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C.R.P.(PD).No.3051 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE S. SOUNTHAR

C.R.P.(PD).No.3051 of 2022

and

C.M.P.No.16450 of 2022

Tamil Nadu Mercantile Bank Ltd.,
Represented by its Branch Manager,
Having Office at No.5/34,
Dhanakotti Raja Street,
Sundaram Nagar, Guindy,
Chennai – 600 032.

... Petitioner

Vs

1.P.Loganathan
2.K.Shankar
3.E.Srinivasan
4.Kavitha
5.G.Mohan
6.Balaji Batteries
Represented by its Proprietor,
E.Srinivasan, S/o.Ellappan,
Having Office at No.53,
Jawaharlal Nehru Main Road,
Ekkaduthangal, Chennai – 600 032.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Indian Constitution, praying to strike off the plaint in O.S.No.23 of 2022 on the file of the District Judge-II, Kancheepuram.



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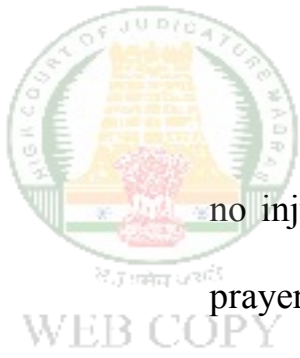
For Petitioner : Mr.P.Tamilavel

ORDER

This Civil Revision Petition is filed seeking to strike out the plaint in O.S.No.23 of 2022 on the file of the learned District Judge - II, Kancheepuram.

2.The learned counsel for the petitioner/ 5th defendant submitted that the suit filed by the respondents 1 & 2/ plaintiffs is not maintainable in view of Section 34 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as 'SARFAESI Act'). He further submitted that the relief prayed for in the suit is hopelessly barred by limitation and hence, the Court below ought not to have entertained the suit.

3.The first submission made by the learned counsel for the Revision Petitioner cannot be accepted, in view of the fact that civil suit is barred under Section 34 of SARFAESI Act, only if it relates to the matters in respect of which a Debts Recovery Tribunal or Appellate Tribunal is empowered by or under SARFAESI Act to determine and then



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no injunction shall be granted by any Court or Authority. As far as the prayer in the suit is concerned, the respondent seeks a declaration that the sale deed allegedly executed by the 1st and 2nd respondent/ plaintiffs in favour of the 3rd respondent/ 1st defendant is null and void and for other consequential reliefs.

4. Whether the sale deed executed by the 1st and 2nd respondent in favour of the 3rd respondent is null and void is a question to be adjudicated by the Civil Court. The bar under Section 34 of the SARFESI Act will not get attracted for the said relief. As far as the question of limitation is concerned, it is a mixed question of law and fact. This Court while exercising supervisory power under Article 227 of the Constitution of India, may not decide the said questions conveniently.

5. The Revision Petitioner has an effective remedy under Order VII Rule 11 of the Civil Procedure Code to seek rejection of the plaint by raising all the points raised by him in the said petition. In the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others Vs Tuticorin Educational Society and Others*** reported in **2019 (9) SCC 538**, the Hon'ble Apex Court has held, the availability of



alternative remedy under Civil Procedure Code is a near total bar for the High Courts to exercise its supervisory power under Article 227 of the Constitution of the India, unless the Revision Petitioner establish that, it is a rarest of rare case warranting exercise of its supervisory power under Article 227 of the Constitution of India. For better appreciation the relevant paras of the said judgment is extracted hereunder:

“12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in Surya Dev Rai v. Ram Chander Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] , pointed out in Radhey Shyam v. Chhabhi Nath [Radhey Shyam v. Chhabhi Nath, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] that “orders of civil court



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stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts.

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13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

6. This Court is not inclined to exercise the supervisory power, in view of the law laid down in the abovesaid case law. Therefore, this Civil Revision Petition is dismissed. However, the Petitioner is given liberty to move appropriate application before the Civil Court seeking rejection of the plaint if so advised. If any such application is filed by the Revision Petitioner, the said application should be considered on merits and disposed of by the Court below, without being influenced by anything observed in this order, within a period of four months from the date of receipt of a copy of this order.



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7. Accordingly, this Revision Petition is dismissed. No costs.

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Index: Yes
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S.SOUNTHAR,J.

gba

To
District Judge-II, Kancheepuram.

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