IA No. GA 2 of 2022
APD No. 1 of 2021
with
CS No. 54 of 2020
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION
(Commercial Bench)

BRH Wealth Kreators Ltd.
Versus
HDFC Bank Ltd.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 24th July 2023

Appearance:
Mr. Jishnu Chowdhury, Advocate
Mr. Chayan Gupta, Advocate
Mr. Souradeep Banerjee, Advocate
Mr. A. Agarwal, Advocate
Ms. Priyanka Garain, Advocate
for the appellant

Mr. D. N. Sharma, Advocate
Mr. Anurag Basu, Advocate
Mr. Srinjoy Bhattacharya, Advocate
for the respondent

Mr. Arindam Banerjee, Advocate
Mr. Apurba Ghosh, Advocate
for the applicant/respondent

The Court: This is an appeal from a judgment and decree dated 10th February 2021 of a learned single judge of this court allowing an application under Order VII Rule 11 of the Civil Procedure Code made by the respondent/defendant bank. The Court held that the suit was barred under section 34 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). The result was that the suit was dismissed.

The only question which falls for consideration is whether the learned judge was right in taking recourse to this drastic action?

We find that it is a very elaborate judgment where the facts have been discussed in great detail, numerous case laws on the subject discussed and analysed and thereafter a conclusion reached that the suit needed to be dismissed at the threshold.

The brief facts are these.

The appellant is a stockbroker. In course of its business it held the shares of its customers for the purpose of selling them or dealing with them otherwise. It had obtained loans and advances of a substantial sum of money from the respondent/defendant bank to maintain the "margin money" by pledging those shares with the bank. When the appellant's outstanding with the bank exceeded the permissible limit, the bank sold the pledged shares and partially appropriated the sale proceeds, towards its dues. For the rest of it, they approached the Debts Recovery Tribunal upon invocation of SARFAESI.

The case sought to be run by the appellant is that the bank's act of selling the subject shares was wrongful, that they are entitled to return of their shares or, in the alternative, damages. According to the respondent bank, the appellant has no cause of action before the civil court. Their right, if any, may be established before the tribunal and that the learned judge very rightly rejected the plaint under Order VII Rule 11 of the Civil Procedure Code.

According to us, just on an appreciation of the case sought to be made out in the plaint, the court ought not to have rejected the plaint. This is for the following reasons.

Section 31 of the SARFAESI Act clearly lays down that the provisions of the Act shall not apply inter alia to pledged movables within the meaning of section 172 of the Indian Contract Act, 1872. Section 176 of the said Act gives a pawnee the right to bring a suit to realise the debt while retaining the pledged goods as collateral security or the right to sell the pledged goods upon giving the pawnor reasonable notice of the sale.

According to Mr. Dhirendra Nath Sharma, learned advocate for the respondent/defendant bank, the proceeding under the SARFAESI was not for sale of the pledged shares. The pledged shares had already been sold by the bank. The proceedings before the said tribunal are for realisation of the loan outstanding after the sale of the pledged shares. According to the appellant, since the loan was secured by the pledged shares, the Act did not apply.

We are of the opinion that when such contentious facts are involved and there is existence of authorities which support both the parties, a more detailed consideration of the case, as to whether this court should dismiss the suit on the ground that it was barred by law, was required. We are of the view that this exercise ought to have been done after filing of written statement and disclosure of documents and framing of issues with this particular issue as the preliminary issue to be decided before all other issues. Further this preliminary issue would not be an issue of law but an issue of law and facts combined, to be determined by the court after full disclosure of documents, but before evidence is admitted. Only then could proper justice be done to the case.

In those circumstances, we set aside the judgment and order dated 10^{th} February 2021.

We direct the respondent/defendant bank to file their written statement by 22^{nd} September 2023. Cross discovery of documents be made by 10^{th} October 2023, inspection forthwith by 19^{th} October 2023.

Let the suit be tried on the above terms immediately after the puja vacation.

In view of this order, let the application for addition of party (IA No. GA 2 of 2022) made by Mr. Arindam Banerjee's client be disposed of with liberty to the applicant to make the self-same application before the learned single judge.

Likewise, the application (IA No. GA 2 of 2020) made in the suit be also considered by the learned single judge.

All the questions, except the ones decided above, are kept open.

The appeal (APD No. 1 of 2021) is disposed of accordingly.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

R. Bose