

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :25/08/2021

Order passed on :10/09/2021

WP227 No. 129 of 2021

- Smt. Vinita Pandey W/o Shri Prashant Pandey, Aged About 42 Years, R/o Keshav Marg, Kududand, Bilaspur, Thana Civil Line, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner

Plaintiff

Versus

1. Vishwajeet Bhomic S/o Dilip Kumar Bhomic, Aged About 42 Years, R/o House No. R-6/43, Ramavalli, Raipur Road Bilaspur, Tahsil Bilha, District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Abhilash Banerjee Aged About 38 Years, R/o Bangali Para, Sarkanda, Thana Sarkanda, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Branch Manager Bank of Baroda, Branch - Rajkishor Nagar, Bilaspur, Thana Sarkanda, Tahsil and District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
4. State Of Chhattisgarh, through the District Collector Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

----Respondents

Defendants

For Petitioner – Shri Neeraj Choubey, Advocate.

For Respondent No.3 – Shri Ankit Singhal, Advocate.

For State/Respondent No.4 – Shri Alok Nigam, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

10-09-2021

1. This petition under Article 227 of the Constitution of India has been brought praying to quash the order dated 17-02-2021 passed in Civil Suit No.167-A/2019 pending before the Court of 7th Civil Judge Class-II Bilaspur.
2. A civil suit has been filed by the petitioner praying for reliefs of declaration and permanent injunction against the respondents. It is pleaded that the petitioner is owner of the suit property. The original papers of the suit property were in possession of respondent No.1 who has misused the same

for obtaining loan in favour of respondent No.2. Without knowledge of the petitioner her property has been mortgaged with the bank as security for the said loan. Husband of the petitioner has filed a complaint in police station Civil Lines Bilaspur on which Crime No.369/2019 has been registered against the respondents for offence under Section 420/34 of the IPC. The respondent No.3 has issued notice to the petitioner demanding the outstanding loan amount of Rs.1,33,316/-. The recovery proceeding has been further initiated and e-auction notice has been served upon the petitioner. The petitioner/plaintiff then filed application application under Section 151 of the CPC praying for issuance of order of status quo with respect to the suit property which has been dismissed by the impugned order.

3. It is submitted that the respondents have committed fraud upon the petitioner, for which her property papers in possession of respondent No.1 were misused and without the consent of the petitioner she was made guarantor of the loan. Therefore, initiation of the proceeding for recovery from the petitioner is illegal and arbitrary.

It is further submitted that in the complaint registered by the police the investigation has been completed and charge sheet has been filed against respondent No.1 and 2 which is prima facie evidence regarding fraud committed by the respondents upon the petitioner. The respondents have raised objection on the maintainability of the civil suit which is not sustainable and there is no bar for filing civil suit under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act, 2002), as it has been held by the Full Bench of Hon'ble the Supreme Court in **Madria Chemicals Limited Vs. Union of India**, 2004 (4) SCC 311. Therefore, the civil suit filed by the petitioner is maintainable and the petitioner has also entitlement for grant of interim relief. The impugned order is unsustainable. Prayer has been made to allow the

petition and grant relief to the petitioner.

4. Learned counsel for respondent No.3 submits that learned trial Court has not committed any error in passing the impugned order. Although the husband of the petitioner has filed a complaint in which charge sheet has been filed, but respondent No.3 has not been made an accused in that case. Therefore, role of the respondent No.3 had been bonafide throughout. It is submitted that the bank papers for sanction of loan have been duly signed by the petitioner. Copy of the bank papers has been submitted along with the reply. These documents have never been denied by the petitioner. Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 very clearly bars jurisdiction of a civil court 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.

Reliance has been placed on the judgment of Hon'ble the Supreme Court in the case of **Authorizd Officer, State Bank of India Vs. Allwyn Alloys Private Limited and others**, (2018) 8 SCC 120, **United Bank of India Vs. Satyawati Tondon and others**, (2010) 8 SCC 110, **K. Virupaksha and another Vs. State of Karnataka and another**, (2020) 4 SCC 440 and **Sree Anandhakumar Mills Vs. Indian Overseas Bank and others**, (2019) 14 SCC 788 and it is submitted that it has been clearly held by Hon'ble the Supreme Court that Section 34 of the SARFAESI Act, 2002 puts a clear bar on the jurisdiction of any civil suit. It is submitted that the petitioner has option to seek relief from the Debt Recovery Tribunal under Section 17 of the SARFAESI Act, 2002. Therefore, learned trial Court has not committed any error in passing the impugned order. Hence, the petition may be dismissed.

5. Heard learned counsel for the parties and perused the documents.

6. Considered on the submissions.

7. The maintainability of the suit is a question in which this Court need not to go into as there is already application filed by respondent No.1 under Order 7 Rule 11 of the CPC, which is yet to be decided by the trial Court. The entitlement of the relief against the e-auction procedure initiated by respondent No.3 appears to be directly connected with the maintainability of the suit. Hence, under these circumstances there is requirement to consider on the maintainability of the civil suit before considering the entitlement of the petitioner for grant of relief as it was prayed in application under Section 151 of the CPC. Exercising jurisdiction under Article 227 of the Constitution of India this Court cannot step into shoes of the trial Court and decide the maintainability of the civil suit before it being decided by the trial Court itself. Therefore, the petition is disposed off at motion stage. The interim relief granted by this Court shall continue for a further period of 45 days. In the meanwhile, learned trial Court is directed to decide the application under Order 7 Rule 11 of the CPC filed by the respondents without being influenced by any of the observations made in this order and then in case the suit survives, consider the application filed by the petitioner for grant of interim relief.

8. The petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge