

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2021

PRONOUNCED ON : 01.06.2021

CORAM

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

C.R.P.(PD)No.2128 of 2018
and C.M.P.No.16299 of 2016

State Bank of India,
Stressed Assets Management Branch,
No.32, Montieth Road,
Egmore, Chennai - 600 008.

... Petitioner

Vs.

1. S.R.Shyam Sundar
2. P.K.Sivakumar
3. P.K.Narayanan
4. Badrinarayanachoudhary

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 28.04.2018 passed in I.A.No.1151 of 2017 in O.S.No.415 of 2017 on the file of the Principal Munsif Court, Alandur.

For Petitioner : Mr.M.L.Ganesh

For Respondents

For R1 : Mr.PVS.Giridhar
for M/s.Giridhar & Sai

For R2 & R3 : Mr.M.A.Rajendra

For R4 : No appearance

ORDER

This Civil Revision Petitions is directed as against the fair and decreetal order dated 28.04.2018 passed by the learned Principal District Munsif, Alandur, in I.A.No.1151 of 2017 in O.S.No.415 of 2017, thereby dismissing the petition filed for rejection of plaint.

2. The petitioner is the third defendant and the first respondent is the plaintiff. The first respondent filed suit in O.S.No.415 of 2017 for bare injunction in respect of the suit property. While pending the suit, the petitioner filed petition in I.A.No.1151 of 2017 for rejection of plaint and the same was dismissed. Aggrieved by the same, the present Civil Revision Petition.

3. The learned counsel appearing for the petitioner would submit that the civil Court has no jurisdiction to try suit in relation to the SARFAESI matters, since there is a statutory bar under Section 18 of the Recovery of Debts due to Banks and Financial Institution Act, 1993 and Section 34 of SARFAESI Act, 2002. The amendment made under SARFAESI Act which enables the tenant to file application under Section 17(4A) of SARFAESI Act before the Debt Recovery Tribunal. Whereas in the case on hand, the first respondent filed suit claiming the tenancy right from the second and third respondents herein.

3.1. The suit property which was mortgaged by the borrower through the second and third respondent, being the guarantors for the loan, on memorandum of deposit of title deed registered in the year 2007. When it being so, as per Section 65A(2)(e) of the Transfer of Property Act, no lease deed can be executed for more than three years for the property which is under mortgage. In fact, under the SARFAESI proceedings, the District Collector passed order of eviction on 10.04.2018 and the same was challenged by the first respondent in S.A.No.192 of 2019 before the Debt

Recovery Tribunal. The same was allowed and aggrieved by the same, the petitioner filed appeal before the Debt Recovery Tribunal in RA(SA).No.27 of 2020 and the same was partly allowed by an order dated 19.04.2021. In respect of the eviction is concerned, the Debt Recovery Appellate Tribunal upheld the order of the eviction passed by the District Collector.

3.2. In fact, the suit properties were already sold out in the Court auction, in favour of the fourth respondent herein. The petitioner also preferred a Civil Revision Petition as against the partial dismissal of the order passed by the Debt Recovery Appellate Tribunal before this Court and it is pending in SR stage in C.R.P.SR.No.45717 of 2021. Unfortunately without considering those facts, the Court below dismissed the petition for rejection of plaint on the ground that cause of action arose in the present suit is bundle of fact and on the grounds raised by the petitioner, the plaint cannot be rejected as such, the petition for rejection of plaint is not maintainable and dismissed.

3.3. He further submitted that memorandum of deposit of title deed of the year 2007, whereas the first respondent entered into lease agreement with the second and third respondents in the year 2013, that too for the period of 16 years. While entering into the lease agreement without due diligence viz., without verifying the encumbrance certificate in respect of the property, they entered into the lease agreement. Though the first respondent averred so many allegations in the plaint, the crux of the suit is only in respect of the proceeding initiated under the SARFAESI Act by the petitioner herein. Therefore, the suit is clearly barred by law and it is liable to be rejected.

3.4. In fact, after dismissal of the petition for rejection of plaint, the Court below dismissed the interim injunction petition filed by the first respondent and aggrieved by the same, the first respondent filed Civil Miscellaneous appeal before the appellate Court and it is pending. Therefore, the pendency of the suit would not serve any purpose and it is nothing but only to prevent the petitioner and the auction purchaser from taking possession of the suit property as per the order passed by the District

Collector pursuant to the sale certificate. In support of his contention, he relied upon the following judgments :-

- a. Manu/SC/0638/2018 - Sri Anandha Kumar Mills Vs. Indian Overseas Bank**
- b. 2014 (1) SCC 479 – Jagadish Singh Vs. Heeralal**
- c. Appeal (Civil) No.5287/2001 dated 13.08.2001 by Hon'ble SC - PNB Vs. OC Krishnan**
- d. Manu/SC/0541/2010 - United Bank of India Vs. Satyavathi Tondon and ors**
- e. 2013 (10) SCC 83 - General Manager, Sri Siddeshwara Co-operative Bank Ltd., and anr Vs. Iqbal and ors**
- f. Manu/SC/1004/2013 - Standard Chartered Bank Vs. Dharminder Bhohi and ors**
- g. Manu/SC/1489/2015 - Pegasus Assets Reconstruction Pvt Ltd., Vs. Haryana Concast Ltd and ors**
- h. Manu/SC/1489/2015 - Thulasi Vs. IOB**
- i. Manu/TN/1517/2012 - Sri Chandra and Chitra Vs. Nagarajan and ors.**
- j. Manu/DE/1169/2016 - Agarwal Tracom Pvt Ltd Vs. PNB**
- k. Manu/WB/1189/2014 - Idol India Projects Ltd., Vs. Nupur Ghosh and ors**
- l. Manu/AP/2725/2014 - Rajesh Binding works Vijayawada Vs. SBI**

m. CDJ/2010/MHC 5018 - HP Jinnappa vs Indian Bank

n. 2017 (5) CTC 198 - Bank of Baroda, Corporate Financial

Services Branch vs. R. Subramanian and Ors.

o. 2017 (5) CTC 302 - Central Bank of India and Ors.

vs. Gomathiammal

p. Manu /SC/1559/2016 - Robust Hotels Pvt. Ltd. and Ors. vs.

EIH Limited and Ors.

q. 2010 (3) CTC 310 Punjab National Bank rep. by its Manager vs.

J.Samsath Beevi and others

4. Per Contra, the learned counsel appearing for the first respondent would submit that the suit filed by the first respondent is not hit by any of the clauses as contemplated under Order 11 Rule 7 of CPC. He fairly concedes that as far as the lessee's right is concerned, the first respondent cannot maintaining the suit before the Civil Court as contemplated under Section 34 of the SARFAESI Act. Insofar as other issues are concerned, the suit can be very well maintainable as against the petitioner as well as other defendants. The first respondent entered into a registered lease deed for the period of 16 years registered vide document No.7061 of 2013 with the respondents 2 & 3 herein. Therefore, he is under

valid tenancy and he can be evicted only by due process of law from the suit property. It is being used for commercial purpose including running of gas distribution agency meant for public purpose. The total extent of the property ad measuring 1.12 acres in which only 8200 Sq.ft has been leased out to the first respondent viz., the subject matter of the suit property.

4.1. He further submitted that the first respondent has obtained license under the Explosive Act and put up the super structure in the suit property. Only in respect of the land, the first respondent entered into the lease agreement. In pursuant to the lease agreement, the petitioner has obtained separate license from the related department to run the gas distribution agency. The first respondent is belonged to Schedule caste community and as such, his right has to be protected in the manner known to law. Under these circumstances, the petitioner issued notice under Section 13(4) of the SARFAESI Act purporting to take possession of the suit property. The first respondent is being the occupier of the suit property, no notice has been issued to the first respondent.

4.2. He further submitted that once the first respondent has been inducted as tenant, he can be evicted only due process of law as described under Rent Control Act and he cannot be arbitrarily evicted by using provisions under the SARFAESI Act. Therefore the suit is very much maintainable and the civil Court has got jurisdiction to try the suit. In support of his contention, he relied upon the following reported judgments:-

- i) AIR 2016 SC 530 - Vishal N Kalsaria Vs. Bank of India and ors*
- ii) AIR 2004 SC 1801 - Sopan Sukhdeo Sable and ors Vs. Assistant Charity Commissioner and ors*
- iii) ARI 1986 Cal. 120 - British Airways Vs. Art Works Export Ltd and ors.*
- iv) CRP.(PD)No.955 of 2016 dated 20.04.2016 - K.Veeraraghavan Vs. T.Munusamy*

5. Heard Mr.M.L.Ganesh, learned counsel appearing for the petitioner, Mr.PVS.Giridhar, learned counsel appearing for the first respondents and Mr.M.A.Rajendra, learned counsel appearing for the respondents 2 & 3.

6. The petitioner is the third defendant in the suit filed by the first respondent for bare injunction in respect of the suit property. The respondents 2 & 3 are the borrowers/guarantors for the loan borrowed by them and they are due and liable to pay a sum of Rs.40,72,65,321.37. In order to secure the repayment of the loan amount, the borrowers/guarantors had executed loan security and deposit of original title deed to create a equitable mortgage in favour of the petitioner. Accordingly, the memorandum of deposit of title deed registered with jurisdictional Registrar Office in the year 2007. Due to non-payment of the loan amount, the account maintained by the second and third respondents with the petitioner bank declared as non-performing assets and the petitioner invoked the provisions of the SARFAESI Act.

7. Accordingly, the petitioner issued notice under Section 13(4) of SARFAESI Act, to take possession of the suit property. In furtherance to the notice, the petitioner issued notice under Section 8(6) of the Security Interest (Enforcement) Rule, thereby call upon that the suit property will be sold out by E-auction to be held on 26.07.2017. In the E-auction, the fourth

respondent herein purchased the suit property along with other properties, which were mortgaged in favour of the petitioner.

8. In the mean time, the first respondent entered into the lease deed with the respondents 2 & 3 herein in respect of the portion of the property which was mortgaged in favour of the petitioner herein to an extent of 8200 Sq.ft for the period of 16 years, by the registered lease deed dated 15.10.2013. According to the first respondent, after purchase of the suit property from the second and third respondents, the petitioner bank and the fourth respondent had engaged goondas and tried to take possession of the suit property illegally. Therefore, the first respondent filed suit for bare injunction in respect of the suit property for permanent injunction restraining the petitioner and other respondents 2 to 4 herein from interfering with the first respondent's peaceful possession and enjoyment of the suit property and also to conduct the first respondent's business including the LPG gas distribution agency. While pending the suit, the petitioner filed petition for rejection of plaint.

9. The point for consideration is that whether the suit filed by the first respondent for bare injunction as against the petitioner is maintainable, when there is specific bar under Section 34 of SARFAESI Act?

10. Admittedly, the suit property is mortgaged with the petitioner for availing cash credit facility, working capital term loan, corporation loans 1 & 2 to the tune of Rs.40,72,65,321.37. In order to secure the repayment of the loan amount, the respondents 2 & 3 herein had executed the loan security document by way of memorandum of depositing title deed to create equitable mortgage in favour of the petitioner in the year 2007. Thereafter, the loan account of the borrowers declared as non-performing asset for non-payment of the loan amount. The petitioner initiated proceedings under the SARFAESI Act.

11. While being so, the first respondent entered into the lease deed with the second and third respondents herein in respect of the suit property to run the business of LPG distribution shop. Under the SARFAESI proceedings, the petitioner brought the suit property for an E-auction in

which the fourth respondent herein purchased the suit property. In pursuant to the sale, the District Collector passed order for delivery of possession of the suit property and the same was challenged by the first respondent before the Debt Recovery Tribunal. Though it was allowed and set aside, the Debt Recovery Appellate Tribunal upheld the order of eviction order passed by the District Collector.

12. On perusal of cause of action in the suit filed by the first respondent, when he entered into the lease deed for the period of 16 years on 15.10.2013 and obtained the license for the purpose of running the LPG dealership and commenced the business of LPG distribution in the suit property from January, 2015, when the petitioner invoked the provisions under the SARFAESI Act and the fourth respondent purchased the suit property and sought for bare injunction. Therefore, the main cause of action in the suit is that, pursuant to the purchase of the suit property by the fourth respondent and ordered for eviction. In fact, the same was also challenged by the first respondent and it was confirmed by the Debt Recovery Appellate Tribunal.

13. In this regard, it is relevant to extract the provision under Section 34 of the SARFAESI Act 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).*

Accordingly, the civil Court has no jurisdiction to entertain any suit in respect of any matter which Debt Recovery Tribunal or Appellate Tribunal are empowered by or under SARFAESI Act.

14. The first respondent is a tenant under the respondents 2 & 3 by virtue of the registered lease deed dated 15.10.2013. Therefore, he can very well approach the Debt Recovery Tribunal under Section 17(4)(a) of

SARFAESI Act. It is relevant to extract the Section 17(4)(a) of SARFAESI Act as follows :-

"17(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.

[(4A) Where— (i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the

Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act."

Therefore, the first respondent cannot maintain the suit on the strength of the lease hold right before the civil Court. That apart, the lease deed dated 15.10.2013, revealed that the lease period for 16 years. When the charge is created by deposit of title deed under equitable mortgage in favour of the petitioner, the lease period cannot exceed three years.

15. It is relevant to extract the provision under Section 65(A) of the Transfer of Property Act as under :-

"65A (2) (e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified."

Therefore without even verifying the encumbrance certificate in respect of the mortgage deed and memorandum of deposit of title deed executed in favour of the petitioner, the first respondent entered into lease deed that too for the period of 16 years, as such there is statutory bar to entertain the suit before the civil Court.

16. In this regard, the learned counsel appearing for the petitioner relied upon the Judgment reported in **MANU/SC/0638/2018** in the case of **Sree Anandhakumar Mills Ltd. Vs. Indian Overseas Bank & Ors** and the relevant portion of the said judgment is extracted hereunder :-

“2 . The High Court by the order under challenge took the view that as the said suit (O.S. No.106 of 2009) was for partition, Section 34 of the SARFAESI Act will not bar the same. Hence the order.

3. The matter need not engage the Court in any great detail as in view of the law laid down by this Court in Jagdish Singh vs. Heeralal and others¹ it would clear and evident that the suit filed by the second respondent (i.e. O.S. No.106 of 2009) is not maintainable. In Jagdish Singh (supra) this Court after an elaborate consideration of the provisions of the SARFAESI Act, particularly, Section 2(zf), 2(zc), 13(1), 17, 18 and 34, took the view, on almost similar facts, that a suit for partition would not be maintainable in a situation where proceedings under the SARFAESI Act had been initiated. It was also held that the remedy of any person aggrieved by the initiation of proceedings under the SARFAESI Act lies under Section 1 (2014) 1 SCC 479 17 which provides for an efficacious and adequate remedy to a party aggrieved. Paragraph 24 of the report in Jagdish Singh (supra) which

make the above position clear may be usefully extracted below: 24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrowe's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have the jurisdiction to entertain any suit or proceeding in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression "in respect of any matter referred" to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently, if any aggrieved person has

got any grievance against any “measures” taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.”

17. The learned Counsel appearing for the petitioner also relied upon the judgment reported in **MANU/TN/1517/2012** in the case of **Chandra and Ors Vs. K.Nagarajan and Ors** and the relevant portion of the said judgment is extracted hereunder:-

“17. The question of maintainability of Civil Suit for partition is to be considered in the light of the above decision of the Supreme Court. The suit

properties were mortgaged in favour of the Bank.

On 3.9.2004, Exs. B.3 & B.4-Section 13(2) notices were issued to Defendants 1 & 2. The 5th Defendant-Bank had taken possession of item Nos. 2 to 7 exercising its power under Section 13(4) of the Act.

18. As per Section 31, the provisions of SARFAESI Act are not to apply in certain cases. As per Section 31(i), provisions of the Act shall not apply to security interest created in agricultural land. On coming to know that the security interest has been created in agricultural land, the 5th Defendant-Bank had withdrawn the measures taken under Section 13 of the Act and proceeded to file its claim in O.A. No. 117 of 2008 before Debt Recovery Tribunal, Madurai. Section 18 of RDDB Act also contains express bar of ouster of jurisdiction of the Civil Court. It is for enforcement of its secured interest the Bank had taken steps and that right remains intact even in a Suit for partition.

19 . Power under Section 34 of SARFAESI Act is not absolute and is subject to restrictions. They are: (1) that parties who filed Suit must be party to

liabilities created in favour of secured creditors, (2) disputes between parties could be resolved under provisions of Act itself; (3) if claim made by parties is outside jurisdiction of Debt Recovery Tribunal or Appellate Tribunal thereto or any action taken or to be taken under the Act and also under Recovery of Debt due to Banks and Financial Institutions Act, 1993 and disputes raised by parties cannot be adjudicated by Tribunal or Authority created under Act.

20. As per the ratio laid down by the Supreme Court in Nahar Industrial Enterprises Ltd. v. Hong Kong And Shanghai Banking Corporation, recourse to other provisions of the Code will have to be made for redressal of individual grievance. For redressal of individual grievances, they have to approach only Civil Courts. When such Civil Suits are filed, Courts are to be cautious about astute drafting of Plaint. Courts have a duty to see that whether the Plaint allegations are made by trying to bring Civil Suit within the parameters laid down by the Supreme Court in Mardia Chemicals Ltd. v. Union of India, MANU/SC/0323/2004 : 2004 (2) CTC 759 (SC),

and under the pretext of seeking redressal of individual grievance.

21. Observing that Courts have a greater duty to see that the allegations of fraud are made just for the purpose of maintaining a Civil Suit and categorising such Civil Suits filed challenging SARFAESI Act in 3 or 4 categories, in Punjab National Bank v. J. Samsath Beevi, 2010 (3) CTC 310, V. Ramasubramanian, J., 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 Complaint, 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 Complaint can certainly be unraveled and exposed by the Court while dealing with an Application under Order 7, Rule 11(a).

9. A Court is obliged to see if the allegations of fraud and collusion made in the Complaint, 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.

22 . Courts have a duty to see whether genuine grounds have been made out to attract the jurisdiction of the Civil Court. No generalisation could be made as to when a Civil Suit is maintainable or when the jurisdiction of the Civil Court is ousted. In the facts and circumstances of each case, it is to be examined whether there is genuine grievance to be redressed in the Civil Court. In *V. Thulasi v. Indian Overseas Bank*, MANU/TN/1939/2011 : 2011 (3) CTC 801, this Court held that the Suit is specifically barred under Section 34 of the Act and the Plaint is liable to be rejected.”

Therefore, the remedy for any person aggrieved by the initiation of proceedings under the SARFAESI Act lies under Section 17 which provides for an efficacious and adequate remedy.

18. Per contra, the learned counsel appearing for the first respondent relied upon the judgment reported in **AIR 2004 SC 1801** in the case of **Sopan Sukhdeo Sable and ors Vs. Assistant Charity Commissioner and ors.**, which reads as follows :-

"17. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order X of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised.

18. As noted supra, the Order VII Rule 11 does not justify rejection of any particular portion of the plaint. Order VI Rule 16 of the Code is relevant in this regard. It deals with 'striking out pleadings'. It has three clauses permitting the Court at any stage of the proceeding to strike out or amend any matter in any pleading i.e. (a) which may be unnecessary, scandalous, frivolous or vexatious, or, (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or, (c) which is otherwise an abuse of the process of the Court.

.....

21. According to Mr. Mohta appearing for the appellants, as noted above, the reliefs are separable and merely because some of the reliefs cannot be granted by the Civil Court it would entail an automatic rejection of the old plaint. In fact he submitted that some of the reliefs would be given up by the plaintiffs in the suit itself. It is true as contended by Mr. Savant learned counsel appearing for the respondent-trust by ingenious drafting a cause of action in the nature of red herrings cannot be brought into judicial arena.

But a reading of the reliefs shows that some of them can only be considered by the Civil Court.

22. Under Order II Rule 1 of the Code which contains provisions of mandatory nature, the requirement is that the plaintiffs are duty bound to claim the entire relief. The suit has to be so framed as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. Rule 2 further enjoins on the plaintiff to include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. If the plaintiff omits to sue or intentionally relinquishes any portion of his claim, it is not permissible for him to sue in respect of the portion so omitted or relinquished afterwards. If the plaintiffs as contended by Mr. Mohta want to relinquish some reliefs prayer in that regard shall be done before the trial Court. A reading of the plaint and the reliefs along with the contents of the plaint goes to show that the main dispute relates to the question of continuance of tenancy and the period of tenancy. They are in essence unrelated with the other reliefs regarding enquiry into the affairs of the trust. Such enquiries

can only be undertaken under Section 50 of the Act. For instituting the suit of the nature specified in Section 50, prior consent of the Charity Commissioner is necessary under Section 51. To that extent Mr. Savant is right that the reliefs relatable to Section 50 would require a prior consent in terms of Section 51. If the plaintiffs give up those reliefs claimed in accordance with law, the question would be whether a cause of action for the residual claims/reliefs warrant continuance of the suit. The nature of the dispute is to be resolved by the Civil Court. The question of tenancy cannot be decided under Section 50 of the Act. Section 51 is applicable only to suits which are filed by a person having interest in the trust. A tenant of the trust does not fall within the category of a person having an interest in the trust. Except relief in Para D of the plaint, the other reliefs could be claimed before and can be considered and adjudicated by the Civil Courts and the bar or impediment in Sections 50 and 51 of the Act will have no relevance or application to the other reliefs. That being so, Sections 50 and 51 of the Act would not have any application to

that part of the relief which relates to question of tenancy, the term of tenancy and the period of tenancy. The inevitable conclusion therefore is that Courts below were not justified in directing rejection of the plaint. However, the adjudication in the suit would be restricted to the question of tenancy, terms of tenancy and the period of tenancy only. For the rest of the reliefs, the plaintiffs shall be permitted within a month from today to make such application as warranted in law for relinquishing and/or giving up claim for other reliefs.

23. *Another plea which has been raised with some amount of vehemence by the appellant is the alleged forcible possession. This plea is strongly disputed by learned counsel for the respondent-trust who says that the possession was taken in accordance with law and as noted above, by voluntary surrendering by most of the tenants. Much of this controversy revolves from the date till the order of injunction passed by the trial Court operated.*

19. He also relied upon the judgment reported in **ARI 1986 Cal.**

120 in the case of **British Airways Vs. Art Works Export Ltd and ors.**, as follows:-

"8. After receipt of the summons of the suit, the defendant petitioner entered or appearance and made an application under Order 7, Rule 11 read with Order 1, Rule 10 of Section 151 of the Civil P. C. praying for rejection of the plaint and/or striking out the name of the defendant No. 1 from the suit principally on two grounds, namely, that (i) there is no subsisting cause of action for the suit and that (ii) the suit is barred by the Carriage by Air Act, 1972, hereinafter referred to as 'the Act'.

.....
12. We are unable to accept the contention of the learned Counsel for the petitioner. Under Clause (a) of Order 7, Rule 11, the plaint shall be rejected where it does not disclose a cause of action. The plea of the petitioner that there is no cause of action for the suit is not same as to say the plaint does not disclose any cause of action, which is a ground for the rejection of the plaint. Indeed, the plaint discloses a cause of action. The

correctness or otherwise of the allegations constituting the cause of action is beyond the purview of Clause (a) of Order 7, Rule 11. It is not the case of the defendant petitioner that the plaint does not disclose a cause of action but, as stated already, its case is that there is no cause of action for the suit which is not a ground for rejection of plaint under Order 7, Rule 11 of the Civil P. C. This view finds support from a Bench decision of the Assam High Court in Santi Ranjan Das Gupta v. Dasuram Mirzamal MANU/GH/0062/1956 : AIR 1957 Gau 49 where it has been laid down that a plea that there was no cause of action for the suit is something different from saying that the plaint itself did not disclose any cause of action. There is, therefore, no substance in the contention made in the instant case on behalf of the petitioner that the learned Judge should have rejected the plaint on the ground that there is no subsisting cause of action for the suit."

20. He relied upon yet another judgment passed by this Court in

CRP.(PD)No.955 of 2016 dated 20.04.2016 in the case of **K.Veeraraghavan Vs. T.Munusamy.**, as follows :-

"7. So far as the ground of undervaluation of the relief is concerned, it shall attract Sub Clause (b) of Rule 11 under Order VII CPC, only if such undervaluation is pointed out by the Court, a direction is issued to correct the valuation and a default is committed by the plaintiff to correct the valuation. Hence, the claim of undervaluation per se cannot be projected as a ground for rejection of the plaint. It has to be raised as a plea and a decision has to be invited regarding the correctness of the valuation, pursuant to which alone, a direction could be issued and rejection of the plaint can be made, provided such direction is not complied with.

8. So far as the question of limitation is concerned, normally it will not be a ground for rejection of plaint, as in most of the cases, it shall be a mixed question of law and fact to be decided on evidence to be adduced by the parties. There may be minimum number of and exceptional cases, in which, the very averments made in the

plaint itself will make it clear that the suit is barred by limitation. Only in such cases, sub clause (d) of Rule 11 under Order VII C.P.C will get attracted for the rejection of the plaint on the ground that the suit is barred by a statutory provision. In the present case, clear averments have been made in the plaint to the effect that the plaintiff came across the document, which is sought to be declared null and void, only just prior to the filing of a previous suit for injunction, which was filed in 2013 and on advice, the plaintiff has chosen to file the present suit for declaration and other reliefs. The averments also proceed to state that within three years from the date of knowledge, the suit came to be filed and hence, the suit is not barred by limitation. If all the contesting defendants claim that the suit is barred by limitation, it is a matter that can be decided not solely based on the plea made in the averments made in the plaint, but by considering the evidence to be adduced on both sides. When such is the case, Rule 11(d) of Order VII CPC shall not get attracted."

In the above all cases, the Hon'ble Supreme Court of India as well as this

Court held that if the defendants claimed that the suit is barred by limitation, it is a matter that can be decided not solely based on the plea made in the averments made in the plaint, but by considering the evidence to be adduced on both sides. Therefore, Order VII Rule 11(d) of Civil Procedure Code shall not be attracted to reject the plaint.

21. The above judgments are arisen out of various Acts and in respect of different cause of action. In the case on hand, the entire cause of action falls on the proceedings initiated under the SARFAESI Act. When there is a specific bar to entertain the suit by the civil Court, the above judgments are not applicable to the case on hand. That apart, the learned counsel appearing for the first respondent vehemently contended that other than the lease hold right, the suit is filed for other cause of action viz., he obtained license to run the business of LPG distribution with BPCL. The first respondent had put up construction in the suit property and commenced business from the month of January, 2015. In respect of the construction is concerned, the first respondent is the owner of the building and as such except due process of law, the valid tenant cannot be vacated. Therefore, the

entire cause of action are bundle of facts and it cannot be rejected in limini.

22. As stated above, the entire cause of action had arisen only on the auction sale conducted by the petitioner under the SARFAESI Act. In fact, the order of eviction passed by the District Collector was upheld by the Debt Recovery Appellate Tribunal. That apart, interim injunction petition filed by the first respondent before the trial Court also got dismissed and aggrieved by the same, the first respondent filed appeal and it is pending. Therefore, the Court below has no jurisdiction to try the present suit in relevant to the SARFAESI proceedings, when there is statutory bar under Section 18 of the Recovery of Debts Due to Banks and Financial Institution Act 1993 and Section 34 of the SARFAESI Act, 2002.

23. In view of the above discussions, the order passed by the trial Court is perverse and liable to be set aside. Accordingly the order dated 28.04.2018 passed by the learned Principal District Munsif, Alandur, in I.A.No.1151 of 2017 in O.S.No.415 of 2017 is hereby set aside and the plaint in O.S.No.415 of 2017 is hereby rejected. However, the first

respondent is at liberty to work out his remedy before the Debt Recovery Tribunal in the manner known to law as envisaged under Section 17(4)(a) of the SARFAESI Act.

24. Accordingly, this Civil Revision petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

01.06.2021

Internet : Yes
Index : Yes
Speaking order

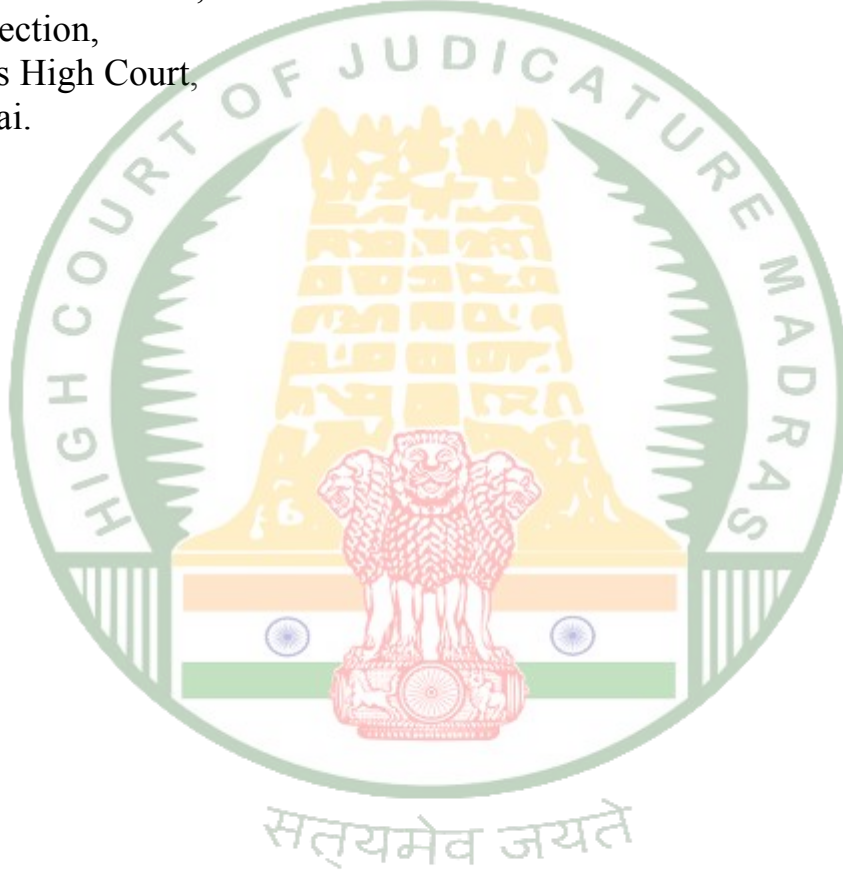
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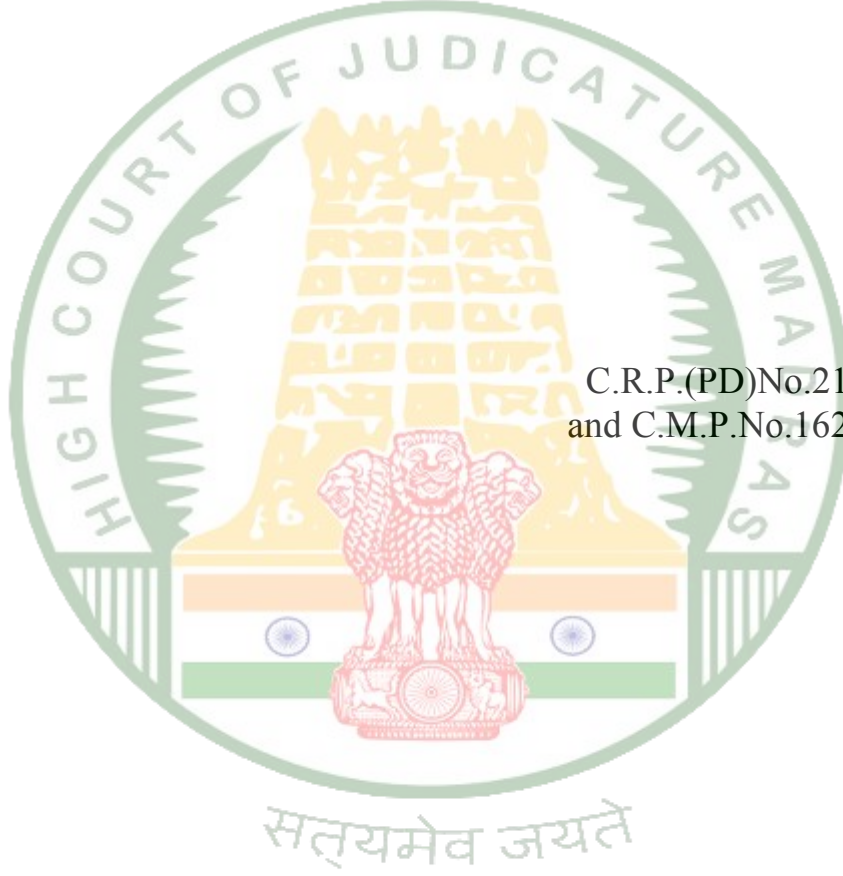
1. The Principal District Munsif,
Alandur.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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C.R.P.(PD)No.2128 of 2018
and C.M.P.No.16299 of 2016

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