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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15765 OF 2023

Jeet Export Through
Its Proprietor … Petitioner

V/s.

Vijaya Bank Branch Kalyani Nagar
Known as Bank of Baroda
Through Its Branch Manager & Anr … Respondents

Mr. Dayanand Awari, for Petitioner.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 20, 2023

P.C.:

1. By this writ petition, under Article 227 of the Constitution of India, the petitioner/original plaintiff is challenging orders passed by the Courts below rejecting temporary injunction application seeking against secured creditor from taking measures under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

2. The petitioner filed Special Civil Suit No.1043 of 2022 seeking relief of compensation against secured creditor from taking measures under the provisions of SARFAESI Act. According to the plaintiff, he availed secured loan of Rs.25 lakh and over draft cash facility of Rs.25 lakh. While availing such loan facilities, said defendant No.1 purchased insurance policy for period from 22 March 2018 to 21 March 2019. After expiry of period of insurance policy, the premium subsequent amount was debited from the plaintiff's account on 5 March 2019, defendant No.1 did not obtain renewal insurance policy. With the result, defendant No.1 failed to cover risk of Rs.17 lakh. On 15 April 2019 there was heavy rain, hailstone and storm wherein the plaintiff's isured property was damaged. The plaintiff's stock material and articles were stolen. According to the plaintiff, he has failed to cover theft in insurance policy and, therefore, he suffered loss to the tune of Rs.72 lakh.

3. In the said suit, the plaintiff filed an application for temporary injunction restraining the secured creditor from taking measures under the provisions of SARFAESI Act. The Trial Court and the Appellate Court rejected the temporary injunction application; hence, present writ petition.

4. Relying on the judgment of this Court in the case of **Bank of Baroda, Through its Branch Manager Vs. Gopal Shriram Panda and Anr.** reported in (2021) SCC Online Bom 466, it is submitted that such suit filed by the applicant is maintainable.

5. The Division Bench has summed up the position of law in paragraph 27 as under:

> "27. In view of what we have discussed above, our considered opinion to the question as referred to is as under:-

Question:

"Whether the jurisdiction of a Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Section 17 of the Securitization Act, in relation to enforcement of security interest of a secured creditor, is barred by Section 34 of the Securitization Act?

Answer:

The answer, looking to the nature of the question, in our view,is in parts:—

(A) Jurisdiction of the Debts Recovery Tribunal to decide all

matters relating to Sections 13 and 17 of the SARFAESI Act,

is exclusive.

(B) In all cases, where the title to the property, in respect of which a 'security interest', has been created in favour of the Bank or Financial Institution, stands in the name of the borrower and/or guarantor, and the borrower has availed the financial assistance, it would be only the DRT which would have exclusive jurisdiction to try such matters, to the total exclusion of the Civil Court. Any pleas as raised by the borrowers or guarantors, vis-a-vis the security interest, will have to be determined by the Debts Recovery Tribunal.

(C) The jurisdiction of the Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Sections 13 and 17 of the SARFAESI Act, in relation to enforcement of security interest of a secured creditor, is not barred by Section 34 of the SARFAESI Act.

(D) Where civil rights of persons other than the borrower(s) or guarantor (s) are involved, the Civil Court would have jurisdiction, that too, when it is prima facie apparent from the face of record that the relief claimed, is incapable of being decided by the DRT, under Section 17 of the DRT Act, 1993 read with Sections 13 and 17 of the SARFAESI Act.

(E) Even in cases where the enforcement of a security interestn involves issues as indicated in Mardia Chemicals (supra) of fraud as established within the parameters laid down in A. Ayyasamy (supra); a claim of discharge by a guarantor under Sections 133 and 135 of the Contract Act [Mardia Chemicals (supra)]; a claim of discharge by a guarantor under Sections 139, 142 and 143 of the Contract Act; Marshaling under Section 56 of the Transfer of property Act [J.P. Builders (supra)]; the Civil Court shall have jurisdiction.

(F) Examples as indicated in para 22.3, are illustrative of the Civil Court's jurisdiction.

(G) The principles laid down in para 33 (i) to (ix) of Sagar Pramod Deshmukh (supra) are in accordance with what we have discussed and held above."

6. The Division Bench in parameter B has held that, if the property stands in the name of secured creditor and such property is mortgaged in favour of secured creditor, the suit restraining secured creditor from initiating measures under SARFAESI Act is not maintainable.

7. Apart from said judgment, the Apex Court in the case of **Jagdish Singh Vs. Heeralal and Ors.** reported in (2014) 1 SCC 479 has held that the expression "any person" used in Section 17 of the SARFAESI Act, 2002 is of wide import and context within it is held not only the borrower but also guarantor or any other person who may be affected by the action under Section 13(4) of the SARFAESI Act, 2002. In the facts of the case, there is no dispute about the factum of property being mortgaged to the secured creditor. There is no allegation of fraud as contemplated by paragraph **51** of the judgment in the case of **Mardia Chemicals Ltd. Vs. Union of India** reported in (2004) 4 SCC 311 emphasized on the protection of the Secured Creditor's right.

8. The Apex Court in the Case of **United Bank of India Vs. Satyawati Tandon**, reported in (2010) 8 SCC 110 has held that the High Court and the Trial Court must be loath while granting any relief of injunction to the secured creditor from initiating measures under the SARFAESI Act.

9. In absence of case of fraud as contemplated by the judgment in the case of **Mardia Chemicals** (Supra) being made. The Trial Court and the Appellate Court were justified in rejecting the application for temporary injunction. Hence, there is no legal infirmity in the orders.

10. The writ petition is dismissed. No costs.

(AMIT BORKAR, J.)