

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2021

Pronounced on : 25.03.2021

CORAM

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

A.No.7239 of 2019

in

C.S.No.821 of 2017

1. The Vice President,
Head, CBB, Corporate Banking,
Axis Bank Limited,
192, Anna Salai,
Karumuthu Nilayam, 1st Floor,
Chennai – 600 002.

2. Axis Bank SME Center,
Axis Bank Limited,
192, Anna Salai,
Karumuthu Nilayam, 1st Floor,
Chennai – 600 002.

3. Mr.Ramesh,
Vice President,
Axis Bank Limited,
192, Anna Salai,
Karumuthu Nilayam, 1st Floor,
Chennai – 600 002.

4. Mr.Naveen,
Manager (Recovery),
Axis Bank Limited,
192, Anna Salai,
Karumuthu Nilayam, 1st Floor,
Chennai – 600 002.
Applicants/defendants 1 to 4

...

Vs.

1. Mr.N.Abdul Salam

... 1st Respondent/Plaintiff

2. Mr.Vidyasankar,
Assistant Manager,
Axis Bank Limited,
192, Anna Salai,
Karumuthu Nilayam, 1st Floor,
Chennai – 600 002.
Defendant

... 2nd Respondent/5th

3. Dr. Ramamurthy (Director)
RR Infra Zenith Pvt. Ltd.,
131, paper Mills Road,
Peravallur,
Chennai – 600 082

... 3rd Respondent/6th Defendant

4. Mr.A.Venkat Ramana Reddy

... 4th Respondent/7th Defendant

Prayer: This application is filed under Order XIV Rule 8 of the Original Side Rules read with Order VII Rule 11 (d) of Code of Civil Procedure, praying to reject the plaint against defendants 1 to 4 in C.S.No.821 of 2017.



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ORDER

Defendants 1 to 4 in C.S.No.821 of 2017, pending on the file of this Court, are the applicants herein. They have filed this application under Order XIV Rule 8 of Original Side Rules read with Order VII Rule 11(d) of Code of Civil Procedure, seeking the relief to reject the plaint as against the defendants 1 to 4.

2. Heard Mr.O.R.Santhanakrishnan, learned counsel for the appearing for the applicants/defendants 1 to 4 and Mr.A.Sirajudeen learned counsel appearing for the 1st respondent/plaintiff.

3. The brief facts which is narrated by the 1st respondent/plaintiff in the plaint in C.S.No.821 of 2017, is as follows:

(i) The 1st respondent/plaintiff is a businessman settled in Wayanad, Kerala. He got associated with the 3rd respondent/6th defendant, who had already floated a private limited company by name RR Infra Zenith Private Limited. After discussion with the 3rd respondent/6th defendant, in the year 2014, it was agreed between them that the 1st respondent/plaintiff had to be inducted as a Director in the above company.

(ii) Later, the 1st respondent/plaintiff and the 3rd respondent/6th defendant, as the Board of Directors of RR Infra Zenith Pvt. Ltd., had approached the applicants/Defendants 1 and 2, with a request to sanction a cash credit facility to the above referred company. Along with the application, the 1st respondent/plaintiff, handed over the documents and title deed in respect to his property as a guarantee for the loan applied for. After complying with all the requirements as demanded by the applicants/defendants 1 and 2, they sanctioned the cash credit limit under the “Service Power Scheme”, to an extent of Rs.3 Crores to RR Infra Zenith Private Limited.

(iii) The condition imposed was that the loan amount had to be used only for the business purpose and not for the personal use. Withdrawal can be permitted only if the cheque is signed by both the Directors which means the 1st respondent/plaintiff should also sign for its validity. Contrary to the terms of the loan and operation of the account, the 3rd respondent/6th defendant had, in collusion with the officials of the applicant/1st defendant bank had withdrawn the funds from the said account with his sole signature in the cheques and misappropriated it. After a large amount was withdrawn, the said factum came to the knowledge of 1st

respondent/plaintiff. Even after receiving the objection raised by the 1st respondent/plaintiff, the applicant/1st defendant had deliberately permitted the 3rd respondent/6th defendant for withdrawal of the amount.

(iv) In that regard, the 1st respondent/plaintiff, has lodged a complaint with the Head Office of the applicant/1st defendant herein on 13.10.2016. His grievance is that by playing fraud on the 1st respondent/plaintiff or by callous negligence, the Defendants 1 to 5 has passed the cheques signed by a single Director. The defendants 1 to 5 had permitted the 3rd respondent/6th defendant for withdrawal of the amount, without the mandatory signature of the 1st respondent/plaintiff. Therefore, he is not at all liable for such withdrawal made by the 3rd respondent/6th defendant and only in the said circumstances, notice under SARFAESI Act, had also been issued to the 1st respondent/plaintiff. The publication of the notice of taking possession for default in repaying the loan has also tarnished the reputation of the plaintiff in his area.

(v) In the last week of March 2017, the defendants 4 and 5 contacted the 1st respondent/plaintiff by phone and advised him to keep the loan account out of NPA and promised to do something to extricate the 1st respondent/plaintiff from

the loan by substituting the property of the 3rd respondent/6th defendant in the place of the property of the 1st respondent plaintiff. At that time, an officer from the recovery section of Ernakulam branch of the applicant/1st defendant came to the residence of the 1st respondent/plaintiff, took photos of the house and threatened that it would be sold shortly and advised the 1st respondent/plaintiff to go to Chennai to solve the problem.

(vi) The plaintiff also not aware of the implications of the signatures obtained by the defendants 3 to 7 from him. Accordingly, a fraud has been committed by the employees of the applicant/1st defendant in the course of their employment and thereby, caused a loss to the 1st respondent/plaintiff. Therefore, the applicant/1st defendant is vicariously liable for the claim and hence, a direction is necessary to the defendants to pay a sum of Rs.3,50,00,000/- to the 1st respondent/plaintiff with future interest @ 18% per annum from the date of filing of the suit till realisation.

4. In the meantime, after entering into appearance, the applicants/defendants 1 to 4, have filed this application, saying that in respect to the loan availed by “M/s.R.R.Infra Zenith Pvt Ltd.,” the account becomes NPA and

thereafter on 22.11.2016 itself, a demand notice was issued under Section 13(2) of the SARFAESI Act, calling upon the Principal Borrower, Guarantor besides the Mortgagor to settle an outstanding sum of Rs.3,25,66,808.80p as on 22.11.2016.

5. The said notice was received by the 1st respondent/plaintiff and thereafter, on 05.01.2018, O.A.No.93 of 2018, has been filed before the Debts Recovery Tribunal-II, Chennai for recovery of a sum of Rs.3,92,98,008.37p, together with interest at 15% per annum and for other incidental reliefs. Despite the receipt of the demand notice, the Principal Borrowers / Guarantors / Mortgagor failed to settle the outstanding and therefore, on 02.02.2018, the bank invoking the provisions of 13(4) of the SARFAESI Act, took symbolic possession of the secured assets. Subsequently, on 10.01.2019, sale notice was issued after fixing the date of auction as 22.02.2019. Therefore, claiming damages for a sum of Rs.3,50,00,000/- and also filing the suit against the applicants/defendants 1 to 4, after initiating the proceedings under the SARFAESI Act, is not maintainable.

6. The 1st respondent/plaintiff and the 3rd respondent/6th defendant stood as guarantors in their personal capacity and executed a Deed of Guarantee

besides the 1st respondent/plaintiff stood as a mortgagor also having offered his immovable property by way of creating an equitable mortgage on 10.05.2014, by executing (i) Declaration cum Confirmation deed dated 12.05.2014 and (2) recording of mortgage by deposit of title deeds dated 15.05.2014. Therefore, filing the suit after the initiation of SARFAESI proceedings is impermissible.

7. Refuting the contentions raised by the applicants/defendants 1 to 4, the 1st respondent/plaintiff had filed the counter affidavit, wherein he has contended that this application has been filed when at the time the present suit is posted for the examination of witnesses, after framing the issues. Further, the present suit has been filed mainly on the ground that the 3rd respondent/6th defendant, in collusion with the other defendants, had withdrawn the money without getting the signature from the 1st respondent/plaintiff and on this score alone the suit is maintainable. According to him, the suit has been filed with proper cause of action and within the law prevailed.

8. During the time of their submissions, both the learned counsel appearing on either side reiterated the contentions made in the application as well as in the counter affidavit.

9. By considering either side submissions with relevant records, for disposing the present application, it would be necessary to find out whether the suit filed by the 1st respondent/plaintiff is barred by law and whether the application has been filed by the applicants/defendants 1 to 4, at a belated stage.

10. Before that, it has to be borne in mind that this Court has to read averments in conjunction with documents relied upon in plaint as a whole without addition or subtraction of any words. Primarily, the Code of Civil Procedure which touch upon the law applicable for deciding an application under Order VII Rule 11 CPC, reads as under:

11. Rejection of plaint. - The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law :

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

11. Now, applying the said guidelines with the case in hand, the primary question to be considered is (i) as to whether the averments contained in the plaint are sufficient to overcome the bar of jurisdiction under Section 18 and (ii) as to whether the plaint would fall under any of the categories enumerated in Clauses (a) to (d) of Rule 11 of Order 7, CPC.

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12. It is an admitted fact that the present suit has been filed on

12.09.2017. Further, it was admitted on either side that on 22.11.2016 itself, notice under Section 13(2) of the SARFAESI Act, has been issued to the 1st respondent/plaintiff and the same was received by him on 26.11.2016 itself. Further, subsequent to the receipt of notice, proceedings were initiated before the Debts Recovery Tribunal in S.A.No.61 of 2019 by the 1st respondent/plaintiff and the same was dismissed on 22.03.2019 as infructuous.

13. At this juncture, it is relevant and useful to see the judgment of this Court in *V.Thulasi Vs. Indian Overseas Bank*, reported in **2011 (3) CTC 801**, wherein, at paragraph No.20, this Court has held as follows:

“20.referring to *Mardia Chemicals* ((2004) 4 SCC 311), the First Bench of this Court has further held that all such grounds, which would render the action of the Bank/Financial Institution illegal, can be raised before the Tribunal in the proceedings under section 17 and that it is for the Tribunal to decide in each case whether the action of the Bank was in accordance with the provisions of the Act and legally sustainable.”

So, already it was held that if the plaintiff is having any ground and grievance against the bank under Section 17 of the SARFAESI Act, the same could be raised before the tribunal.

14. Here it is a case instead of following the said procedure, the plaintiff herein filed the suit and prayed for the relief of direction, directing the defendants 1 to 4, for recovery of suit sum. In an identical situation, our Hon'ble Apex Court, while at the time of disposing the case of *Jagdish Singh Vs. Heeralal and Others*, reported in **2014 (1) SCC 479**, held that in respect to notice sent under Section 13(4) of the SARFAESI Act, civil Court is not having any jurisdiction. The appropriate observation made by our Hon'ble Apex Court in paragraph No.25 of the said judgment, reads as follows:

“We are of the view that the civil court jurisdiction is completely barred, so far as the “measure” taken by a secured creditor under sub- section (4) of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal. to determine as to whether there has been any illegality in the “measures” taken. The bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondent Nos.6 to 8 have been crystallised, before creating security interest in respect of the secured assets.”

15. Therefore, being the bank, the applicants/defendants 1 to 4 are entitled to initiate action against the 1st respondent/plaintiff, who is the mortgagor in the loan availed by RR Infra Zenith Private Limited, under the SARFAESI Act. So, after the initiation of the proceedings under Section 13(4) of the SARFAESI

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Act, filing the suit as against the bank officials is nothing but barred by law. Therefore, the 1st ground raised by the applicants/defendants 1 to 4, is decided in their favour.

16. Secondly, the specific contention raised by the learned counsel appearing for the 1st respondent/plaintiff is that the present application has been filed during the time, the case was posted for examination of witnesses and therefore, it is an belated application.

17. Ofcourse, this application has been filed after framing the issues. In respect to the same, it is necessary to see the judgment of our Hon'ble Apex Court in the case of ***Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead through legal representatives and others***, reported in **(2020) 7 SCC 366**, wherein our Hon'ble Apex Court has held in paragraph No.23.14, as follows:

“The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra ((2003) 1 SCC 557). The plea that once issues are framed, the matter must necessarily go to

trial was repelled by this Court in Azhar Hussain (1986 Supp SCC 315).”

18. So, the law is well settled that the plaint has to be rejected, at any time before the conclusion of the suit. Therefore, in this area also, the ground raised by the 1st respondent/plaintiff is against the law prevailing and therefore, this Court is of the considered opinion that the suit filed against the applicants/defendants 1 to 4, is liable to be rejected.

19. Accordingly, the application in A.No.7239 of 2019, is ordered and the plaint filed against the applicants/defendants 1 to 4, is rejected. For further proceedings against the other defendants, list the matter of 26.04.2021.

25.03.2021

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R.PONGIAPPAN, J.

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Pre-delivery order in
A.No.7239 of 2019
in C.S.No.821 of 2017

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