IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 03.12.2020	Date of Pronouncing Judgment 17.02.2021

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.R.P.(P.D).No.1978 of 2020
and
C.M.P.No.12284 of 2020

P. Thavasiraj .. Petitioner

Vs.

1.Virgin Manufacturing Industries Private Limited,
Rep.by its Managing Director, N. Baskar,
No.42/1, Cooperative Colony,
Vilankurichi, Kalapatty,
Coimbatore – 641 035.

2. J. Arun Prakash .. Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the impugned order dated 18.08.2020, passed by the Hon'ble V Additional District and Sessions Judge, Coimbatore in I.A.No.3 of 2020 in O.S.No.323 of 2020.

For Petitioner : Mr. P.A. Prabhushankar

For Respondents : Mr. R. Bharath Kumar, for R1
Mr. S.V. Pravin Rathinam, for R2

ORDER

The first defendant in the suit is the revision petitioner herein.

2. The petition is filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.3/2020, consequently, to reject the plaint.

3. The brief facts that are necessary for the determination of the Civil Revision Petition are as follows:-

(i) The first respondent herein has filed a original suit before the V Additional District and Sessions Judge, Coimbatore in O.S.No.323/2020, praying for permanent injunction restraining the petitioner herein and the 2nd respondent in anyway disturbing the peaceful possession and enjoyment of the first respondent herein in the suit property and running the factory in the suit premises. The first respondent herein has prayed for an ad interim injunction in I.A.No.2 of 2020 in O.S.No.323 of 2020, which has been granted by the Hon'ble V Additional District and Sessions Judge, Coimbatore vide order dated 17.07.2020 till 03.08.2020, thereafter extended till 11.09.2020 as of now.

(ii) The suit property was originally owned by M/s.Dura Craft Papers Private Ltd., in which petitioner holding the position of Managing Director. M/s. Dura Craft Papers Private Ltd., borrowed loan from Indian Overseas Bank, which was taken over by the Corporation Bank on 12.07.2011. On 27.09.2013, the account of M/s. Dura Craft Papers Private Ltd., was declared as Non-performing Asset by the Corporation Bank with a sum of Rs.940.81 lakhs as due and along with other dues, the total liability of the unit came upto a tune of Rs.1075.36 lakhs. The Bank issued a Demand notice dated 11.10.2013 under Section 13 (2) of the SARFAESI Act, 2002, demanding a payment of Rs.10,06,51,339/-. The bank issued a possession notice dated 17.12.2013 under Section 13(4) of the SARFAESI Act, 2002, and further a sale notice dated 12.02.2014. In pursuance to the same, the petitioner herein representing M/s.Dura Craft Papers Private Limited submitted a one time settlement proposal vide its letter dated 20.10.2017, to which the corporation Bank has not sent a reply till date.

(iii) The suit properties are agricultural properties and not an industrial land. The Corporation Bank issued a Sale notice once again on 13.02.2018. The petitioner herein representing the company had filed an application in S.A.No.80 of 2018 before the Hon'ble Debts Recovery Tribunal, Coimbatore, praying to declare the E-auction sale notice dated 13.02.2018, alleging that the Bank has violated the mandatory rules and without considering the proposals given by M/s. Dura Craft Papers Private Limited for settlement of the dues.

(iv) The above S.A.No.80/2018 is under the SARFAESI Act and there is an original application in O.A.No.415 of 2014 filed by the banker under the Recovery of debts due to banks and Financial Institutions Act wherein the petitioner as well as M/s.Dura Kraft Papers Pvt. Ltd., is also a contesting party to the said proceedings, which is still pending before the Hon'ble DRT, Coimbatore. When the above proceedings are pending disposal before the Hon'ble DRT, Coimbatore, the Corporation Bank vide an e-auction sale dated 29.05.2019, sold the suit properties and issued Sale Certificate dated 15.07.2019 and 19.07.2019 towards land and plant &

machinery respectively in favour of the 1st respondent herein.

(v) According to the petitioner, the first respondent was not given with the physical possession of the property sold by the banker and the same is also very well reflected in the sale notice of the banker dated 09.05.2020 which says the possession is only symbolic (disputed by respondent herein). The first respondent herein filed a suit in O.S.No.323 of 2020 before the Hon'ble V Additional District and Sessions Judge, Coimbatore, praying for an injunction restraining the petitioner herein and the second respondent in any way disturbing the peaceful possession and enjoyment of the first respondent herein in the suit property and running the factory in the suit premises and an ad interim injunction has also been granted.

(vi) The petitioner filed an application in I.A.No.3 of 2020 in O.S.No.323 of 2020 before the V Additional District and Sessions Judge, Coimbatore, praying to reject the plaint in O.S.No.323 of 2020, on the ground that as the suit property happens to be a 'secured asset' as defined under Section 2(1)(z)(c) of the SARFAESI Act and a security interest was created over the property under Section 2(1) (zf) of the SARFAESI Act, and further as the property was sold in “As is what is” and “whatever there is” condition as per the sale notice dated 09.05.2019 issued by the banker, hence possession is only symbolic.

(vii) As per petitioner version "As is what is" mentioned by the banker in the sale notice goes to show that the auction purchaser has agreed for the same and these being so, the first respondent/plaintiff is bound by the pending litigations vide S.A.No.80/2018 under SARFAESI Act by the petitioner before the DRT, Coimbatore. The Additional District and Sessions Judge, Coimbatore passed an order dated 18.08.2020, dismissing the I.A.No.3 of 2020 in O.S.No.323 of 2020.

4. Aggrieved against the order of dismissal made in I.A.No.3/2020 in O.S.No.323/2020 passed by V Additional District Sessions Judge, Coimbatore, the first defendant has preferred the above CRP.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

6. The contention of the learned counsel for the petitioner is summarised as under:-

(i) The suit is not maintainable before the civil Court. SARFAESI Act and DRT proceedings are pending before the Debt Recovery Tribunal, Coimbatore. The outcome of the result of S.A.No.80/2018 and O.A.No.415/2014, before the DRT, Coimbatore can reverse the sale certificate and hence the suit is not maintainable. In view of the proceedings under SARFAESI Act, right of appeal to the revision petitioner/defendant is available. The suit is bad for non-joinder of necessary parties and the respondent plaintiff is not in possession of the suit property and hence Civil Suit filed before the civil Court for bare injunction is not maintainable and hence the suit itself has to be struck off.

7. Per contra, the learned counsel for the respondent/plaintiff would contend that the prayer in the suit is not hit under Section 34 of the SARFAESI Act. The grievance of the plaintiff is that the plaintiff was put in possession by virtue of sale deed executed by the authorised officer DRT and he is carrying on business. While doing so, the first defendant (in his

individual capacity who was erstwhile Managing Director of the erstwhile company-debtor) while the second defendant / second respondent, is his henchman are trying to interfere with the peaceful possession and enjoyment of the property, which he had purchased under the e-auction and he was put in possession pursuant to the sale certificate dated 19.07.2019. Hence, the prayer in the suit is maintainable and does not fall within the prohibitory Clause under Section 34 of the SARFAESI Act and relied upon ***AIR (2014) SC 371 ((Jagdish Singh Vs. Heeralal & Others)***.

8. I have perused the plaint documents and plaint prayer and also the Interlocutory Application filed under Order 7 Rule 11 CPC for rejection of the plaint and four documents filed therein.

9. On perusal of the plaint and the plaint documents, it is seen that the first respondent filed suit in O.S.No.323/2020 before the V Additional District Court, Coimbatore against the revision petitioner and the second respondent herein for injunction restraining them not to interfere with his

peaceful possession and enjoyment of the suit property. The suit property is a factory land with buildings, together with plant and machineries. Along with the suit, the first respondent filed application for interim injunction in I.A.No.2 of 2020 and ad-interim injunction was granted in favour of the first respondent.

10. The revision petitioner herein who is the first defendant in the said suit filed I.A.No.3 of 2020 under Order 7 Rule 11 CPC, seeking rejection of the plaint, alleging the suit is barred by Section 34 of the SARFAESI Act.

11. The submissions made by the learned counsel for the revision petitioner as summarised above, in support of the rejection application for rejecting the plaint, in short are as follows:

a) Proceedings in O.A.No.415/2014 and S.A.No.80/2018 are pending before the Debts Recovery Tribunal.

b) The petitioner moved further appeal before DRT on 24.07.2020 under SARFAESI Act.

c) The issuance of sale certificate is not the resting point.

d) The ruling in the matter of Mardia Chemicals Ltd is relied on and the suit is therefore hit by Section 34 of the SARFAESI Act.

e) The revision petitioner along with rejection petition filed 4 documents in support of his application.

12. The 1st respondent/plaintiff filed a counter in the said application. Though four applications and four documents have been filed, it is a settled principle of law that when a Court is called upon to adjudicate or enquire on the application for rejection of the plaint, plaint averment and plaint document alone can be looked into and documents if any, by the defendant referred to in the written statement cannot be looked into. Those documents cannot be relied to decide the application to reject the plaint. It is settled law that the plaint has to be rejected only based on the averments in the plaint and the plaint documents not on any other materials. Therefore, the trial Court has rightly refused to rely on those documents and also render a categorical finding in this regard and hence, I find that those four documents filed by the revision petitioner cannot be looked into, in

view of the limited scope for enquiring into an application filed under Order 7 Rule 11 CPC.

13. The respondent relied the ruling reported in ***AIR 2006 Supreme Court Page 1828 (Mayar (H.K) Ltd., and others Vs. Owners & Parties, Vessel M.V.Fortune Express and Others)***. In para 11 of the said ruling it has been held that,

> *"11. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint."*

13(a)(i) The core question that is to be decided in this case is:

Whether, a successful auction purchaser, who was put in possession of the property by the creditor bank, can seek protection of this possession against third party individual before the DRT under the SARFAESI proceedings or in the above stated circumstances, whether a civil suit to protect the possession of the auction purchaser against third parties is barred under the provision Section 34 of the DRT Act.

(ii) Consequently; whether, on above stated circumstances, civil suit is maintainable.

14. The main reason that is assigned in the said application for rejection of plaint is that the suit is hit by Section 34 of the SARFAESI Act, which reads 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)."*

15. Perused the averments made in the plaint and seen the plaint documents. The respondent plaintiff is the auction purchaser in the auction conducted by the "secured creditor" namely the "Corporation Bank", Coimbatore. The plaintiff was declared as successful purchaser and purchased the suit property under the registered sale certificate, (exhibited

as plaint document A2 dated 19.07.2019). The same was registered with the Sub Registrar, Pollachi in Document No.4452/2019. Perusal of the said document reveals that the sale certificate, possession was duly delivered by the bank to the 1st respondent/ plaintiff. In support of his possession, he has filed plaint documents No. 3 to 7. Plaint document No. 7 is the patta having no.1086 issued by the competent revenue authority in favour of the plaintiff.

16(a). From the above plaint averments and plaint document, this Court finds that the 1st respondent plaintiff is neither a borrower nor a creditor and he is an auction purchaser and he has filed the suit relying upon the sale certificate (plaint document No.2). According to the plaint averments, he is in possession and enjoyment of the suit property, pursuant to the sale certificate issued by the secured creditor, Corporation Bank dated 19.07.2019.

16(b). According to the plaint averments, the first defendant-borrower (individual capacity was a Managing Director of the erstwhile company) borrower and the second defendant/second respondent is the henchman trying to interfere with his possession of the suit property which they have purchased under the plaint document no.2 and hence in order to protect his possession from these two individuals, he has filed the present suit for bare injunction, that is the core contention of the 1st respondent plaintiff.

16(c). In the decision reported in ***AIR (2014) SC 371***, it is held as follows:

> *"..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 17 which provides for an efficacious and adequate remedy to a party aggrieved. At Paragraph 24 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 borrowers 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. Following the decision, the Hon'ble Apex Court in ***AIR 2018 SC (SC)2472 (Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel & Others)*** has held that partition suit filed by one of the sisters of the borrower is not maintainable before the civil Court since the same challenges and involves the proceedings under the SARFAESI Act. In the decision cited supra, the auction purchaser if, aggrieved by the auction of the bank, they can also move an application under Section 17 of the SARFAESI Act before the DRT, which reads as under:-

> *“31.The auction purchaser (appellant herein) is one such person, who is aggrieved by the action of the secured creditor in forfeiting their money. The appellant, therefore, falls within the expression any person as specified under Section 17(1) and hence is entitled to challenge the action of the secured creditor (PNB) before the DRT by filing an application under Section 17(1) of the SARFAESI Act.”*

18(a). On the factual matrix as pleaded in the plaint, this Court finds that under plaint document 2, the petitioner/1st defendant has challenged the sale notice issued by the bank dated 13.02.2018. Admittedly, the erstwhile company-the debtor has not questioned the sale notice dated 09.05.2019, based upon which E auction was conducted on 29.05.2019, wherein, the first respondent became a successful bidder and the sale certificate was issued to him on 19.07.2019.

18(b). If anybody is having any grievance against any of the measures taken by the Secured Creditor under Section 13(4), they have to approach the DRT under Section 17 of the SARFAESI Act and those persons alone are prohibited from approaching a civil Court in seeking redress in respect of those grievances as per Section 34.

18(c). In the present case, this respondent has no grievance against the measures taken by the secured creditor namely the bank and therefore there is no need for this respondent to go to DRT.

18(d). The contention that the bank has not delivered actual possession to this respondent is incorrect and contrary to record. Though the sale notice refers symbolic possession the bank took actual possession of the secured assets and delivered the same to this respondent. The recitals in the sale certificate reveals that the bank delivered vacant possession. The plaint documents are also in support of this respondent's physical possession and this respondent running an industry in the suit property. This is sufficient to make out a prima facie case in favour of plaintiff to number the plaint.

19(a). At the risk of repetition, however for the sake of clarity the said Section has nothing to do with the present suit. The respondent is neither a borrower nor a creditor. On the other hand, he is an successful auction purchaser and filed the suit relying on the sale certificate registered in its favour. The revision petitioner and the second respondent herein have nothing to do with the suit property. Section 34 has to be read along with Section 17 of the SARFAESI Act. As per Section 17 any person aggrieved by any of the measures referred to in Section 13(4) of the said act, has to approach the DRT, within 45 days from the date on which such measure has been taken. Respondent herein as aforesaid has no grievance about the sale by the secured creditor under SARFAESI Act. Therefore, there is no need for respondent to go before DRT under Section 17.

19(b) On the other hand present suit is one seeking a civil remedy covered under Section 9 of the Code of Civil Procedure and the same is very much maintainable before a civil Court. Furthermore, in the event of an injunction order being granted by Civil Court, protecting the possession of the plaintiff / auction purchaser against third party individual and Anti Social Elements, as in the instant case, and when such an order of injunction has been violated by the defendant namely the third party individuals / Anti Social Elements he can very well move the civil Court for police protection to implement the order of injunction granted by the civil Court and this kind of provision conspicuously absent in the DRT Rules.

19(c) The contention that the suit is barred under Section 34 has no legal basis. As explained supra what is barred under Section 34 is only a civil suit before Civil Court in respect of the proceedings questioning the measures taken under Section 13(4) of the SARFAESI Act. Admittedly, the present suit is not one questioning or challenging any of the SARFAESI Proceedings, assumes significance. Neither the Secured creditor, viz., Bank nor the borrower (the company) are parties to the suit.

20. In other words, at any rate this civil actions have nothing to do with the sale in favour of the respondent. The respondent has no grievance about the SARFAESI proceedings initiated by the secured creditor viz., the bank and also the sale certificate issued in its favour. The respondent filed the present suit by relying on the sale certificate. As per Section 17 of the SARFAESI Act, any person aggrieved by any of the measures taken by "secured creditor" has to approach DRT. Then in those cases, the DRT is having exclusive jurisdiction to decide the matters covered under Section 17. Consequently, in respect of the matters covered under Section 17 the civil Court jurisdiction is barred as per Section 34.

21. The cause of action for this suit is not any proceeding initiated under SARFAESI Act. Suit is not by "secured creditor" nor borrower. In the instance case filing of suit is necessitated, when third party trying to

interfere with their possession. In such circumstances if the plaintiff's possession is disturbed by third parties, in their individual capacity a civil court is the appropriate forum to seek remedy. Hence, I find that taking into consideration that the relief sought for in the plaint has nothing to do with the proceedings initiated under the SARFAESI Act or DRT Act, the suit filed under Section 9 of CPC is maintainable in respect of the prayer as sought for.

In view of the above discussion,

I answer the core question No.1 in negation

and

answer the core question No.2 in affirmation thereto.

22. Furthermore, the defendants 1 and 2 are arrayed in their individual capacity and not in their representative capacity since, they are trying to interfere with the peaceful possession and enjoyment of the suit property of the respondent/plaintiff. Hence, the plea that the suit is barred for non-joinder of necessary parties does not arise. These two points are answered against the petitioner/1st defendant.

23. In the decision reported in ***(2009) 8 SCC 366*** authorisation Officer Indian Overseas Bank and Another Vs. Ashok Saw Mill, in paragraph 37 & 39, has held as follows :-

> *"37.The consequences of the authority vested in the DRT under sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases.*
>
> *39.We are unable to agree with or accept the submissions made on behalf of the appellants that the DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under Section 13(4) of the Act. On the other hand, the law is otherwise and contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT."*

24. Though for the reasons best known, the revision petitioner /1st defendant has not challenged the second sale notice issued on 09.05.2019 which has culminated in issuing of sale certificate in favour of the plaintiff, even otherwise, if the 1st defendant is aggrieved, in respect of the sale notice dated 09.05.2019, which culminated into the sale certificate in favour of the plaintiff, he can move the DRT by way of an appropriate application and in the event of success before the DRT, in getting the sale notice dated 09.05.2019 set aside, the DRT is empowered to re-deliver of possession as observed in the above decision rendered by the Hon'ble Apex Court. Till such time, petitioner cannot interfere with the possession of the plaintiff either in the capacity of the Managing Director of the erstwhile company, (creditor company) or in the individual capacity in association with henchman to disturb the possession.

25. At the risk of repetition, however for the sake of clarity, it is stated that the 1st respondent/ plaintiff has no grievance against the auction or measure taken by the “secured creditor” namely the bank. Therefore, in the absence of any grievance by the 1st respondent / plaintiff against any of

the proceedings, he cannot knock the door of the DRT either under the DRT Act or SARFAESI Act . Besides protection for possession is civil right, which is not barred under Section 34 of the SARFAESI Act in view of the discussion in the preceding paragraph.

26. Yet another contention raised by the revision petitioner is relating to the nature of possession said to have been held by the 1st respondent/plaintiff. According to the learned counsel for the petitioner/1st defendant the bank has not delivered actual possession to the 1st respondent plaintiff and relied upon the sale notice which refers to symbolic possession of the bank to take actual possession of the secured assets. This Court is unable to uphold the said contention for more than one reason. In the decision reported in ***(2008) 1 SCC 125 in Transcore Vs. Union of India***, wherein the Hon'ble Supreme Court has observed Para 43, which reads as follows:-

> *"The word possession is a relative concept. It is not an absolute concept. The dichotomy between symbolic and physical possession does not find place in the Act. Section 13(4) read with Section 17(3) shows that if the borrower is*

dispossessed, not in accordance with the provisions of the Act, then the DRT is entitled to put the clock back by restoring the status quo ante. Therefore, it cannot be said that if possession is taken before confirmation of sale, the rights of the borrower to get the dispute adjudicated upon is defeated by the authorised officer taking possession. Thus, Rule 8 deals with the stage anterior to the issuance of sale certificate and delivery of possession under Rule 9. Till the time of issuance of sale certificate, the authorised officer is like a court receiver under Order XL Rule 1 CPC. The Court receiver finds that a third party interest is likely to be created overnight, he can take actual possession even prior to the decree. It is well settled that third party interests are created overnight and in very many cases those third parties take up the defence of being a bona fide purchaser for value without notice. It is these types of disputes which are sought to be avoided by Rule 8 read with Rule 9 of the 2002 Rules. <u>In the circumstances, the drawing of dichotomy between symbolic and actual possession does not find place in the scheme of the NPA Act read with the 2002 Rules</u>.(emphasis supplied).

27(a). Hence, the contention raised by the petitioner counsel falls to ground on the legal issue. On factual issue, after going through the plaint documents 7 to 9, the trial Court came to the conclusion that the 1st respondent/plaintiff is in possession of the property in view of the certificate and patta issued by the Revenue Authority plaint document no.7.

27(b) The factum of possession is now challenged. It is a matter for the trial wherein, evidence has to be let in to prove the alleged factum of possession of the property. Besides on the above said plaint documents, the trial Court has taken the plaint on record and assigned the number and hence the dispute with regard to the factum of possession cannot be gone into in the enquiry in a petition filed under Order 7 Rule 9 of CPC.

28. Furthermore, any observation made by this Court in respect of alleged possession of the respondent plaintiff could likely to cause prejudice upon the trial Court and hence on self imposed restrictions, to make any finding thereto except by saying that as per the plaint documents, the trial Court has rightly taken the plaint on record and the same cannot be rejected on mere allegation levelled by the 1st defendant/ revision petitioner and both the parties have to let in evidence to substantiate the said plea of possession

or otherwise and the same is a matter for trial. Hence, all the points raised by the revision petitioner are answered in the negative, against him and the CRP is devoid of merits and liable to be dismissed.

29. Based upon the plaint averment and plaint document as the 1st respondent plaintiff as an auction purchaser, had filed the suit based upon the sale certificate registered in his favour based upon the possession handed over to him under the sale certificate. He is in alleged possession which is lawful in nature and as the defendants, 2 individuals who are associated with the erstwhile debtor borrowing company having tried to trespass into the property resulted in filing of the plaint. Hence, the relief sought for to protect his possession from the two individual persons, based upon the sale certificate issued by the Corporation Bank under the SARFAESI Act will not bar the civil action.

30. In the result, in view of the discussion in the preceding paragraph, since the plaintiff is neither a borrower nor a creditor and he is

an auction purchaser and is not aggrieved by any of the proceedings initiated by the creditor bank under the SARFAESI Act nor having any grievance in respect of the proceedings initiated under the SARFAESI Act can maintain a civil suit under Section 9 of CPC to protect his possession which is primarily a personal right. When a personal right is transgressed into the civil right of possession and in view of the fact that the auction purchaser being put in possession pursuant to the sale certificate will not debar him from invoking the civil jurisdiction before the competent civil Court, as the contention and the prayer and the relief sought for thereto does not fall under the scope and the powers of the DRT. Hence, the 1st respondent/plaintiff in order to enforce the civil right against the person attempting to infringing his civil right can move the civil suit, so long as the contention, averment and relief sought for does not fall under the power and the scope of the DRT. In the absence of any provision in the DRT, the relief sought for by the plaintiff does not fall under the jurisdiction of DRT. Consequently, civil Court is held to be the appropriate forum to decide this dispute and hence civil suit is held to be maintainable.

31. In the result, C.R.P.No.1978 of 2020 is dismissed and the fair order passed in I.A.No.3/2020 in O.S.No.323/2020 dated 18.08.2020 on the file of V Additional District and Sessions Judge, Coimbatore is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

17.02.2021

Index : yes/no
Internet : yes/no
Speaking Order/Non-Speaking Order
AT

To
The V Additional District and Sessions Judge, Coimbatore.

RMT.TEEKAA RAMAN.J,

AT

Pre-delivery Order in

C.R.P.(P.D).No.1978 of 2020

17.02.2021