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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2021

DELIVERED ON : 13.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.NO.292 OF 2019

Electrosteel Castings Limited,
Having registered Office at
Rathod Colony, Rajgangpur,
Sundergarh, Odhisha - 770 017,
and functioning through its
Administrative Office at
148/150, Luz Church Road,
Chennai.

.. Appellant

Vs.

1. UV Asset Reconstruction Company Limited,
704, Deepali Building,
92, Nehru Place,
New Delhi - 110 019.
2. SREI Infrastructure Finance Limited,
Having its registered office at
No.6A, Kiran Shankar Roy Road,
Kollkata - 700 001.
Having its Branch Office at
Peters Colony, Royapettah,
Chennai - 6.
3. Electrosteel Steels Limited,
801, Uma Shanthi Apartments,
Kanke Road,
Ranchi - 834 008,
Jharkhand.

.. Respondents

Prayer: Appeal filed under Section 13 of the Commercial Courts Act, 2015 read with Clause 15 of the Letters Patent to set aside the order dated 30.09.2019 made in Application No.4322 of 2019 in C.S.Dairy.No.18962 of 2019.



For Appellant

: Mr.Soumendranath Mookherjee
Senior Advocate
for Mr.Surya Teja Nalla
M/s.Srinath Sridevan

For Respondents

: Mr.P.S.Ganesh
for respondent No.1

: Mr.V.Kuberan
for M/s.Ganesh & Ganesh
for respondent No.2

: R3 - No Appearance

JUDGMENT

THE HON'BLE CHIEF JUSTICE

The appellant here brought a suit in this court but the plaint was rejected at the threshold on the grounds that there was a statutory bar in receiving the action and that the cause of action as pleaded in the plaint had no nexus with this court exercising authority on the Original Side.

2. The reliefs sought in the suit, pertaining to an immovable property that was mortgaged by the plaintiff in favour of the second defendant, are set out:

"a) A DECLARATION that the purported Assignment Agreement between the 1st and 2nd Defendants dated 30th June 2018 is bad, invalid, illegal void ab initio and of no legal effect or consequence against the Plaintiff, whatsoever, and for a consequential PERMANENT INJUNCTION restraining the Defendants 1 and 2 from acting or, implementing or in any manner taking any action against the Plaintiff on the basis of the Assignment Agreement dated 30.06.2018;

b) A DECLARATION that the 1st Defendant and the 2nd Defendant do not have the right to retain the title deeds of the Plaintiff detailed in Schedule B hereto and a consequential direction to the 1st Defendant to return to the Plaintiff the Specific Movable Property, namely the deeds of title more fully described in the Schedule B hereto;



c) Direct the Defendants to bear the costs of this suit."

3. By the judgment and order impugned dated September 30, 2019, passed while considering the plaintiff's prayer for leave under Clause 12 of the Letters Patent, 1865, the trial court observed that the suit had to be regarded as a suit for land and, since no part of such land was within the original jurisdiction of this court, the suit could not be instituted here. The leave sought was declined, but liberty was granted to the plaintiff "to approach the Tribunal"; presumably the appropriate Debts Recovery Tribunal (DRT).

4. At the outset, a question of maintainability arises since the order impugned has been passed in a suit filed before the Commercial Division of this court and it is not an order enumerated in Order XLIII of the Code of Civil Procedure, 1908. Though the first defendant, the principal adversary of the plaintiff, concedes that the appeal may be entertained, it is the duty of the appellate court to ascertain whether the appeal lies before the court proceeds to address the merits of the matter.

5. Section 13(1A) of the Commercial Courts Act, 2015 permits "the judgment or order" of the Commercial Division of a High Court to be carried in appeal to the Commercial Appellate Division of such High Court. The Proviso to sub-sections (1) and (1A) of Section 13 of the Act of 2015 may not use the word "only" in its opening limb, but a meaningful reading thereof would imply that the word "only" has to be read into it. Thus, if the impugned order qualifies as an order, but such order is not included as an appellable order in Order XLIII of the Code, the appeal may not lie. However, sub-section (1A) of Section 13 of the Act of 2015, like its preceding sub-section, uses the expression "the judgment or order" as noticed above, though the Proviso to sub-sections (1) and (1A) is confined only to orders. It may also not be missed that sub-section (2) of Section 13 of the Act of 2015 refers to "any order or decree", which is quite at variance with the expression "the judgment or order" used in the substantive parts of the two preceding sub-sections.

6. The right of appeal under Section 13 of the Act of 2015 is conferred in respect of two classes of matters - the classification being based on the level of the court in the hierarchical system in which the suit originates - and these two classes are distinctly divided in sub-sections (1) and (1A) and



different appellate authorities provided. The most striking feature is that in the two provisions by which the right of appeal is conferred under the statute, the word "decree" does not figure. As the definitions assigned to the words decree, judgment and order in the Code apply to the Act of 2015, the word "judgment" may not be equated with a decree, nor can the word "order" be seen to include a decree, in view of the distinct meanings ascribed to them in the Code. However, the appellate provisions cannot also be reasonably read to imply that it precludes any appeal being preferred against a decree. There is a clear lacuna, if Section 13 of the Act of 2015 is read literally, since even sub-section (2) restricts what judgment or order would be appellable, as it precludes appeals that are "otherwise than in accordance with the provisions of this Act."

7. At the same time, Section 2(2) of the Code defines a "decree" and Section 96 thereof permits an appeal from every original decree, except when passed with consent.

8. If only to give Section 13 of the Act of 2015 its proper meaning in the context of the statute, the objects that the Act professes to achieve and the purpose of providing for an appeal in any statute, an appeal from a decree has to be seen to be permitted by Section 13 in both situations covered by sub-sections (1) and (1A) by enlarging the meaning of the expression "judgment or order" in either sub-section, in the context, to include a decree. This would be the only meaningful way of reading the provision and of giving meaning to the expression "unless there is anything repugnant in the subject or context" used in the opening limb of Section 2 of the Code and the similar caveat that is indicated in any reasonable definition provision of a statute.

9. It would also be completely unreasonable to read Section 13 of the Act of 2015, however inarticulately such provision may have been drafted, to permit appeals against interlocutory orders, but not provide for any appeal against the final determination of the lis that is rendered by way of a decree. Since Section 2(2) of the Code expressly provides for the rejection of a plaint to be a deemed decree, the refusal to grant leave under Clause 12 of the Letters Patent must be regarded as an order rejecting the plaint and, as such, appellable despite the merits of the claim not being prejudiced by the order under appeal.

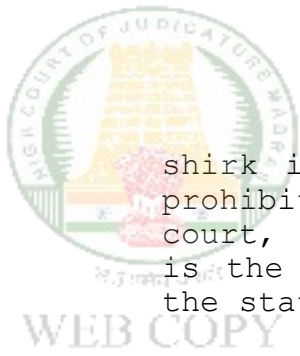


10. Though the order under appeal has dwelt more on the territorial jurisdiction of this court and the mortgaged property being situated wholly outside the territorial limits of this court while exercising authority on its Original Side, an objection to the very receipt of the suit in this court in view of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was raised by the first defendant herein. There is not much discussion in the impugned judgment in such regard, but the operative part of the order impugned permits the appellant herein to carry the claim before the appropriate DRT.

11. Clause 12 of the Letters Patent permits a suit to be instituted on the Original Side of this court in certain situations. However, such provision requires leave thereunder to be first obtained in certain cases. There is no doubt that the manner in which the present suit was framed called for such previous leave to be obtained under Clause 12 of the Letters Patent.

12. Ordinarily, the court grants leave under Clause 12 of the Letters Patent if, on a cursory glance of the plaint, even an infinitesimal part of the cause of action appears to have arisen within the jurisdiction of this court exercising its authority on the Original Side. It is possible for a defendant to, later, apply for revocation of the leave on the ground that no part of the cause of action as pleaded in the plaint had arisen within the original jurisdiction of this court. It is equally open to a defendant to apply for revocation of leave on the ground that the suit had no nexus with the Original Side of this court or also on the ground of forum non conveniens.

13. As to the claim of the plaintiff here being incapable of being lodged in this court, Original Side Courts are slow in raising the bogey, unless the suit appears ex facie to be barred by law. Ordinarily, Original Side Courts leave the objection on the ground of the suit being barred by law to be taken by a defendant before an adjudication in such regard is made. But a court cannot be faulted for being vigilant and not entertaining a suit which the law prohibits. When it is perceived that a law prohibits the institution of a suit before a civil court or the receipt thereof by the civil court, the prohibition must be express or by unavoidable necessary implication and the civil court will not take its jurisdiction to be ousted lightly, particularly since jurisdiction is an obligation and not a privilege. When a court has due authority to adjudicate on a matter, it is obliged to undertake such activity and cannot



shirk its responsibility in such regard. Equally, when a law prohibits a certain kind of action to be carried to a civil court, rather than the law operating as a bar on the parties, it is the duty of the civil court to not entertain the action if the statutory prohibition operates on the court itself.

14. The plaintiff has referred to several judgments in trying to pursue its claim in this court. The plaintiff submits that even if the claim in a suit appears to be absurd, the suit will lie; though it may ultimately fail. But before the law cited by the plaintiff is noticed, it is the cause that was sought to be carried to the court that requires to be seen.

15. According to the case run in the plaint, the plaintiff executed a deed of warranty and indemnity on July 27, 2011 in connection with credit facilities of Rs.500 crore obtained by the third defendant from the second defendant. The plaint also speaks of the plaintiff having created a mortgage in respect of an immovable property in favour of the second defendant creditor as a part of the said transaction. The mortgage was created on November 23, 2011. The plaint makes out that upon a financial creditor initiating a Corporate Insolvency Resolution Process against the third defendant corporate debtor before the National Company Law Tribunal, Kolkata in 2017, a Resolution Plan was submitted by Vedanta Limited. Such Resolution Plan came to be approved by the National Company Law Tribunal on April 17, 2018, upon the second defendant financial creditor fully participating in the proceedings and acquiescing in the Resolution Plan. The plaint claims that the second defendant's crystallised claim in excess of Rs.577 crore was discharged upon the Resolution Plan being approved and a cash disbursement over Rs.241 crore being received by the second defendant by June 21, 2018 together with the allotment of shares in the third defendant of aggregate face value in excess of Rs.336 crore. The plaint speaks of a no-dues certificate being issued by the second defendant to the third defendant on June 25, 2018, wherein the second defendant unconditionally confirmed that its debt due from the third defendant had been discharged.

16. The business part of the plaint begins at paragraph 30 with the narration of the second episode of the saga, so to say, when the second defendant issued a communication to the plaintiff on October 3, 2018 to the effect the second defendant had absolutely assigned its right, title and interest pertaining to the transaction with the third defendant in favour of the first defendant asset reconstruction company. The claim in the plaint is that since the second defendant had unconditionally



issued a no-dues certificate to the third defendant and acknowledged that the debt due from the third defendant stood discharged, the second defendant did not have any right or claim in respect of its transaction with the third defendant to assign to the first defendant. In such circumstances, the plaintiff contends that the first defendant is not entitled to take recourse to the provisions of the Act of 2002 against the plaintiff pertaining to the credit facilities granted by the second defendant to the third defendant. The reliefs claimed, as set out above, include a declaration that the deed of assignment executed by the second defendant in favour of the first defendant is invalid, with the consequential injunction. The further relief sought is a declaration that the first and second defendants have no right to retain the title-deeds pertaining to the property mortgaged by the plaintiff with the second defendant, with the consequential direction for return of the property and the title-deeds.

17. For a start, the plaintiff contends that notwithstanding Section 5 of the Act of 2002 and the permissibility of the debt due to a bank or a financial institution to be assigned in favour of an asset reconstruction company, when there is no right to pass on to an assignee, the assignment may be challenged by any person prejudiced thereby. The substance of the submission is that since the debt due from the third defendant to the second defendant stood discharged upon the approval of the Resolution Plan pertaining to the third defendant and the receipt of money and shares in the third defendant by the second defendant, whereupon the second defendant issued the no-dues certificate to the third defendant, the second defendant could no longer have a claim against a person who had guaranteed repayment of the dues of the third defendant to the second defendant or even a party who had mortgaged any property in favour of the second defendant in connection with such transaction. The plaintiff asserts that a creditor may not proceed against the guarantor if the debt due to the creditor is discharged by the principal debtor; and, similarly, a creditor cannot proceed against any security if there is no further debt that remains to be discharged; irrespective of whether such security had been furnished by the principal debtor or by any other in connection with the loan obtained by the debtor.

18. The plaintiff submits that such a claim may only be carried to a civil court, as the authority of a DRT under Section 17 of the Act of 2002 is to receive a petition by any person aggrieved by any measure adopted by a secured creditor, as defined in the statute, under Section 13(4) thereof. The



plaintiff claims that the right to seek a declaration of the kind that is reflected in the first relief in the suit accrues upon an aggrieved person as the plaintiff herein being made aware of the assignment and such relief cannot be carried to a DRT, since the DRT's jurisdiction is triggered off only upon a secured creditor taking "any of the measures referred to in sub-section (4) of section 13" of the Act of 2002. The plaintiff insists that it is inconceivable that a person would have a cause of action and no forum to approach. Indeed, the plaintiff suggests that if the plaintiff does not react to an invalid assignment of the kind that is sought to be assailed herein and waits for any measure to be taken by the assignee, the plaintiff may be accused of delay.

19. The plaintiff first refers to a judgment reported at (2004) 4 SCC 311 (Mardia Chemicals Limited v. Union of India) for the recognition therein, inter alia, at paragraph 51 of the report that "to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever ..."

20. The plaintiff places a Division Bench judgment of this court reported at AIR 1955 Mad 491 (A.Batchha Saheb v. Nariman K. Irani) for the same proposition.

21. Two further judgments, one of the Andhra Pradesh High Court reported at (2016) 6 ALT 533 (D.Ram Reddy v. Asset Reconstruction Company (India) Pvt. Ltd) and another of the Bombay High Court reported at 2021 SCC OnLine Bom 466 (Bank of Baroda v. Gopal Shriram Panda) have also been cited, as such judgments rely on the exception to the rule as recognised in Mardia Chemicals Limited to hold that in a very restricted field, a civil suit may lie.

22. The plaintiff has also brought a Division Bench judgment of the Calcutta High Court reported at AIR 2018 Cal 8 (Delta International Limited v. Smt. Nupur Mitra) that noticed the distinction between the two limbs of the bar of civil court's authority under Section 34 of the Act of 2002. It is necessary that the provision be seen first before referring to the discussion on such aspect in Nupur Mitra:

"34. Civil Court not to have jurisdiction.- No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter



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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)."

23. The judgment in Nupur Mitra noticed the bar of jurisdiction of the civil court in the first part of Section 34 of the Act of 2002 and the mandate on the civil court, under the second part, to not grant any injunction in respect of the fields specified therein. The bar of jurisdiction under the first limb prohibits, inter alia, any suit being entertained by a civil court "in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine ...". The authority of the DRT to determine such matter arises only upon a measure being taken by a secured creditor under Section 13(4) of the Act of 2002, whereupon any person aggrieved thereby may apply thereagainst before the jurisdictional DRT. However, before any measure is taken by a secured creditor, no DRT would be empowered to determine the validity of the measure taken as there would be no person aggrieved by any measure before such measure is taken. The bar or an injunction being issued under the second limb of Section 34, however, covers the field of "any action taken or to be taken" in pursuance of any power conferred by the Act of 2002 or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (which has since been renamed the Recovery of Debts and Bankruptcy Act, 1993).

24. However, the window that is left open for a civil court to entertain a suit is no longer available to the plaintiff here, since the first defendant has invoked the provisions of the Act of 2002.

25. As a consequence of the first defendant having invoked the provisions of the Act of 2002, the bar under the first limb of Section 34 has come into effect. Whether or not any part of the plaintiff's cause of action arose within the territorial limits of the Original Side of this court, by virtue of the statutory bar in Section 34 of the Act of 2002, the suit can no longer be entertained as the invocation of the Act of 2002 by the first defendant empowers the jurisdictional DRT to determine the inter se rights between the plaintiff and the first defendant. And, no injunction may be granted by any court in



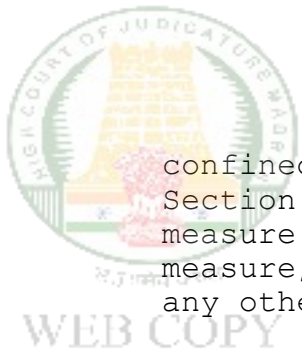
respect of any action taken or to be taken by the first defendant in pursuance of any power conferred by or under the Act of 2002. If no injunction can be issued, the relief for declaration becomes meaningless. As of today, the suit can no longer be received in this court.

26. A further submission of the plaintiff is that no DRT or DRAT may have the authority to direct the return of the title-deeds pertaining to the mortgaged property and, as such, the suit ought to have been entertained as the other reliefs claimed are incidental to the primary relief for return of the title-deeds pertaining to the property that was mortgaged by the plaintiff in favour of the second defendant for repayment of the loan obtained by the third defendant from the second defendant.

27. There is no doubt that tribunals created by statutes have only so much authority as is expressly conferred by the governing statute; unlike a civil court which has authority to address all matters before it, except to the extent precluded by law.

28. In a sense, when a person invokes Section 17 of the Act of 2002 to challenge a measure taken by a secured creditor under Section 13(4) of the Act of 2002, the challenge may be on divers grounds; including that no debt may be due from the person to the secured creditor for the secured creditor to proceed against any asset of such person, or that the invocation of the provisions of the Act of 2002 was invalid since the creditor was not qualified to resort to such provisions, or even that the very branding of the account as a non-performing asset was impermissible.

29. The wording of Section 17 of the Act of 2002 does not imply that the challenge that must be carried thereunder must be confined to the measure taken by the secured creditor under Section 13(4) of the said Act. The very status of the creditor as a secured creditor may be questioned; as, if the creditor is not a secured creditor within the definition of the expression in the Act of 2002, the creditor could not have invoked the provisions of the said Act. That the opening words of Section 17 of the Act of 2002 permit a challenge to be carried against a measure taken by a secured creditor under Section 13(4) of the Act of 2002, does not preclude even the act of labelling the relevant account as non-performing asset to be questioned. The opening words of the provision must be seen to be indicative of when the right to apply thereunder arises, but cannot be



confined merely to a challenge to the measure adopted under Section 13(4) of the Act of 2002, since a challenge to the measure adopted would always include the authority to take the measure, whether on account of the status of the creditor or on any other available count.

30. Thus, when an asset reconstruction company, as the assignee of the debt originally due to a secured creditor, adopts a measure under Section 13(4) of the Act of 2002, any person aggrieved thereby may challenge the same by questioning the assignment of the debt on any of the various grounds that may be available. It is incumbent on the jurisdictional DRT to deal with the matter and, technically, it may be said that upon the DRT coming to a conclusion that the secured creditor had no debt to pursue or that the person who had taken measures under Section 13(4) of the Act of 2002 did not qualify to take recourse to the provisions of such statute, it would lose further authority over the matter. Such a finding would stop the relevant creditor in its tracks and not permit such creditor to proceed any further. But it is possible that the measures taken by the creditor would require to be undone. It cannot be said, in such a scenario, that since the DRT had held that the so-called creditor could not have invoked the provisions of the Act of 2002, the DRT would lose all jurisdiction over the matter. It would be opposed to public policy to view Section 17 of the Act of 2002 in such narrow light that it would not permit the wrong done to a person aggrieved who has approached the forum to be adequately remedied. There may be the odd situation where the limited authority of the DRT or the DRAT may not be effective to remedy the wrong; but Section 17(3) of the Act of 2002 confers sufficient authority on the tribunal to pass appropriate directions which are consequential to its finding that the secured creditor was not entitled to invoke the provisions of the Act of 2002 or the measures taken by the secured creditor were not in accordance with the provisions of the Act.

31. It is equally possible that the tribunal may be embarrassed, on the ground of lack of authority, to completely remedy the wrong done to the person who had applied under Section 17 of the Act of 2002 to establish that the creditor did not qualify to take any measure under Section 13(4) of the Act of 2002 by reason of its status or otherwise by operation of law or the like. In such a case, the civil court's doors remain open to receive an action, not only to completely undo the mischief but also to consider a claim in damages.



32. In the light of the aforesaid discussion, the issue as to whether this court had territorial jurisdiction to entertain the suit may not be conclusively answered and left open to the unlikely stage that the plaintiff may have to approach this court again and as to whether the relief claimed then for return of title-deeds is accompanied by a relief for the possession of the immovable property, whereupon the situs of the immovable property may be the deciding factor.

33. Since the suit that the plaintiff brought before this court can no longer be entertained on the grounds indicated hereinabove, the order impugned does not call for any interference, though on completely different grounds than indicated in the judgment in support thereof.

34. O.S.A.No.292 of 2019 is disposed of on the above basis. C.M.P.Nos.23686 of 2019 and 11818 of 2020 are closed.

There will be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sasi

To:

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

O.S.A.No.292 of 2019

RR(CO)
PM(27/08/2021)