

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Second Appeal No. 502 of 2016

Mrs. Rashmi Rajkishor Agrawal

Versus

Motilal Shivshankar Agrawal

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Dr. R.S. Sundaram, Advocate for the appellant.

Shri S.N. Kumar, Advocate for the respondent no.6.

CORAM : ANIL S. KILOR, J.

DATED : 17 NOVEMBER 2021

In the suit for partition and separate possession filed by the appellant/plaintiff, the State Bank of India (respondent no.6) filed an application under VII Rule 11(d) of the Code of Civil Procedure on the ground that the suit is not maintainable as the only remedy available is before the Debt Recovery Tribunal. The trial Court upholding the said objection, dismissed the suit vide order dated 27th July, 2016 passed by the 2nd Joint Civil Judge, Senior Division, Nagpur, *inter alia* observing that as per section 34 of Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (for short “SARFAESI Act”) the Civil Court has no jurisdiction in respect of any action taken or to be taken in pursuance of any power conferred by any provisions or under SARFAESI Act. The said order was challenged in Regular Civil Appeal No. 505 of 2016 before the District Judge-5, Nagpur. The said appeal came to be dismissed vide judgment and order dated 22nd November, 2016, which is the subject matter of this appeal.

2. As various civil revision applications and second appeals were pending on the issue as involved in the present second appeal, in view of a reference made to the larger Bench. This appeal was tagged with the aforesaid matters.

3. In the reference before the Division Bench of this Court in a case of **Bank of Baroda Vs. Gopal Shriram Panda**¹ and other connected matters, the question was “Whether the jurisdiction of a Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Section 17 of the Securitisation Act, in relation to enforcement of security interest of a secured creditor, is barred by Section 34 of the Securitisation Act ?”

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4. While answering the said question, the Division Bench has held thus :

27. In view of what we have discussed above, our considered opinion to the question as referred to is as under:-

Question :

“Whether the jurisdiction of a Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Section 17 of the Securitisation Act, in relation to enforcement of security interest of a secured creditor, is barred by Section 34 of the Securitisation Act ?

Answer :

The answer, looking to the nature of the question, in our view, is in parts :-

(A) Jurisdiction of the Debts Recovery Tribunal, to decide all matters relating to Section 13 and 17 of the SARFAESI Act, is exclusive.

(B) In all cases, where the title to the property, in respect of which a ‘security interest’, has been created in favour of the Bank or Financial Institution, stands in the name of the borrower and/or guarantor, and the borrower has availed the financial assistance, it would be only the DRT which would have exclusive jurisdiction to try such matters, to the total exclusion of the Civil Court. Any pleas as raised by the borrowers or guarantors, vis-a-vis the security interest, will have to be determined by the DRT.

(C) The jurisdiction of the Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Section 13 and 17 of the SARFAESI Act, in relation to enforcement of security interest of a secured creditor, is not barred by Section 34 of the SARFAESI Act.

(D) Where civil rights of persons other than the borrower(s) or guarantor (s) are involved, the Civil

Court would have jurisdiction, that too, when it is prima facie apparent from the face of record that the relief claimed, is incapable of being decided by the DRT, under Section 17 of the DRT Act, 1993 read with Sections 13 and 17 of the SARFAESI Act.

(E) *Even in the cases where the enforcement of a security interest involves issues as indicated in **Mardia Chemicals** (supra) of fraud as established with the parameters laid down in **A. Ayyasamy** (supra); a claim of discharge by a guarantor under Section 133 and 135 of the Contract Act [**Mardia Chemicals** (supra)]; a claim of discharge by a guarantor under Sections 139, 142 and 143 of the Contract Act; Marshaling under Section 56 of the Transfer of property Act [**J.P. Builders** (supra)]; the Civil Court shall have jurisdiction.*

(F) *Examples as indicated in para 22.3, are illustrative of the Civil Court's jurisdiction.*

(G) *The principles laid down in para 33 (I) to (ix) of **Sagar Pramod Deshmukh** (supra) are in accordance with what we have discussed and held above."*

5. The Division Bench of this Court has in clear terms held that the jurisdiction of Civil Court to decide all the matters of civil nature excluding those to be tried by the Debts Recovery Tribunal under Sections 13 and 17 of the Securitisation Act, in relation to enforcement of security interest of a secured creditor, is not barred by Section 34 of the Securitisation Act.

6. In that view of the matter, the impugned judgment and decree dated 22nd November, 2016 and order dated 27th July, 2016 do not survive and findings recorded by the both the Courts below while

considering the jurisdiction of the Civil Court under Section 34 of the SERFAESI Act need to be re-examined in view of the judgment passed by the Division Bench of this Court in a reference dated 25th March, 2021. Accordingly, I am of the considered view that the impugned judgment and decree dated 22nd November, 2016 passed by District Judge-5, Nagpur and order dated 27th July, 2016 passed by 2nd Joint Civil Judge, Senior Division, Nagpur need to be set aside and matter is required to be remanded back to the trial Court by keeping all the issues open. In that view of the matter, I pass the following order.

ORDER

- i. The order dated 27th July, 2016 passed by the 2nd Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit No.97 of 2016 and judgment and decree dated 22nd November, 2016 passed by District Judge-5, Nagpur in Regular Civil Appeal No. 505 of 2016 are set aside in view of the judgment dated 25th March, 2021 passed in a reference made by the Division Bench of this Court.
- ii. The matter is remanded back to the trial Court for a decision afresh.

- iii. If the record and proceeding is received in this matter, the Registry is requested to send back the same within three weeks from today.
- iv. The parties may appear before the trial Court on **20th December, 2021**, thereupon the trial Court may proceed with the suit.
- v. All issues are kept open.
- vi. Second appeal is disposed of.

[ANIL S. KILOR, J.]