02.09.2022
KC(6)

F.M.A. 676 of 2022
T & I Private Limited
-versus-
Standard Chartered Bank
With
CAN 1 of 2022

Mr. Jishnu Chowdhury,
Mr. Rachit Lakhmani,
Mr. Avishek Das……………………For the appellant.

Mr. Suddhasatwa Banerjee,
Ms. R. Misra,
Mr. Prithwish Roy Chowdhury…..For the respondent.

We admit the appeal.

As the point involved is very short, we proposed to hear it out, dispensing with all formalities.

The reliefs claimed in the plaint are as follows:

> "a) Declaration that the classification of the Plaintiff's account by the Defendant as Non-Performing Asset (NPA) is illegal, null and void ab-initio;
>
> b) Declaration that the said impugned notices being the recall cum demand Notice dated 2nd September, 2020 (being Annexure-B hereto) and the SARFAESI Notice dated 27th October 2021 (being Annexure-E hereto) are illegal, null and void ab-initio;
>
> c) Perpetual injunction restraining the Defendant, its men, servants, agents, assigns from giving any effect or further effect to or acting on the basis of the Plaintiff's classification as Non-Performing Asset and/or the recall cum demand notice dated 2nd September 2020 (being Annexure-B hereto) and/or the SARFAESI notice dated 27th October 2021 (being Annexure-E hereto);

d) Costs;
e) Such further or other reliefs.”

On an examination of Section 34 of the SARFAESI Act, 2002, from the above reliefs claimed in the plaint there does not seem to be any doubt that the suit, as framed, is barred under that provision.

However, learned counsel for the appellant/ petitioner taking us through the averments in paragraphs 18 to 23 of the plaint, argued that his client was a small enterprise under the M.S.M.E. Act, 2006. Under the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises dated 17th March, 2016 framed by the Reserve Bank of India, certain guidelines were required to be followed by the respondent bank before declaring the account of an enterprise covered by the said Act as a Non-Performing Asset (NPA). Such guidelines were not followed before action under the SARFAESI Act was initiated it was submitted. In those circumstances, the proceeding under the SARFAESI Act be kept in abeyance till the decision under the said scheme of the Reserve Bank of India was considered by the respondent bank, it was argued.

Although this case is sought to be made out in the above paragraphs of the plaint but no reliefs based on it have been claimed. The reliefs which have been claimed in the plaint can only be claimed before the Debts Recovery Tribunal or the Appellate Tribunal.

In those circumstances, we find no infirmity in the impugned judgment and order dated 20th December, 2021 passed by the learned court below, except that instead of returning the plaint under Order VII Rule 10 of the Code of Civil Procedure the proper order ought to have been rejection of the plaint under Order VII Rule 11 of the Code on the ground that the suit was barred by law.

We order accordingly.

But considering the case sought to be made out by the appellant/plaintiff in paragraphs 18 to 23 of the plaint, while dismissing the suit, we direct that if the appellant/plaintiff makes a representation to the respondent bank on the basis of said averments in paragraphs 18 to 23 of the plaint by 12th September, 2022 the respondent bank will pronounce a decision on it by 24th October, 2022.

The appeal (F.M.A. 676 of 2022) and the connected application (CAN 1 of 2022) are disposed of.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)