IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.16 OF 2023
with
INTERIM APPLICATION NO.164 OF 2023
IN
APPEAL FROM ORDER NO.16 OF 2023

JSK Distributions LLP & Anr. … Appellants
Versus
Board of Directors of RBL Bank Ltd. & Ors. …Respondents

Mr.Nikita Panhalkar i/b. Sudip Mallick, for the Appellants.
Mr.Rohit Gupta, Mr.Nishit Dhruva, Mr.Oprakash Shinde, Ms.Niyati Merchant, Mr.Yash Dhruva, Mr.Harsh Sheth, for Respondent Nos.2, 3 & 5.
Ms.Tanaya Goswami, AGP for the State-Respondent Nos.9, 10, 17, 18.
P.I. Mr. S. R. Dhumale, Malbar Hill Police Stn. present.

CORAM: G. S. KULKARNI, J.
DATED: JANUARY 07, 2023

P.C.

1. This appeal from order impugns an order dated 28 November 2022 passed by the learned Judge of City Civil Court, Bombay, whereby ad-interim relief has been refused to the appellants/plaintiffs as prayed for in the draft notice of motion.

2. It appears that the respondent-bank has proceeded against the appellants under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "**the SARFAESI Act**") under a notice issued under Section 13(2) of the SARFAESI Act on 9 December 2019. The appellants did not reply to the said notice and failed to discharge their liabilities. Consequently an action under Section 13(4) of the SARFAESI Act was initiated on 31

June 2020. It also appears that on 14 July 2022 possession of the suit flat was taken.

3. It is contended that the mother of appellant No.2 who is also a partner of appellant No.1, has already approached the Debt Recovery Tribunal seeking interim reliefs in regard to the action initiated by the respondent Bank under the SARFAESI Act, however, she could not succeed in getting any relief. The appellants had also approached the Division Bench of this Court in Writ Petition (l) No.30236 of 2022 assailing the action of the bank, when admittedly, the suit in question was already filed and was pending. The Division Bench on 23 November 2022 did not entertain the Writ Petition noting objections raised on behalf of the bank obviously that the remedy for the appellant was to invoke Section 17 of the Recovery of Debts due to Banks and Financial Institutions Act,1993. The order dated 23 November 2022 passed by the Division Bench reads thus:

> "Heard learned counsel for the parties.
> 2. The Petitioners have sought various reliefs in this Petition. The main relief is a declaration that the transaction dated 3 May 2019 between the Petitioners and Private Respondents, and the Deed of Mortgage dated 3 May 2019 entered into between the parties are void, vitiated by fraud etc. Such relief cannot be granted in the writ jurisdiction.
> 3. Learned counsel for the Respondents pointed out that the remedy for the Petitioners is under section 17 of Recovery of Debts due to Banks and Financial Institutions Act, 1993 and furthermore the Petitioners have filed a Civil Suit bearing (L) No. 10255 of 2022 in City Civil Court for the same declaration. In light of these two positions, we are not inclined to exercise writ jurisdiction.
> 4. Learned counsel for the Petitioners submits that auction is scheduled on 29 November 2022 and therefore, interim relief be granted. Since the Petitioners have already approached the Civil Court, which according to the Respondents is not the correct remedy and has the remedy of approaching the Debt Recovery Tribunal, it is always open to the Petitioners to seek an interim relief from the appropriate forum, on merits. Keeping all

> contentions of the parties open including about the maintainability of the Suit, Writ Petition is disposed of."

4. It appears that thereafter a draft notice of motion was moved by the appellant before the City Civil Court. The reliefs as prayed in the said draft notice of motion read thus:

> (a) Grant an ad interim injunction restraining and prohibiting the Defendants in particularly the Defendant No.1 Bank and its officers, their agents, men and privies from interfering in any manner with the absolute right, tide, estate, possession, property and enjoyment of the property of the Plaintiffs being residential property 162/C, Grand Paradi, A.K. Marg, KEMPS Corner, near Shalimar Hotel, August Kranti Marg, Mumbai 400026 and further from proceeding in pursuance of the E-Auction Notice scheduled on November 29, 2022, the notice whereof is attached and marked herewith as Annexure "A collectively".
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> (b) Pending the hearing and final disposal of the instant Application/Notice of Motion grant an ad-interim, mandatory and/or prohibitory injunction restraining and prohibiting the Defendants, in particularly the Defendant No.1 Bank and its officers their agents, servants and privies from proceeding any further in furtherance of the E-Auction scheduled on November 29, 2022 and/or by recourse to any other means or procedure, so too from proceeding any further of their purported powers under 13(4) and 14 of the SARFAESI Act and the Rules made thereunder.
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> (c) to grant an ad-interim prohibitory injunction in favour of the Applicants/Plaintiffs and against the Defendants restraining and prohibiting the Defendants, its officers, agents, servants and privies from proceeding further under the SARFAESI Act, 2002 and further to restrain and prohibit the Defendants from taking recourse to any precipitatory steps which will tilt or shake 'vinculum juris, pendent lite';
>
> (d) grant an ad-interim mandatory and prohibitory injunction in favour of the Plaintiffs in terms of prayer (a) and (b) and (c) above;
>
> (e) pass such further and other relief as the nature and circumstances of the case may warrant."

5. The learned Trial Judge after considering the well settled principles of law as also considering the case of the appellants on merits, has thought it appropriate, not to grant any ad-interim protection to the appellants. Learned Trial Judge has also observed that it is not possible to believe the case of the appellants on any fraud by the defendant-bank.

6. In so far as the case of the appellants in regard to fraud is concerned, learned Trial Judge has observed that prima facie there was no material to accept the case that there was any fraud so that an exception can be made to entertain the proceedings, and not continuing the suit proceedings *de hors* the specific remedies available under Section 17 of the SARFAESI Act. The learned Trial Judge has clearly observed that the remedy for the appellants to seek any relief was under Section 17 of the SARFAESI Act against any measures referred to under Section 13(2) and 13(4) of the SARFAESI Act taken by the respondents.

7. The learned Trial Judge has also observed that the action under the SARFAESI Act has substantially progressed, resulting in a notice under Section 13(4) of the SARFAESI Act being issued on 31 July 2020 in an order being passed by the Chief Metropolitan Magistrate, and under a warrant of possession being issued, the respondent-bank has already received possession of the flat. The suit in question itself was filed on 3 September 2022 and the draft notice of motion was moved on 28 November 2022. The learned Trial Judge has observed that even otherwise there was a substantial delay and laches even in moving the draft notice of motion. This apart, the learned Judge has also observed that the appellants have not approached the Court with clean hands in praying for the reliefs on the draft notice of motion. In these circumstances, the learned Judge has observed that the appellants had failed to make out a prima facie case for grant of ad-interim reliefs and dismissed the appellants' prayer clause (a).

8. Learned Counsel for the appellants, however, would submit that this is a case wherein the issue which falls within the exception, so as to not relegate the appellants to a remedy of invoking the jurisdiction of the Debt Recovery Tribunal under Section 17 of the SARFAESI Act, considering the case of fraud as alleged by the appellant in the plaint. The Court's attention is drawn to paragraphs 11, 12 and 13 of the appeal stating that such a case of fraud needs to be considered in considering the appelalnts prayers for interim reliefs in the suit.

9. With the assistance of learned Counsel for the appellants, I have perused the avernments in the plaint. In my opinion, the nature of the case as pleaded and being labelled as fraud, cannot be accepted. In fact the proceedings initiated before the City Civil Court by the appellants appears to be the proceedings in absolute desperation, this more particularly, considering that the another partner namely the mother of the appellant No.1 had already raised a similar challenge before the Debt Recovery Tribunal and could not succeed in obtaining any order. Further the appellants had approached the Division Bench when the Division Bench clearly observed that the only remedy for the appellants is to invoke Section 17 of the SARFAESI Act. There cannot be multiple proceedings before different forums. The appellants have no choice to select such multiple remedies when the law prescribes otherwise. The learned Trial Judge is correct in coming to a prima facie conclusion that the appellants had not approached the City Civil Court with clean hands.

The learned Judge has rightly taken the view considering the materials on record as also the averments in the plaint to refuse granting any ad-interim reliefs to the appellants. . No case is made out for interference in the present appeal. Appeal is accordingly, summarily rejected. All contentions of the parties in the pending suit are expressly kept open.

10. In view of disposal of the Appeal, pending Interim Application would not survive. It is accordingly disposed of.

(G. S. KULKARNI, J)