IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.522 of 2016
and C.M.P.No.2687 of 2016

Punjab National Bank,
a body corporate under the banking companies
(Acquisition and Transfer of undertaking) Act 1970,
Having it Head office at New Delhi,
Carrying on business in bank among
other places represented by its
Chief Manager and Authorised Officer,
Office at ARM Branch, 448A,
Dr.Nanjappa Road, Coimbatore. ... Petitioner

Vs

1.Subbathal
2.Shanmugam
3.Nataraj
4.Chenniappan
5.Ponnusamy
6.S.N.Thangavel ... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 30.11.2015 made in I.A.No.669 of 2014 in O.S.No.398 of 2014 on the file of III Additional District and Sessions Judge, Coimbatore.

For Petitioner	: Mr.M.L.Ganesh
For R1 to R3	: Mr.S.Thangavel
For R4 & R5	: Mr.S.Saravanan
For R6	: Mr.P.G.Kumaraguru

O R D E R

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 30.11.2015 made in I.A.No.669 of 2014 in O.S.No.398 of 2014 on the file of III Additional District and Sessions Judge, Coimbatore, thereby dimissing the petition for rejection of plaint in O.S.No.398 of 2014.

2. The petitioner is the third defendant and the respondents 1 to 3 are the plaintiffs. The respondents 1 to 3 filed a suit for partition as against the petitioner and the respondents 4 to 6 herein in respect of the suit property. Pending suit, the petitioner filed petition for rejection of plaint on the ground that the partnership firm M/s.S.P.Polymers consisting the respondents 4 and 5 herein as partners availed credit facilities from the Nedungadi Bank Limited comprising of term lean facility to the tune of 3,27,000/- and cash credit facility to the tune of Rs.7,00,000/- and cheque discounting facility to the tune of Rs.2,00,000/- by the sanction letter dated 21.06.1999. Thereafter, the said bank merged

with the petitioner bank and acquired the assets and liabilities of the said Nedungadi Bank Limited. The respondents 4 and 5 are secured by way of mortgage by deposit of title deeds in respect of the suit property created by their father. He deposited the title deeds in respect of the suit property and created a valid equitable mortgage by deposit of title deeds. Thereafter, the respondents 4 and 5 defaulted in repayment of loan and the petitioner initiated the proceedings under Section 19 of Recovery of Debts Due to the Banks and Financial Institutions Act, 2002 in O.A.No.96 of 2002 before the Debt Recovery Tribunal.

3. While pending the said proceedings, the petitioner offered one time settlement scheme to the tune of 16,00,000/- in full and final settlement by communication dated 15.03.2007 on or before 14.05.2007. The respondents 4 and 5 did not remit the amount within the stipulated time and as such the petitioner issued a demand notice under the 13(2) of the SARFAESI Act. While pending the proceedings under the SARFAESI Act, the respondents 1 to 3 filed the present suit for partition in respect of the very same property instead filing necessary applications before the Debt Recovery Tribunal as provided under the SARFAESI Act. In fact,

the petitioner also issued possession notice under Section 13(4) of the SARFAESI Act. In pursuant to the same the tender-cum-auction sale notice dated 28.05.2009 was issued. The sale notice was affixed on the secured assets at the conspicious place of the property. The respondents 4 and 5 challenged the SARFAESI proceedings in S.A.No.61 of 2009 before the Debt Recovery Tribunal, Coimbatore and the same was dismissed by an order dated 04.04.2012. The auction purchaser purchased the suit property and he was already been put in symbolic possession. The sale certificate dated 26.07.2010 has already issued in favour of the auction purchaser. The application in O.A.No.96 of 2002 filed under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act was also allowed by an order dated 19.04.2012. The 6th respondent herein is the auction purchaser and the sale certificate is issued in his favour. In fact, the respondents 4 and 5 challenged the order passed in S.A.No.61 of 2009 passed by the Debt Recovery Tribunal, Coimbatore in R.A.(S.A).No.85 of 2012 before the Debt Recovery Appellate Tribunal, Chennai and the same was dismissed. Aggrieved by the same, they also filed a Writ Petition before this Court in W.P.No.19865 of 2014 and the same was disposed of by an order dated

27.10.2014, thereby remanded the matter to the Debt Recovery Appellate Tribunal for considering the appeal in its entirety on merits and in accordance with law.

4. At that juncture, the respondents 1 to 3 herein, being the legal heirs of the K.Senniappan, filed a suit for partition for the very same property. The Debt Recovery Appellate Tribunal, Chennai, again confirmed the order passed by the Debt Recovery Tribunal, Coimbatore by an order dated 04.04.2012 and dismissed the appeal in R.A.(S.A).No.85 of 2012. Aggrieved by the same, they also filed a Writ Petition before this Court in W.P.No.5011 of 2016 and the same was allowed by an order dated 30.11.2018 and remanded the matter for fresh consideration before the Debt Recovery Tribunal, Coimbatore to decide the appeal in S.A.No.61 of 2009 on merits and in accordance with law. Without insisting on the deposit an amount of Rs.48,50,000/-.

5. Further made it clear that the outcome of the appeal in S.A.No.61 of 2009 shall decide the fate of the sale made in favour of the 6th respondent herein and the sale certificate dated 26.07.2010 issued in favour of the 6th respondent herein, which is pending on the file of Debt

Recovery Tribunal, Coimbatore.

6. Therefore, there is a statutory bar to entertain the present suit by the Civil Court. As per the Section 18 of the Recovery of Debts due to Banks and Finacial InsituteAct 1983 and Section 34 of the SARFAESI Act, the jurisdiction of the Civil Court is ousted. In this regard, the learned counsel for the petitioner relied upon the Judgment in the case of ***Sree Anandhakumar Mills Ltd. Vs. Indian Overseas Beank and Ors*** reported in ***MANU/SC/0638/2018.*** 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.*
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> *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 areinconsistent with the provisions of that Act, which takes in Section 9 CPC as well."*

7. The learned Counsel also relied upon the Judgment in the case of ***Chandra and Ors Vs. K.Nagarajan and Ors*** reported in ***MANU/TN/1517/2012.*** 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.*
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> ***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.*
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> ***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 Plaint, not formally, but in a meaningful manner. So is the dictum of the Apex Court in T. Arivandandam v. T.V. Satyapal, MANU/SC/0034/1977 : 1977 (4) SCC 467. It was again reiterated by the Court in I.T.C. Ltd. v. Debts Recovery Appellate Tribunal, MANU/SC/0968/1998 :

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 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 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.*

***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."*

8. In tems of Section 34 of SARFAESI Act, the jurisidiction of

the Civil Court is barred under Section 34 of the SARFAESI Act reads as follows :

"34. Civil Court not to have jurisdiction – No Civil Court hall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Revocery 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)".

9. As per Section 34, the bar of jurisdiction of Civil Court is two folds.

i) No Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which a DRT or the Appellate Tribunal is empoered by or under the Act ;

ii) No injunction shall be granted by any Court or other authority in respect of any action or to be taken in pursuance of any order conferred under the Act or under the RDDB Act.

10. In the case on the hand, the respondents 1 to 3 herein filed

a suit against the petitioner as well as the borrower in respect of the very same property. Therefore, the above Judgments are squarely applicable to the case on hand and the plaint is liable to be rejected.

11. Accordingly, the order passed by the trial Court in I.A.No.669 of 2014 in O.S.No.398 of 2014 dated 30.11.2015 on the file of the III Additional District and Sessions Judge, Coimbatore is set aside. The Civil Revision Petition is allowed. No costs. Consequently connected Miscellaneous Petition is closed. However, the respondents 1 to 3 are permitted to work out their remedy before the Debt Recovery Tribunal in the manner known to law. If they succeed before the Debt Recovery Tribunal in respect of the suit property, they can very well file a suit for partition in respect of the property.

29.03.2021

Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
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To

1. The III Additional District and Sessions Judge,
Coimbatore.

2.The Section Officer,
VR Section,
High Court,
Madras.

G.K.ILANTHIRAIYAN , J.

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