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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 285 OF 2021

M/S. GAJANAN CONSTRUCTION THR.APPLICANTS
PROP. DISNESH SHANKARRAO AND
ANOTHER

V/s.

M/S. ENCORE ASSET RECONSTRUCTIONRESPONDENTS
COMPANY PRIVATE LIMITED (EARC)
THR PALLAVI GOEL AND ORS

Mr. Popat R. Rathod Advocate for Applicants
Ms. Payoja Gandhi i/b Mr. Avchit Virmani for Respondent no. 1

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 25, 2022.

P.C.:

1) Applicants-Plaintiff were served with notices by Defendant no. 2 Cooperative Bank, as a consequences of order passed against him in action initiated under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Hereinafter referred to as 'the said Act' for the sake of brevity). Feeling aggrieved, Applicant-Plaintiff initiated Suit in

which Respondent-Defendant, financial institution initiated proceedings Exh. 47 Under Order VII Rule 11 of the Code of Civil Procedure, 1908. It is claimed therein that Suit is not maintainable as same is directed against notices dated 11/7/2018, 16/11/2018 and 02/07/2019 which are under the provisions of the said Act. Relying on provisions of Section 34 of the said Act, it is claimed that jurisdiction of the Civil Court is barred. Upholding said objection raised under Order VII Rule 11 (a) and (d) on the maintainability of Suit, Plaint came to be rejected vide impugned order. As a consequences of which, this Revision by the Plaintiff.

2) According to him, two authorities viz. Debts Recovery Appellate Tribunal or Maharashtra Cooperative Societies Act have no jurisdiction to look into the said claim as claim of fraud is to be established by Plaintiff based on pleading and by adducing oral evidence. He would claim that the said authorities cannot effectively appreciate the said issue in absence of oral evidence. As such, he would claim that bar under Section 34 will not operate against the Applicant-Plaintiff in the background of pleadings in the Plaint.

3) Ms. Gandhi, learned counsel appearing for the Respondent-

financial institution has supported the order impugned.

4) Considered submissions.

5) The fact remains that claim in the Suit is against the execution of recovery proceedings against the Applicant. It is not in dispute that against recovery certificate issued under Section 101 of the M.C.S. Act so also order of Debt Recovery Tribunal, Applicant-Plaintiff has not taken out appropriate proceedings pursuant to statutory remedy provided under the M.C.S. Act or before Debt Recovery Tribunal under the said Act.

6) In the aforesaid backdrop, though the Applicant has drawn support from the Judgment of the Apex Court in the matter of **Mardia Chemicals Ltd. Etc. V/s. U.O.I. & Ors etc.**¹ so as to claim that in case of fraud is alleged in the Plaint, suit is maintainable. This Court is required to be sensitive to the nature of pleadings based on which claim of fraud made by the Applicant in the Plaint.

7) If the nature of fraud alleged by the Applicant-Plaintiff in the Plaint is appreciated, same does not speak of non adjustment of the amount deposited by the Applicant in the loan account. Case of the

¹ Transfer Case (civil) 92-95 of 2002

Applicant appears to be that of adjusting the amount deposited by the Applicant in some different loan account. Such issue can always be gone into by the Tribunal in case if the Applicant takes out appropriate statutory proceedings. This itself will not give lever to the Applicant to take out proceedings in the Suit making it maintainable, particularly Section 34 of the said Act.

8) If the pleadings in support of claim of fraud in the Plaintiff if appreciated, it is worth to mention that claim of the Applicant in the Plaintiff is based on such pleadings which are brought only with an intention to oust the jurisdiction of tribunal.

9) Application Exh. 47 moved by Respondent-Defendant no. 1 which has lead to the passing of the order impugned thereby directing rejection of Plaintiff is based on provisions of Section 34 of the said Act which oust the jurisdiction of the Civil Court. Suit claim of the Applicant is based on notices dated 11/07/2018, 16/11/2018 and 02/07/2019 which were issued under the provisions of the said Act and notice dated 02/02/2020 issued by Revenue Authorities as a consequence of above referred notices. Claim of the Applicant-Plaintiff in the Suit is that of seeking injunction restraining the

Respondent from taking possession or selling mortgaged properties. Said process of initiation of impugned notices in the Suit is based on provisions of the said Act.

10) Nature of pleadings in the Suit are based on three loan accounts operated by Applicant-Plaintiff with the Respondent-Bank and the NPA of such loan accounts. It is claimed by the Applicant that already auction was initiated against him under the provisions of Maharashtra Cooperative Societies Act.

11) In the aforesaid background, if the pleadings of the Applicant in the Plaint are appreciated, same are in the nature of practicing fraud simplicitor. Such allegation of fraud are at all not substantiated by any documentary evidence but for baseless pleadings of the Applicant. Nature of pleadings in the Plaint if looked into, it is the basic requirement for deciding the Application for return of Plaint under Order VII Rule 11 of CPC. There is absence of serious allegation of fraud so as to draw an inference that such pleadings in the Plaint takes this Court to the only inference of commission of criminal offence by Respondent-Defendant. In the aforesaid background, it cannot be said that there is complex case or

complicated allegation of fraud to be decided by the Civil Court based on voluminous evidence. Rather the pleadings reflects that Petitioner-Plaintiff has come out with illusionary case of fraud.

12) In the aforesaid background, the Court below in my opinion is justified in recording a finding that the Suit preferred by the Applicant is barred under Section 34 of the said Act. That being so, no error of jurisdiction or failure to exercise jurisdiction is demonstrated. As such, Revision fails, stands dismissed.

[NITIN W. SAMBRE, J.]