

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD).No.2439 of 2015
and M.P.No.1 of 2015

Punjab National Bank
Having its Head Office
at Plot No.4, Sector-10,
Dwarka,
New Delhi - 110075.

The Authorised Officer,
Punjab National Bank,
Having its Office at
R.K.Salai, Chennai - 4.

(Amended as per the order
of this Court dated 26.02.2021 made
in CMP.Nos.3239 & 3244 of 2021
in C.R.P.No.2439 of 2015)

... Petitioner

Vs.

1. S.Darren Manuvel Rajasigamani (Minor)
 2. Ryan Ebinezar Rajasigamani (Minor)
- Both minors represented by their
next friend J.Issac.

3. R.Selvaraj
4. R.Arumugasamy

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 08.10.2014 passed in I.A.No.9831 of 2014 in O.S.No.2309 of 2014 on the file of the learned XVIII City Civil Judge, Chennai.

For Petitioner : Mr.P.S.Ganesh

For Respondents

For R1 & R2 : Mr.G.Mutharasu
for Mr.D.Yogeswaran

For R3 : No appearance

For R4 : Dr.S.N.Amarnath

ORDER

This Civil Revision Petition is directed as against the fair and decretal order dated 08.10.2014 passed by the learned XVIII City Civil Judge, Chennai in I.A.No.9831 of 2014 in O.S.No.2309 of 2014, thereby dismissing the petition filed by the petitioner for rejection of plaint.

2. The petitioner is the third defendant in the suit filed by the respondents 1 & 2 for declaration declaring that the sale deed dated 10.02.2006, executed by the third respondent herein in favour of the fourth respondent in respect of the suit property as null and void. Further prayed to

declare that the petitioner accepting the sale deed of the third respondent as a security interest is illegal and not valid in law and non-est.

3. The learned counsel appearing for the petitioner would submit that the suit properties were secured towards the repayment of financial assistant availed by M/s. RA Samy Trading Pvt. Ltd., by creating equitable mortgage by deposit of title deeds. Thereafter, the petitioner issued demand notice and also possession notice under the SARFAESI Act. Under Section 34 of the SARFAESI Act, there is a bar of civil Court jurisdiction in entertaining the suit or any action taken in pursuance of that Act.

4. The case of the respondents 1 & 2 is that originally, the suit property was allotted to the first and second respondents' father viz., the third respondent herein by a registered Will dated 13.09.1989. It was a conditional allotment and he has no right to create any encumbrance over the suit property. However the third respondent sold out the suit property to the fourth respondent herein by a registered sale deed dated 10.02.2006 and the fourth respondent pledged the suit property with the petitioner/Bank and

obtained loan to the tune of Rs.25 crores. Since the fourth respondent defaulted in repayment of loan, the petitioner/Bank took action under the SARFAESI Act. Therefore, the respondents 1 & 2 filed suit as against the petitioner who intends to bring the suit property for sale, as they are having claim in the suit property. The suit property was brought for auction to be held on 15.09.2014 and as such the suit was filed.

5. However, the Court below dismissed the petition for the reason that the suit property has not been mortgaged to the bank as per the memorandum of deposit of title deed and therefore, the issues in the suit have to be gone into in full fledged trial. Further there is a bar under Section 34 of SARFAESI Act does not merit acceptance.

6. In this regard, the learned counsel appearing for the petitioner relied upon the judgment reported in **2011 (3) CTC 801** in the case of **V.Thulasi Vs. Indian Overseas bank**, in which the Hon'ble Division Bench of this Court held as follows:-

"29. By clever and astute drafting, the Plaintiff might create an illusion of cause of action by trying to bring civil suit within the parameters laid down by the Supreme Court in Mardia Chemicals case, (2004) 4 SCC 311. Pointing that Court has duty to see if such allegations of fraud are thrown just for the purpose of maintaining a suit, in Punjab National Bank v. J. Samsath Beevi 2010 (3) CTC 310, Justice V. Ramasubramanian held as under:

8. But at the same time, the Court has a duty to see, if such allegations of fraud are thrown, just for the purpose of maintaining a suit and ousting the jurisdiction of the Tribunal and to keep the Banks and Financial Institutions at bay. If by clever drafting, the Plaintiff creates an illusion of a cause of action, the Court is duty bound to nip it in the bud. To find out if it is just a case of clever drafting, the Court has to read the plaint, not formally, but in a meaningful manner. So is the dictum of the Apex Court in T. Arivandandam v. T.V. Satyapal : 1977 (4) SCC 467. It was again reiterated by the Court in I.T.C. Ltd. v. Debts Recovery Appellate Tribunal : 1998 (2) SCC 70,

by holding that clever drafting, creating illusions of cause of action are not permitted in law. The ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order VII, Rule 11(a).

9. A Court is obliged to see if the allegations of fraud and collusion made in the plaint, are themselves a product of "fraud and collusion" between the family members of the borrowers, so as to escape liability and save the secured assets, somehow or the other. In the recent past, there is a sudden spurt in the number of civil cases filed against the actions initiated by Banks and Financial Institutions, either under the 1993 Act or under the SARFAESI Act, 2002. All these cases fall under 3 or 4 categories viz.,

(i) cases filed by strangers claiming that their properties are brought to sale on the basis of forged documents or certified copies of documents submitted by borrowers to Banks

(ii) cases filed by guarantors claiming that they never signed letters of guarantee or offered their properties as securities

(iii) cases filed by close relatives of borrowers such as spouses, children, brothers and sisters, claiming that they have a share in the properties mortgaged by the borrowers and that they were never aware of and they never gave consent to the properties being offered as securities and

(iv) cases filed by third parties claiming that the properties were sold to them by the borrowers or guarantors by suppressing the creation of the mortgage and that they are bona fide purchasers for value without notice of the encumbrances.

10. It is not very difficult for a seasoned litigant or an intelligent lawyer to draft the Plaint in such a manner as to make a secured asset, come within anyone of the above 4 categories, by a clever drafting of the Plaint, thereby creating an illusion of fraud, collusion, misrepresentation and the like. Today, with the advancement of technology, the creation of an illusion and the creation of a virtual world are both possible. The moment the Civil Suit is taken on file, the proceedings before the Debts Recovery Tribunal or under the SARFAESI Act, 2002 gets slowed down. This results in two consequences viz., (i)

out of frustration, the Banks agree for one time settlements, or (ii) third party rights get created by taking advantage of the situation. Therefore, the Courts have a greater responsibility to scan the pleadings and see if the allegations of fraud and collusion made in the Plaint are actually a product of fraud and collusion between the borrowers and those making such claims.

We fully endorse the above views of the learned single Judge.

*30. In the present case, Plaintiffs seek for a declaration that the alleged guarantee created in the Plaintiff's name for the loan advanced to the 1st Defendant is null and void and seeks for permanent injunction restraining the Defendants from proceeding against the Plaintiff or the plaint schedule property. The Plaintiff has brought out the averments in the plaint to bring the suit within the purview of the exception carved out by the Supreme Court in *Mardia Chemicals Ltd. v. Union of India* : (2004) 4 SCC 311. In determining whether such a plea has to be*

accepted, the plaint as a whole has to be read. In Popat and Kotecha v. State Bank of India Staff Association: (2005) 7 SCC 510, the Supreme Court held that plaint averments cannot be compartmentalised or dissected, nor can the averments be read in isolation. As pointed out earlier, the limited exception, which is carved out by the Supreme Court, is whether the action of the secured creditor is so absurd and untenable that it would not require any probe, what so ever.

31. As held by the Supreme Court, the pleadings in an action for restraining a sale by a mortgagee must "clearly disclose a fraud or irregularity on the basis of which the relief is sought. The observations of the Supreme Court in Mardia Chemicals Ltd. v. Union of India : (2004) 4 SCC 311 emphasized that the exception, which is carved out is a limited exception. Like all exceptions, the exception carved out by the Supreme Court has to be strictly construed. A borrower or a third party cannot be permitted to defeat the provisions of the Act merely by alleging the "gross misuse of the trust reposed" and

"misuse of the documents executed by the Plaintiff. The above expressions used in the plaint cannot be compartmentalised and read in isolation. The plaint has to be read as a whole along with the documents produced by the Plaintiff. Considering the plaint averments, we are of the view that the learned single Judge rightly held that in view of the specific bar under Section 34 of SARFAESI Act, the Civil Suit filed by the Plaintiff is barred.

32. As pointed out earlier, on 7.2.2006, Bank issued the notice under SARFAESI Act and the suit came to be filed on 27.3.2006. As rightly pointed out by the learned Counsel for the Bank, the Plaintiff has not chosen to send any reply to the said notice dated 7.2.2006. On the other hand, the Plaintiff has produced a copy of the complaint purported to have been lodged with the Commissioner of Police on 23.1.2006.

33. Even though the Plaintiff has produced a copy of the plaint dated 23.1.2006, there is no material to show that the same has been lodged

with the Commissioner of Police on 23.1.2006. If it is the case of the Plaintiff that he has never given his property as security for the loan availed by the 1st Defendant and that the Defendants 1 to 3 and 5 to 7 colluded together to misuse the documents, nothing prevented the Plaintiff from issuing suitable reply to the said notice dated 7.2.2006. But that was not to be so. In the absence of any contemporaneous denial from the Plaintiff, going by the plaint averments and the documents, in our considered view, the suit is barred under Section 34 of the SARFAESI Act.

34. Considering the scope of powers of the Tribunal under Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (in short, RDDBFI Act"), in Union of India v. Delhi High Court Bar Association : (2002) 4 SCC 275, the Supreme Court has held that there is no absolute right in any one that his dispute to be adjudicated upon only by a Civil Court and under RDDBFI Act Civil Court now stands replaced by a Banking Tribunal in respect of the dues to the Bank.

35. *There is no force in the contention of the Appellant that the Tribunal is not vested with the power to inquire into the issues concerning the creation of the security. It is not as if remedy available under Section 17 is illusory. The right to move an application under Section 17 of the SARFAESI Act accrues to any person aggrieved by any of the measures taken under Section 13(4). The expression 'evidence produced by the parties' occurring in Section 17(3) would include evidence produced by the Appellant, though he is a person other than the borrower. Under Section 17, it is open to Appellant to raise the points raised."*

7. He also relied upon the another judgment of this Court reported in **(2010) 3 CTC 310** in the case ***Punjab National Bank vs. J.Samsath Beevi***, as follows:-

"30. To summarise, the suit on hand is nothing but an abuse of the process of law and the plaint is liable for rejection for the following reasons:-

(i) *The plaintiffs have admitted, in the writ petitions filed in March 2005 that they had knowledge of the proceedings initiated by the first defendant-bank before the DRT in O.A.No.137of 2003. Yet they have chosen to file the present suit only in August 2009. Therefore, the suit is barred by limitation even on admitted facts.*

(ii) *The plaintiffs have completely suppressed in the plaint, the factum of having filed writ petitions in the year 2005 on the file of this Court. This suppression has been made, obviously with a view to enable them to take a stand that they were not aware of the proceedings before the DRT. Therefore, they have come to court with unclean hands and are also guilty of abuse of the process of court.*

(iii) *The plaintiffs have admittedly initiated proceedings before the DRT for setting aside the sale and for setting aside the final orders. The plaintiffs were made parties to the original application before the DRT, even in the first instance. Since they were aware of the proceedings even in 2005, they must have taken steps to defend themselves in the original*

*application, by raising all the contentions now raised in the present plaint. Allegations of fraud and collusion, if made by close relatives of borrowers such as spouses, children, parents and brothers and sisters, can be agitated even before the Tribunal, since the Tribunal is competent to decide all such issues. This is especially so when these relatives are arrayed as parties to the original application before the Tribunal, either on the ground that they are guarantors or on the ground that they had offered third party collateral securities. It is not as though the Tribunal is not competent to decide questions relating to non execution of documents or letters of guarantee. That the Tribunal is competent even to set aside a transaction including sale and to restore possession to the borrower in appropriate cases, was made clear by the Apex Court in *Authorised Officer, Indian Overseas Bank vs. Ashok Saw Mill* {CDJ 2009 SC 1434}. Though that decision was under the SARFAESI Act, 2002, the powers of the Tribunal are in no way lesser under the 1993 Act, than under the SARFAESI Act. Therefore, the plaintiffs who were made parties by the first*

defendant-bank to the proceedings before the Tribunal, on the plea that they executed letters of guarantee and also created a mortgage of their properties, ought to have agitated all these issues only before the Tribunal, where they have filed applications for setting aside the recovery certificate and the sale.

(iv) The only basis on which the plaintiffs seek to maintain the present suit is that the original title deeds are in the custody of the CBI and that therefore, there was no valid creation of an equitable mortgage. But the copy of the FIR filed by the first defendant-bank before the CBI and the charge sheet filed by the CBI, filed as additional documents by Mr.R.Thiagarajan, learned counsel for the plaintiffs, show that the role played by the plaintiffs herein vis-a-vis the borrower V.M.S.Jaffarullah, was never in doubt in the criminal complaint. While the bank made allegations against the plaintiffs also for producing fabricated documents and also obtaining loans from various banks, on the strength of the very same documents, the charge sheet filed by the CBI left out the plaintiffs. But a

perusal of the charge sheet shows that the letters of guarantee and the memorandum of deposit of title deeds were not alleged to be fabricated. The charge sheet does not say that V.M.S.Jaffarullah forged the signatures of the plaintiffs in the letters of guarantee and in the memorandum of deposit of title deeds. The fulcrum of the charge sheet is that the documents of title relating to the properties were fabricated. In the absence of an allegation in the charge sheet filed by the CBI that the signatures of the plaintiffs were forged by V.M.S.Jaffarullah, the plaintiffs cannot take advantage of the custody of the documents with the CBI to claim that they had absolutely nothing to do with the banks. In any case, this question is a moot question in view of the fact that the properties have been brought to sale in pursuance of a certificate of recovery issued by the DRT. Once a property is brought to sale in execution of a decree, the question whether there was a valid mortgage or not recedes to the background, so long as the decree stands. Therefore, the criminal case initiated by the CBI and the custody of the title deeds with the CBI, can hardly save the

plaintiffs of their liability and they cannot turn this error into account.

Hence the applications for rejection of plaint are liable to be allowed.

31. Before parting with the case, it is appropriate to record what the Apex Court said in Ravinder Kaur vs. Ashok Kumar {2003 (8) SCC 259}, which was also quoted with approval in Gayatri Devi vs. Shashi Pal Singh {2005 (5) SCC 527}. It was observed that "the Courts of Law should be careful enough to see through such diabolical plans of the judgment debtors to deny the decree holders, the fruits of the decree obtained by them. These types of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system."

8. On perusal of plaint, the respondents 1 & 2 categorically averred that the fourth respondent pledged the title deed along with the original Will with the petitioner/Bank as one of the five documents and he created a security interest and obtained loan from the petitioner herein to the

tune of Rs.25 crores for his business. As such the above judgments are squarely applicable to the case on hand.

9. That apart, the fourth respondent herein created equitable mortgage by depositing the title deeds of the suit property to the petitioner/Bank. After default in repayment of loan, the loan become non-performing asset. Therefore, the petitioner proceeded under the SARFAESI Act by issuance of notice under Sections 13(2) and 13(4) of the said Act. Further there is a specific bar for civil Court to entertain any suit as provided under Section 34 of the SARFAESI Act. Therefore, the order passed by the Court below is perverse and liable to be set aside.

10. Accordingly, the order dated 08.10.2014 passed by the learned XVIII City Civil Judge, Chennai, in I.A.No.9831 of 2014 in O.S.No.2309 of 2014, is hereby set aside and the plaint in O.S.No.2309 of 2014 is hereby rejected. However, the respondents 1 & 2 are at liberty to approach the appropriate forum for appropriate relief.

11. With the above observations, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

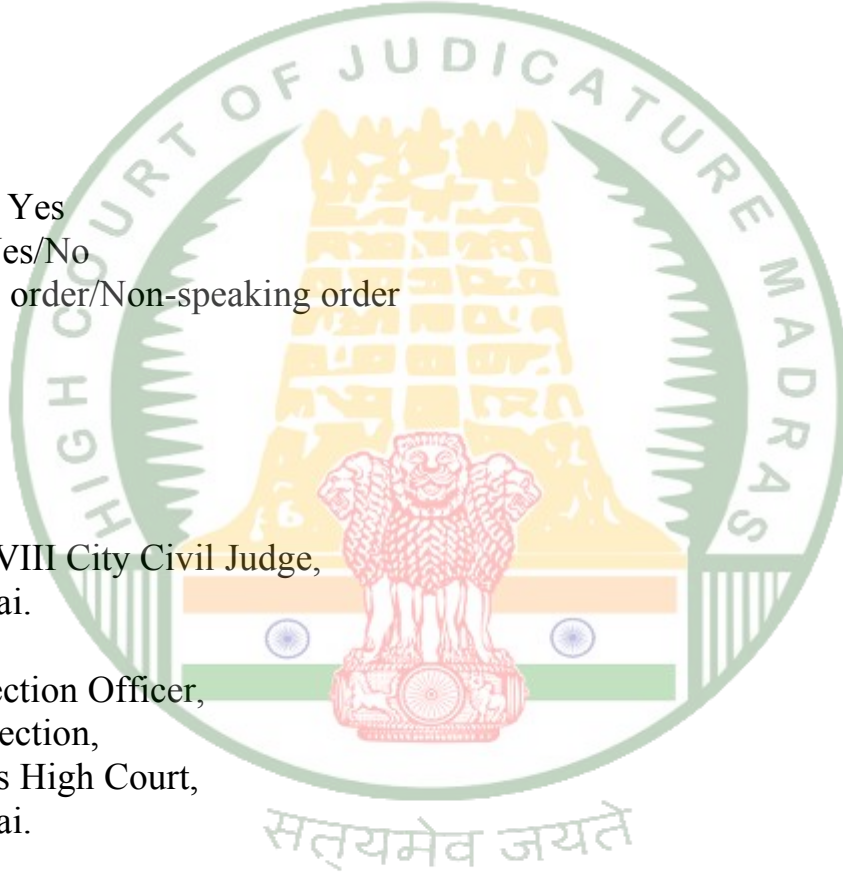
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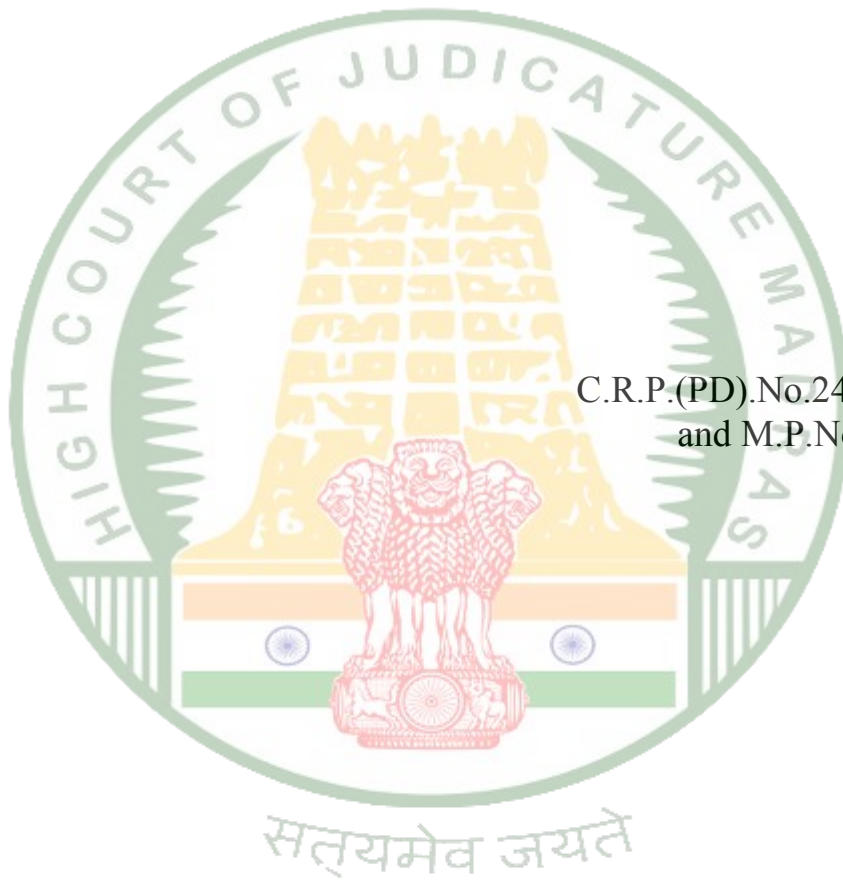
1. The XVIII City Civil Judge,
Chennai.
2. The Section Officer,
V.R. Section,
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