

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
(Commercial Division)

*APO/31/2021
WITH CS/55/2020
GA/870/2020*

*BASUDEV BUILDERS PRIVATE LIMITED AND ANR.
VS.
SOUTH INDIAN BANK LIMITED AND ANR.
.....*

BEFORE:
The Hon'ble JUSTICE I. P. MUKERJI
AND
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 22nd March, 2021.
[VIA VIDEO CONFERENCE]

*Mr. Abhrajit Mitra, Sr. Adv.,
Mr. Jishnu Chowdhury, Mr. S. Mukherjee, Mr. A. Agarwalla,
Mr. Bhoopesh Sharma, Advs...for appellants.*

*Mr. Siddhartha Banerjee, Mr. Suchayan Banerjee, Mr. Souradeep Banerjee,
Ms. Sanjana Sinha, Advs...for South Indian Bank Ltd.*

The Court : The respondents raised objection to this Court entertaining, trying and determining the suit.

Mr. Banerjee, learned advocate appearing for the respondent Bank submits in very clear terms that this suit is barred under section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act].

On the other hand, Mr. Abhrajit Mitra, learned senior advocate takes us through the sub-sections of section 13 of the said Act, after showing us the reliefs claimed in the plaint, to submit that the Debts Recovery Tribunal does not have the jurisdiction to decide the issues that might arise in the suit.

This appeal arises from an order dated 11th January, 2021 by a learned single judge made in an interlocutory application connected with the suit refusing to grant interim relief to the appellants/plaintiffs.

We find on a perusal of this order that the point of jurisdiction was raised before the trial court. There is no finding on that point.

Now, if we have to enter into the question of jurisdiction of this Court on appeal and give a finding, it would be prima facie. Only on determination of the suit can a final finding of the question of jurisdiction be made, as in our opinion, questions of facts and the extent to which the Debts Recovery Tribunal has power to determine those questions are likely to be involved in this adjudication.

We make it clear that we have not gone into the question whether such a determination can be made in an application under Order VII Rule 11 of the Code of Civil Procedure, which point is kept open.

In those circumstances, we are of the opinion that the suit should be expedited and the question of jurisdiction be decided as a preliminary issue. We do not in any manner restrain the proceedings before the Debts Recovery Tribunal. However, sale of the mortgaged property or properties shall be made by the respondents upon obtaining leave of this Court or the Tribunal.

Written statement, if not filed, shall be filed within two weeks from date. Order for cross discovery within four weeks thereafter. Inspection forthwith. Steps shall be taken for early trial of the suit, so that it is deemed preferably within six months from date.

This order for expeditious disposal of the suit shall be brought to the notice of the Tribunal to take appropriate action with regard to the proceedings before it.

The appeal and the connected application are disposed of.

(I. P. MUKERJI, J.)

(MD. NIZAMUDDIN, J.)

