana and Arunkumar. The guarantors have executed the guarantee agreement in favour of the Karnataka Bank Limited.

3. It was contended that the suit schedule property was mortgaged and on account of the non-payment of loan amount, the Bank invoked the provisions of the SURFAESI Act and the matter

was pending before the Debts Recovery Tribunal, Coimbatore. When issues relating to the suit property was the subject matter of the SURFAESI Act and the Debts Recovery Tribunal ceased of the issues, then under Section 34 of the SURFAESI Act, no suit can be entertained by the Civil Court. On account of the express bar under the SURFAESI Act, the respondents 7 and 8 filed an Interlocutory Application, seeking rejection of plaint. The trial Court considered the grounds raised by the respondents 7 and 8 and allowed the Interlocutory Application, against which, the present appeal suit is filed.

4. The main contention of the appellants are that the civil rights are to be decided only by the Civil Courts and therefore, the appellants plaintiffs cannot be denied to adjudicate the civil rights before the Civil Court in the suit instituted. The defendants though can enforce their security interest for realisation of the loan amount by approaching the Debts Recovery Tribunal, the same cannot be a bar for the plaintiffs to establish their civil rights in respect of the suit schedule property, which is an ancestral property. Thus, Section 34 of the SURFAESI Act shall not be applicable.

5. The Trial Court considered the grounds raised by the respondents 7 and 8 regarding the maintainability of the suit in view of the express bar as contemplated under Section 34 of the SURFAESI Act, allowed the Interlocutory Application.

6. This Court is of an opinion that Section 34 of the SURFAESI Act enumerates “No Civil Court shall have jurisdiction to entertain any suit or proceedings 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)”

7. Admittedly, the suit schedule property is the subject matter of the SURFAESI Act, and the Bank filed an Original Application before the Debts Recovery Tribunal, Coimbatore, which is pending for adjudication. This being the admitted fact, this Court is of an opinion that the express bar as contemplated under Section 34 of the SURFAESI Act should be pressed into service and consequently, the decision arrived by the trial Court is in consonance with Section 34 of the SURFAESI Act and with reference to Section 9 of the Code of Civil Procedure.

8. When there is an express bar, then no suit can be entertained. When Section 34 of the SURFAESI Act provides an express bar of the Jurisdiction of the Civil Court, then the Civil Court cannot entertain the suit for partition.

9. The learned counsel appearing on behalf of the respondents 7 and 8 relied on the judgment of the Hon'ble Supreme Court of India in the case of Jagdish Singh Vs. Heerala and others, reported in (2014) 1 SCC 479 and paragraphs 7 and 21 are extracted hereunder:

> "17. Section 17 of the Securitisation Act confers a right of appeal to any person, including the borrower, if that person is aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 taken by the secured creditor. The operative portion of Section 17 is extracted hereinbelow for ready reference:
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> "17. Right to appeal.—(1) Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:
>
> Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.
>
> Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.
>
> (2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.
>
> (3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the secured creditors as invalid and

restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of Section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of Section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder."

21. Section 34 of the Securitisation Act ousts the civil court jurisdiction. For easy reference, we may extract Section 34 of the Securitisation Act, which is 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).”

22. The scope of Section 34 came up for consideration before this Court in Mardia Chemicals Ltd. [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] and this Court held as follows: (SCC p. 349, para 50)

“50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an 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’. That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. 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. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.”

10. This being the factum, there is no infirmity in respect of the conclusion arrived by the trial Court and accordingly, the suit cannot be entertained by the Civil Court and

consequently, the judgment and decree passed in O.S.No.3 of 2017 dated 23.07.2018 is confirmed and the A.S.No.848 of 2018 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Kak

To
The IV Additional District Court,
Erode District at Bhavani.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

+1 CC to M/s. Srinath Sridevan, Advocate sr 2361.
+1 Cc to Mr.M.Guruprasad, Advocate sr 1552.

A.S.No.848 of 2018

SSV(CO)
SP(23/11/2020)