



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 13th September, 2022

+ CS(OS) 380/2022 & I.A. 9842/2022 (O-XXXIX R-1 & 2 of CPC),
I.A. 15001/2022 (O-XII R-6 of CPC)

SANDIP SINGH

..... Plaintiff

Through: Mr. Prag Chawla and Ms. Jaspreet Kaur, Advocates along with plaintiff in person.

versus

MIS CHOLAMANDALAM INVESTMENT
AND FINANCE COMPANY LIMITED & ORS..... Defendants

Through: Mr. Sanjeev Bhandari, Mr. Sushant Bali, Mr. Kunal Mittal and Mr. Maitreya Saha, Advocates for D-1 along with Mr. Sidhartha Rastogi, Authorized Representative of D-1.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (ORAL)

I.A. 11148/2022 (of the defendant no.1 u/O-VII R-11 of CPC)

1. The present suit was filed on 23rd June, 2022 seeking following reliefs:

“a. Pass an order thereby, declaring the alleged loan agreement dated 16.11.2018 as null and void;

b. Pass a decree of Permanent Injunction in favour of the Plaintiff and against the Defendant No.1, thereby, restraining the Defendant No.1, their servants, agents, employees etc., from selling and/or creating any third party interest in house bearing No D-45, area measuring 350 sq. yards (approximately), Corner Ring Road side situated in the area of Village Basai Darapur,



Delhi State Delhi in colony known as Rajouri Garden, New Delhi-110027;

c. Pass an order of Mandatory Injunction against the Defendant No.1 and in favour of the Plaintiff thereby, directing the defendant to handover the original Gift Deed dated 04.05.2011 to the Plaintiff.”

2. Summons in the suit were issued on 24th June 2022 and the parties were directed to maintain status quo vide order dated 24th June, 2022.
3. Subsequently, this application under Order VII Rule 11 of the Code of Civil Procedure, 1908 was filed on behalf of the defendant no.1. Notice in this application was issued on 20th July, 2022 and reply has been filed on behalf of the plaintiff.
4. At the outset, the counsel for the defendant no.1 submits that the property bearing no. D-45, area measuring 350 sq. yards (approximately), Corner Ring Road side situated in the area of Village Basai Darapur, Delhi in colony known as Rajouri Garden, New Delhi-110027 (Suit Property), was mortgaged by the plaintiff in order to avail a loan of Rs.6,25,00,000/- from defendant no.1. The equitable mortgage was created in favour of the defendant no.1 by deposit of the gift deed dated 4th May, 2011 in favour of the plaintiff in respect of the suit property.
5. Counsel for the defendant no.1 further submits that:
 - i) Upon failure of the plaintiff to repay the aforesaid loan, the defendant no.1 initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) in relation to the suit property.
 - ii) The present suit is based on concealment of facts and various judicial orders passed in respect of other civil proceedings initiated by the



plaintiff against the defendant no.1, details of which are mentioned in paragraph 8 of the present application.

- iii) The plaintiff has deliberately misled the Court by submitting that the Gift Deed dated 4th May, 2011 in respect of the suit property was deposited as a security towards the loan amounting to Rs. 2,00,000/-.
- iv) Under the garb of mandatory injunction for return of the Gift Deed of the suit property, the plaintiff is seeking a relief which would amount to redemption of the mortgage and in view of the proceedings initiated by the defendant no.1 against the plaintiff under the provisions of SARFAESI Act, the said relief cannot be granted. Therefore, the present suit is barred under Section 34 of the SARFAESI Act.
- v) Allegations of fraud have been made in the plaint without giving any particulars in order to get out of the bar under Section 34 of the SARFAESI Act. Reliance in this regard is placed on the judgment of the Supreme Court in *Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd.*, (2022) 2 SCC 573.

6. Per contra, the counsel appearing on behalf of the plaintiff has made the following submissions:

- i) The plaintiff had taken a loan of Rs.1,67,00,000/- from Aditya Birla Housing and Finance Ltd. and the said loan was transferred from Aditya Birla Housing and Finance Ltd. to the defendant no.1 and accordingly, the title deeds of three commercial properties owned by the plaintiff and mortgaged with Aditya Birla Housing and Finance Ltd., were transferred to the defendant no.1. On the basis of the security of the aforesaid three properties, the present loan of Rs.6,25,00,000/- was given by the defendant no.1 to the plaintiff.



- ii) Mortgage deed in respect of the suit property was executed in favour of the defendant no.1 on 22nd November, 2018. However, the aforesaid loan of Rs.2,00,000/- was never disbursed by the defendant no.1 to the plaintiff.
- iii) The particulars of fraud have been duly pleaded in the plaint to the extent that the signatures of the plaintiff in the sanction letter for the aforesaid loan were forged and fabricated. Reliance is placed on the judgment of the Supreme Court in ***Mardia Chemicals vs. Union of India***, (2004) 4 SCC 311, to contend that in the present case, the jurisdiction of a Civil Court is not barred on account of fraud committed by the defendant no.1.

7. I have heard the counsels for the parties.

8. It is a settled position of law that in order to decide an application under Order VII Rule 11 of the CPC, reference has to be made only to the averments made in the plaint as well as the documents filed along with the plaint.

9. With the aforesaid background, a reference may be made to the relevant provisions of the plaint, which are set out below:

“2(g) That initially, two separate loan documentations/agreements were got signed by the Defendant No.1 for the Two separate (one secured and one unsecured) loans of the following details and were disbursed in the following manner:-

(i) Rs.50 Lacs unsecured credit facility disbursed in the name of Regent EV Taxis and Exim LLP

(ii) Rs.1.50 Crores (Approx.) secured equitable mortgage loan transferred from ABHFL along with Three commercial properties as securities already mortgaged with ABHFL all collectively transferred in favour of the Defendant No.1 and the above said



payment of Rs.1.50 Crores directly disbursed in favour of ABHFL against the transferring of 3 securities in favour of the Defendant thereby, clearing balance outstanding loan amount of existing secured loan directly by the Defendant No.1 in favour of ABHFL.

(iii) Rs. 4,12,32,494/- being the balance sanctioned amount disbursed in favour of the Plaintiffs.

*j. That immediately before the disbursement/ release of the amount of credit facility, when it was scheduled/due to be released, the Defendant No.1 came up with yet another pre-condition to be satisfied by the Plaintiff before the release/disbursement of any funds. The Defendant No.1 stated that since the transfer of the Original Title Deeds of the commercial properties at Gurgaon were to be also required to be transferred in original in favour of the Defendant No.1 by ABHFL, which would at least take about 50-60 days, therefore, that the Defendant No.1 demanded from the Plaintiff to temporary deposit any additional registered deed of any property, whether valid or invalid, whether enforceable or un-enforceable and whether constituting an independent and complete transfer of ownership on the strength of exchange of valuable sale consideration or otherwise, whatsoever. The Defendant No.1 assured the Plaintiff that the said document was desired and demanded only as an interim measure and only till such time the original title deeds of the three commercial properties mortgaged with ABHFL are being received by the Defendant No.1 from M/s ABHFL by way of transfer and thereafter, the said interim security would be returned to the Plaintiff forthwith. The copies of title documents of the said three mortgaged properties are enclosed herewith and marked as **Document-P4 (Colly)**.*

k. That being utterly shocked, cornered and left with no other alternative, the Plaintiff were compelled and constrained to part with a document by the name and style of a gift deed dated 04.05.2011 in original to the Defendant No.1, although with the only intention to be treated and retained as an interim and temporary measure for about 50-60 days. However, the Plaintiff clarified to the Defendant No.1 that the said Gift Deed dated



04.05.2011 is nonest as the Plaintiff had already ceased to be the absolute owner much earlier and the Plaintiff was also not holding the actual lawful peaceful possession and actual control of the Suit property at the relevant time as the same already stood encumbered, alienated and transferred from the Plaintiff. The Plaintiff further informed the Defendant No.1 that the said document being the Gift Deed dated 04.05.2011 was invalid, inoperative, un-enforceable and merely a gesture of love and affection by the Plaintiff's father towards the Plaintiff and at the most, the said Gift Deed could be treated as a ratification and overlapping of the already sold, transferred and alienated said property much prior to 04.05.2011.”

10. A reading of the aforesaid paragraphs of the plaint shows that:
- i) The plaintiff has admitted various loans sanctioned by the defendant no.1 in favour of the plaintiff.
 - ii) The plaintiff has specifically admitted that the defendant no.1 required the plaintiff to deposit Gift Deed in respect of suit property as a security for the aforesaid loan and pursuant thereto, the plaintiff by way of an interim security gave the Gift Deed dated 4th May, 2011 in respect of the suit property.
11. The aforesaid paragraphs of the plaint are clear admission on the part of the plaintiff that the suit property was given towards the security for the loan taken by the plaintiff from the defendant no.1. Even though the plaint states that the gift deed was given only on a temporary basis till the time the original papers of the three commercial properties were released by Aditya Birla Housing and Finance Ltd., the plaint nowhere states that the said papers were released by Aditya Birla Housing and Finance Ltd. or were given to the defendant no.1. In any case, it cannot be the case of the plaintiff that a loan of Rs.6,25,00,000/- was given by the defendant no.1 without any security.



12. In this regard, the counsel for the defendant no.1 submits that the defendant no.1 had simply repaid the outstanding loan of the plaintiff towards the Aditya Birla Housing and Financing Ltd. from the loan of Rs. 6,25,00,000/- sanctioned in favour of the plaintiff. It was never envisaged that the property papers submitted by the plaintiff with Aditya Birla Housing and Finance Ltd. would be transferred to the defendant no.1 by Aditya Birla Housing and Finance Ltd.

13. In any case, this Court finds it hard to believe that the original papers of three commercial properties given as a security towards the loan of Rs.1,50,00,000/- would suffice as a security for a loan of Rs.6,25,00,000/-. Counsel for the defendant no.1 has correctly pointed out that if the title deeds of the three commercial properties of the plaintiff were indeed transferred to the defendant no.1, the defendant no.1 would have also initiated appropriate proceedings under the SARFAESI Act in respect of the said properties.

14. From the paragraphs of the plaint extracted above, it emerges that the plaintiff is taking completely contradictory stands. On one hand, it has been pleaded that the Gift Deed in respect of the suit property was given as an interim security, on the other hand, it has been pleaded that the said Gift Deed is non est and that the plaintiff had ceased to be the owner of the suit property. If that be the case, it does not stand to reason as to why the plaintiff is seeking return of the Gift Deed as well as injunction in respect of the suit property.

15. Counsel for the defendant no.1 has drawn attention of the Court to various orders passed in the previous suits filed by the plaintiff against the defendant no.1. Though a vague reference has been made to the aforesaid



suits and legal proceedings in the plaint, the plaintiff has not filed the orders passed in the said suits along with the plaint.

16. A reference may be made to the relevant paragraphs of the order dated 18th February, 2022 passed by the Civil Judge in a suit initiated by the plaintiff against defendant no.1, which are set out below:

“....

31. *The counsel for defendant no.1 has stated at bar that loan of Rs. 200,000/- was never disbursed to the plaintiff and the case of the plaintiff can be disposed of qua loan of Rs 2,00,000/- only and defendant no.1 has no objection in case mortgage deed with respect to Rs 2,00,000/- loan is canceled. Apparently, the plaintiff did not agree to such proposal of the defendant no.1 on the ground that gift deed is with defendant no.1 which should be returned back to the plaintiff first. This court does not find iota of truth in the factum of the plaintiff that gift deed was deposited with the defendant no.1 for loan of Rs. 2,00,000/-.*

....

37. *It is ironic how plaintiff has drafted his plaint. In plaint there is no whisper of loan of Rs 6,25,00,000/- yet the case seems to tilted towards that loan only and not towards loan of Rs 2,00,000/- taken by the plaintiff. The motive of filing the present case is simply to take stay in the suit premises on concealment, denial and false submissions. Counsel for the defendant no.1 has stated at bar that he has no objection if prayer a and d are granted in favour of the plaintiff i.e. with respect to loan of Rs.2,00,000/- as the same was never disbursed to the plaintiff. Whereas prayer b and c is concerned, it appears that this is perfect case of clever drafting. Plaintiff in the plaint has alleged that he requested the defendant no.1 many times to return the original gift deed given with respect of Rs.2,00,000/-. Not even a single document has been filed by the plaintiff to show that plaintiff ever sent a request to defendant no.1 for return of original document with respect of Rs. 2,00,000/- loan. Even if there was such request, it would not tantamount to belief that*



defendant no.1 actually took the gift deed for loan of Rs. 2,00,000/-.

....

38. The case is filed in disguise for non-enforcement of action being taken by the defendant no.1 against plaintiff for recovery of loan account no XOHEDT00002669289 for Rs 6,25,00,000/-. This court finds that trial is tilted towards loan no XOHEDT00002669289 and not towards loan of Rs.2,00,000/- for which this court has no pecuniary jurisdiction. The subject matter jurisdiction also lies before different forum in view of 2002 Act.

39. Plaintiff has submitted that he has alleged fraud in the present matter that's why section 34 of 2002 Act does not apply. Plaintiff has merely pleaded fraud without anything else, that too with respect of Rs.2,00,000/- loan only. Even if we assume that there was any fraud, with respect to loan of Rs 2,00,000/- that does not stop the defendant no.1 from recovering their dues as per due process of law with respect to loan account no XOHEDT00002669289. As noted above that defendant no.1 has already stated that they have no objection if relief a and d is granted in favour of the plaintiff. But it appears that plaintiff is only interested in taking the gift deed and stopping the defendant no.1 from alienating the suit property and stalling the recovery proceedings with respect to loan account no. XOHEDT00002669289."

17. The aforesaid order was taken in appeal by the plaintiff and the said appeal was partially allowed. However, the part of the order of the Civil Judge rejecting the plaint under provisions of Order VII Rule 11 of the CPC was upheld. The relevant paragraph of said order of the Appellate Court is set out below:

"Thus, from the above provision, it is clear that the suit is barred under Order 7 Rule 11 (d) CPC as provisions of the SARFAESI Act are applicable which bar the jurisdiction of Civil Court under



Section 34 CPC. Hence, there is no infirmity found in the order of the Ld. Trial Court while rejecting the plaint for being barred by law. This part of the order of the Ld. Trial Court is upheld. However, as per the admission of the respondent in the WS regarding their readiness and willingness to get the said registered mortgage deed canceled for Rs. 2 lakhs only, the appeal is partly allowed to this extent only. The appellant may approach the concerned Sub Registrar office to move appropriate application in this regard after giving due information about the same to the respondent. The expenses, if any for cancellation of the said registered mortgage deed dated 22.11.2018 for a sum of Rs. 2 lakhs shall be borne by the appellant.

The remaining part of the order of the Ld. Trial Court is upheld and requires no modification. Hence, the relief of permanent and mandatory injunction and directions for return of the original gift deed of the property in question to the appellant has been rightly rejected by the Ld. Trial Court being barred by law. As the appeal has been disposed of, the application under order 41 Rule 5 CPC for stay stand dismissed being infructuous.

18. Subsequently, the proceedings under SARFAESI Act were initiated by the plaintiff before the Debt Recovery Tribunal (DRT) and vide order dated 28th March, 2022, the interim stay was rejected by the DRT. Admittedly, no appeal has been filed against the aforesaid order.

19. A subsequent suit being CS SCJ 570/2022 was filed on behalf of the plaintiff, which was dismissed on the ground of pecuniary jurisdiction and thereafter, the present suit was filed.

20. As is evident, strong observations have been made against the conduct of the plaintiff in the orders extracted above. That is why, the orders in all the aforesaid proceedings were deliberately concealed by the plaintiff in the present suit, in order to obtain an *ex parte* interim order. If the aforesaid orders had been filed with the plaint, it would have been difficult for the



plaintiff to obtain an *ex parte* interim order.

21. At this stage, it may be relevant to refer to the relevant provisions of the SARFAESI Act:

“17(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession of the secured assets to the borrower or other aggrieved person, it may, by order, -

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of the secured assets or management of the secured assets to the borrower, or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13

...

34. Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter 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).”

22. A reading of the aforesaid provisions makes it clear after the



amendment carried out to the SARFAESI Act in the year 2016, the DRT has been given widest possible powers. The DRT has the power to go into the evidence produced by the parties and declare that the measures adopted by a secured creditor under Section 13(4) are invalid and pass appropriate orders. The bar under Section 34 of the SARFAESI Act is clear that the Civil Court shall have no jurisdiction in respect of any matter, wherein the DRT is empowered under the SARFAESI Act. Therefore, all the defences raised and the averments made in the plaint can be considered by the DRT in the proceedings under Section 17 of the SARFAESI Act. In fact, a securitization application being S.A. 134/2022 has already been filed by the plaintiff before the DRT. The counsel for the defendant no.1 submits that the said securitization application is still pending adjudication before the DRT.

23. Now, I will examine the allegations of fraud made by the plaintiff. In the present case, the loan was sanctioned on 15th November, 2018 and the loan amount was released on 23rd November, 2018. If there were any issues with regard to the signatures of the plaintiff being forged or the sanction letter being fabricated, the plaintiff would have promptly taken the aforesaid objections before the disbursement of the said loan. It is only when the plaintiff defaulted in the repayment of the aforesaid loans and the defendant no.1 took action for recovery, the plaintiff started raising objections with regard to the fraud played by the defendant no.1. Reference may be made to the loan agreement dated 16th November, 2018 filed along with the plaint and the schedule thereto, where the aforesaid property has been specifically mentioned as the security given by the plaintiff to the defendant no.1 and the aforesaid document bears the signatures of the plaintiff. The counsel for the defendant no.1 has produced the original sanction letter, which bears the



signatures of the plaintiff. There is nothing to suggest that the same is forged, fabricated, counterfeit and manipulated.

24. The pleadings of fraud against the defendant no.1 have only been made at a belated stage in an attempt to cover the case within the exception provided in *Mardia Chemicals* (supra). A reading of *Mardia Chemicals* (supra) would show that only cases for which an exception has been carved out is where the action of the secured creditor has been fraudulent or so absurd or untenable. There is nothing to substantiate the pleadings of fraud and forgery against the defendant no.1. Therefore, in my view, the present case does not come within the ambit of the exception provided in *Mardia Chemicals* (supra).

25. At this stage, a reference may be made to the judgment of the Supreme Court in *Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd.*, (2022) 2 SCC 573. Relevant paragraph of the said judgment is set out below:

*“9. Having considered the pleadings and averments in the suit more particularly the use of word “fraud” even considering the case on behalf of the plaintiff, we find that **the allegations of “fraud” are made without any particulars and only with a view to get out of the bar under Section 34 of the Sarfaesi Act and by such a clever drafting the plaintiff intends to bring the suit maintainable despite the bar under Section 34 of the Sarfaesi Act, which is not permissible at all and which cannot be approved.** Even otherwise it is required to be noted that it is the case on behalf of the plaintiff-appellant herein that in view of the approved resolution plan under IBC and thereafter the original corporate debtor being discharged there shall not be any debt so far as the plaintiff-appellant herein is concerned and therefore the assignment deed can be said to be “fraudulent”.*

26. The ratio of the aforesaid judgment of the Supreme Court in



Electrosteel Castings (supra) is squarely applicable to the present case. The allegations of fraud and forgery have been levelled against the defendant no.1 in the plaint with a view to get out of the bar under Section 34 of the SARFAESI Act. Under the garb of mandatory injunction for return of the Gift Deed of the suit property, the plaintiff is seeking a relief which would amount to redemption of the mortgage. This is a classic case of clever drafting of the plaint to make the suit maintainable despite the bar under Section 34 of the SARFAESI Act. The reliefs claimed in the present case can be agitated before the DRT under section 17 of the SARFAESI Act.

27. Counsel for the defendant no.1 has also pointed out that the plaintiff is using different names in different legal proceedings. In the Civil Suit, being CS SCJ 583/2021, filed against the defendant no.1 herein, the plaintiff has filed the suit in the name of “Sandeep Singh Bhatia”. In the proceedings filed before the DRT being SA No.134/2022, the proceedings have been filed in the name of “Sandip Singh Bhatia” and the present suit has been filed in the name of “Sandip Singh”. It is clear that the plaintiff is resorting to different proceedings against the same defendant using different names.

28. It is also to be noted that the plaintiff has valued the present suit for the purposes of pecuniary jurisdiction at Rs.6,25,00,000/- on the basis of loan of Rs.6,25,00,000/-. However, the plaintiff has paid court fees of Rs.20 *qua* relief of declaration and Rs.20 for the relief of permanent injunction.

29. The law with regard to Order VII Rule 11 of the CPC has been propounded by the Supreme Court in *Dahiben v. Arvinbhai Kalyanji Bhanusali (D) thr. L.Rs. and Ors., (2020) 7 SCC 366*. The Supreme Court in the said judgment held that the law cannot permit clever drafting, which creates an illusion of a cause of action and it should be nipped in the bud at



an earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the Court. A reading of the plaint shows that it is manifestly vexatious and meritless and does not disclose a right to sue. There are gross contradictions in the plaint and material suppressions have been made. Besides, the present suit is barred in view of Section 34 of the SARFAESI Act.

30. Accordingly, the application of the defendant no.1 is allowed and the suit is rejected in terms of Order VII Rule 11 of the CPC.

31. In view of the discussion above, the Court was inclined to reject the plaint with exemplary costs of Rs.5,00,000/-. However, the plaintiff is present in person and claims grave financial hardships and therefore, the costs may not be imposed. The statement is taken on record and the court refrains from imposing costs.

32. Interim order dated 24th June, 2022 stands vacated. In view of the rejection of the plaint, the pending applications in the present suit do not survive.

SEPTEMBER 13, 2022/at

AMIT BANSAL, J.