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CRP No.415 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM :

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRP No.415 of 2023

Repco Home Finance Limited,
A company incorporated under the Companies Act, 1956,
Having its registered office at
Repcto Tower, No.33, North Usman Road,
T.Nagar, Chennai – 600 017.
Represented by its Authorized Signatory/General Manager,
Having office at No.55, IV Main Road, Gandhi Nagar,
Adayar, Chennai 600 020.

.... Petitioner

-Vs-

1.A.Sabin Nihar
2.Fysal Khan
3.Thameem Ansari
4.Jainul Arabu
5.H.Shakeela Banu

.... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India,
against the fair and decretal order dated 28.11.2022 passed in I.A No.3 of 2021 in
O.S No. 5098 of 2019 on the file of learned XIX Additional Judge, City Civil
Court, Chennai.



CRP No.415 of 2022

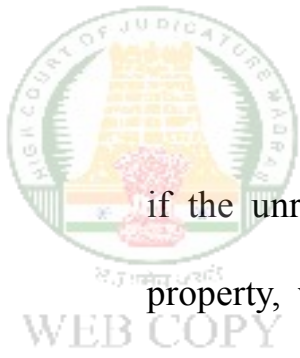
For Petitioners : Mr.A.Ilangovan
For Respondents : Not appeared

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ORDER

This Civil Revision petition has been filed against the fair and decreetal order dated 28.11.2022 passed in I.A No.3 of 2021 in O.S No. 5098 of 2019 on the file of learned XIX Additional Judge, City Civil Court, Chennai.

2. Originally suit in O.S No. 5098 of 2019 was filed by the first respondent herein against the petitioner herein and 2 to 5 defendants herein for the relief of specific performance and other consequential relief based on the alleged sale agreement dated 31.10.2014, in that suit, the petitioner herein only contested the suit other parties remain exparte. While so, the petitioner herein filed I.A No. 3 of 2021 in O.S No. 5098 of 2019 to reject the plaint by stating that respondent 2 to 4 by creating equitable mortgage availed huge loan from the petitioner herein and also failed to repay the loan thereafter that loan was classified as Non Performing Asset (NPA) on 30.06.2016. Further, recovery proceedings under SARFAESI Act was initiated and the symbolic possession of the property was taken on 23.10.2017. After receipt of the notice at the instigation of respondents 2 to 4 herein, the first respondent filed the vexatious suit against the petitioner as



if the unregistered sale agreement was entered between them with regard to property, which was under the mortgage of this petitioner by depositing title deeds, in order to evade SARFAESI proceedings the first respondent filed the suit and also causing delay to the recovery proceedings made by the petitioner herein. Further, as per Section 34 of SARFAESI Act, no civil Court have jurisdiction to entertain any suit or proceedings in respect of any matter which a debts recovery tribunal or the appellate tribunal alone have jurisdiction, as such suit is not maintainable liable to be rejected for want of jurisdiction. But the Trial Court held that whether the suit is barred under SARFAESI Act is only decided at the end of the Trial accordingly dismissed the said application. Challenging the same the petitioner preferred this petition. Notice was issued to the respondents but the same was returned as door locked.

3. The learned counsel for the respondent submitted that the Trial Court failed to take note of the fact that there was equitable mortgage in favour of the petitioner herein in respect of suit property on the date of alleged sale agreement dated 31.10.2014. Further the respondent 2 to 4 creating equitable mortgage availed huge loan from the petitioner herein and also failed to repay the loan thereafter that loan loan was classified as equitable as Non Performing Asset



(NPA) on 30.06.2016. Further, the recovery proceedings under SARFAESI Act was initiated and the symbolic possession of the property was taken on 23.10.2017. While so, in order to evade the SARFAESI proceedings the respondents 2 to 4 clandestinely created sale agreement with the first respondent. Furthermore, as per Section 34 of SARFAESI Act, no civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter dealt by debts recovery tribunal or the appellate tribunal, as such suit is not maintainable liable to be rejected for want of jurisdiction. Therefore he prayed to allow this petition. Further to support his contention he relied the judgment of the supreme Court in the case of Jagdish Singh Vs Heeralal & others reported in 2014(1) CTC 652.

5. On seeing the facts of this case, it clearly reveals that fifth defendant/petitioner herein issued notice dated 20.09.2016 under 13(2) of SARFAESI Act, calling upon the defendants 1 to 3 to settle the issue within 60 days, despite receiving notice the said defendants not came forward to settle the issue, thereafter issued demand notice dated 28.02.2017. Subsequently, the symbolic possession of the property was taken on 23.10.2017. Further the first respondent filed writ petition before this Court seeking for prohibiting the revision petitioner herein to the invoke SARFAESI Act and the same was



dismissed by this Court. Furthermore, the fact reveals that the respondents 2 to 4 have already borrowed loan from the petitioner in the year 2014 thereafter which was classified as NPA on 30.06.2016, and recovery proceedings was initiated by the petitioner herein and the notice was issued to the respondent 2 to 4 by invoking Section 13(2) of SARFAESI Act. Thereafter suit was filed on 26.04.2018 which implies that after initiation of SARFAESI Act, based on unregistered sale agreement plaintiff/first respondent herein filed suit as if respondents 2 to 4 had entered into an sale agreement with him to sell the property. Furthermore, as per Section 34 of SARFAESI Act the Civil Court has not jurisdiction to entertain the suit after initiating SARFAESI Proceedings in the year 2016 but the said suit was filed in the year 2018 which clearly implies that in order to delay the recovery proceedings at instigation of respondents 2 to 4 the first respondent initiated the said suit which is vexatious and liable to be set aside. But the Trial Court without appreciating the above legal aspects dismissed I.A No.3 of 2021 in O.S No. 5098 of 2019. Hence, the order passed by the XIX Additional Judge, City Civil Court, Chennai, I.A No.3 of 2021 in O.S No. 5098 of 2019 is hereby set aside.



CRP No.415 of 2022

8. In view of the above and for the reasons stated above, this Civil

Revision Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

23.03.2023

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WEB COPY



CRP No.415 of 2023

T.V.THAMILSELVI, J.
pbl

CRP.No.415 of 2023

23.03.2023