IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 16.06.2023

Delivered On : 20.12.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.813 of 2021
and
CMP.No.6735 of 2021

S.V. Kumar ... Petitioner/Petitioner/1st Defendant

Vs.

Mr.V.Balasubramaniam ... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Judgment and decretal Order in I.A.No.9830/2016 in O.S.No.3286/2014 dated 04.01.2020 on the file of the learned II Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.P.Raghunathan
for Mr.T.S.Gopalan & Co.

For Respondent : Mr.M.Aravind Subramanian
Senior Counsel
for Ms.S.Alagammai

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal Order passed by the learned II Assistant Judge, City Civil Court, Chennai in I.A.No.9830/2016 in O.S.No.3286/2014, dated 04.01.2020.

2. The learned Counsel for the Revision Petitioner submitted that the Plaintiff in the Suit had filed the Suit seeking compensation of Rs.5,00,000/- from the Defendant.

3. The subject matter of the Suit is that the first Defendant/Bank had taken auction for recovery of the loan which was defaulted by the Defendants 2 to 5, who are the partnership firm and its partners. At the time of availing the loan, they had furnished a property in Chennai as their security for the loan. Apart from that, one of the partners had furnished the deed for the property at Vadavalli in Coimbatore as collateral security. Since they had not paid the dues and the loan was outstanding, the Bank Officials by way of abundant caution initiated auction over the property at Vadavalli in Coimbatore which was also shown as collateral security. Before initiating recovery proceedings by attaching the property of borrower at Coimbatore, the first Defendant Bank had applied for computer

generated copy from the REGENET i.e, internet website of the Department of Registration seeking encumbrance through the REGENET wherein all the particulars throughout the State of Tamil Nadu for any property are available. Therefore, the Bank believing the encumbrance obtained from the REGENET of the Registration Department, State of Tamil Nadu Government. Based on which, recovery proceedings were initiated by the first Defendant through the Debt Recovery Tribunal for the outstanding dues of the Defendants 2 to 5.

4. As an abundant caution, the first Defendant/Bank had issued public notice regarding the default of loan committed by the Defendants 2 to 5 and the attachment proceeding under this SARFAESI Act against the property furnished in Coimbatore as collateral security. Public notice was issued through the Indian Express and Dinamalar, Coimbatore Edition. After such public notice, the Recovery Officer attached to Debt Recovery Tribunal had initiated recovery proceedings. Based on which, publication was issued and after reasonable opportunities were given to the general public to raise objection. Since no objection were received by the Debt Recovery Tribunal, the Debt Recovery Tribunal through the recovery

officer/D6 had attached the property. Subsequent to the attachment, paper publication was issued based on which, before auction was conducted. In the open bid property attached was brought to sale by public auction. The successful bidder had purchased the property attached under the SARFAESI Act by paying Rs.65,00,000/- to the first Defendant. After such public auction was conducted, Recovery Officer/D-6 in O.S.No.3286/2014 had issued sale certificate.

5. The learned Counsel for the Revision Petitioner also submitted that the proceedings were initiated for attachment and sale of the property are similar to the proceedings followed under the Income Tax Act by the Income Tax Authorities. The same procedure is followed under the Recovery of Debts and Bankruptcy Act, 1993. Therefore, the conduct of the proceedings for recovery of loan for the default committed by the Defendants 2 to 5 who had borrowed loan from the first Defendant/Canara Bank and the auction initiated under the SARFAESI Act are proper. It is similar to the conduct of the attachment and sale of the property under the Income Tax Act for the default committed by the Income Tax Assessee. After issuing the sale certificate by the Recovery Officer/D-6, the successful

purchaser had approached the Sub Registrar, Vadavalli for registering the sale certificate, based on which, he has to seek possession of the property. When the successful purchaser approached the Sub Registrar, Vadavalli for obtaining the Encumbrance Certificate. Only then he came to know that the Defendants 2 to 5 who had availed the loan from the first Defendant/Bank, had sold the property to the Plaintiff in the Suit in O.S.No.3286/2014. Therefore, he was unable to register the sale certificate before the Sub Registrar, Vadavalli, Coimbatore District. Therefore, the purchaser had approached the Recovery Officer/D-6 and informed the same to the Recovery Officer, first Defendant/Senior Branch Manager of Canara Bank and also to the Plaintiff herein who was the original owner of the property.

6. The Plaintiff is a Chartered Accountant. He was shocked to learn about the entire proceedings. The Plaintiff was agitated and disappointed by the conduct of the Officials of the Bank and the recovery proceedings initiated by the Recovery Officer. The Plaintiff has not availed any loan from the Bank/first Defendant. While so, his valuable immovable property was brought to attachment and subsequently brought to sale by public auction, after issuing public notice in two language newspapers viz., Tamil

and English. It has caused damage and injury to the reputation of the Plaintiff.

7. The successful purchaser had approached the Recovery Officer of the Bank. Subsequently he had approached the Debt Recovery Tribunal and filed C.P.No.24/2013 to set aside the sale by public auction and refund the amount that was paid towards the purchase of the property at Coimbatore by him which does not belong to the defaulter, but in fact belong to the Plaintiff. The Plaintiff had also filed C.P.No.28/2013 before the Debt Recovery Tribunal seeking to set aside the sale as he is not at all a borrower and to raise the attachment. The first Defendant as Respondent in both C.P's filed before the Debt Recovery Tribunal filed counter disputing the contention of the Plaintiff and the purchaser of the property in the public auction stating that the first Defendant as Respondent in C.P had relied upon the REGENET copy for the encumbrance certificate of the property that was brought to sale. Believing it, the first Defendant had taken auction over the property and there is no lapse on his part. He had acted in good faith.

8. The learned Counsel for the Revision Petitioner also submitted

that the Plaintiff before filing the Suit had issued lawyer's notice dated 04.05.2013 to the Chairman, Managing Director of Canara Bank and the Senior Branch Manager of the first Defendant claiming damages for bringing the properties of the Plaintiff for attachment and sale in public auction, causing damage and injury to the reputation, who had individually not borrowed money from the first Defendant/Bank and for the cause of omission and commission committed by the first Defendant and its Officials. The learned Counsel for the Revision Petitioner submitted that the conduct of the first Defendant/ Branch Manager of the Bank and sixth Defendant/Recovery Officer of the Bank who had acted in good faith as per Section 33 of the Recovery of Debts and Bankruptcy Act, 1993 is extracted hereunder:

> ***"33. Protection of action taken in good faith._***
>
> *No suit, prosecution or other legal proceeding shall lie against the Central Government or against (the Presiding Officer of a Tribunal or the Chairperson of an Appellate Tribunal) or against the Recovery Officer for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or Order made thereunder."*

There cannot be any Suit instituted against the Defendants 1 and 6.

9. The learned Counsel for the Revision Petitioner also submitted

that the Plaintiff, in the Plaint had narrated all the facts fairly. Still, the Suit is not maintainable as the Officials does not have any *mala fide* intention against the Plaintiff in the Suit. It all occurred due to the lapses in the REGENET of the State Government Internet Services for which the Plaintiff cannot find fault with the Defendants 1 to 6.

10. The plaint averments proceeds stating that the Defendants 1 to 6 had colluded and played fraud on the Plaintiff. It was not so, the pleadings are contrary to the Provisions of Order VII Rule 11 of CPC. The word "negligence" and the word "*mala fide* intention" are contradictory one is opposite to the other. If the Plaintiff claims negligence on the part of one, then *mala fide* intention is not attracted. If the Plaint averments is to be accepted as *mala fide* intention on the part of the Defendants, negligence cannot be invoked. Therefore, in short, the cause of action stated in the Plaint does not give the cause of action as per Section 33 of Recovery of Debts and Bankruptcy Act, 1993.

11. The learned Counsel for the Revision Petitioner invited the

attention of the Court to Section 95 of Civil Procedure Code reads as follows:

"***95. Compensation for obtaining arrest, attachment or injunction on insufficient grounds-***

(1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,-

(a) it appears to the Court that such arrest, attachment or injunction was applied for on sufficient grounds, or

(b) the suit of the Plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the Court, and the Court may, upon such application, award against the Plaintiff by its Order such amount, (not exceeding fifty thousand rupees), as it deems a reasonable compensation to the defendant for the (expense or injury (including injury to reputation) caused to him):

Provided that a Court shall not award, under this Section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An Order determining any such application shall bar any Suit for compensation in respect of such arrest, attachment or injunction.

12. Order VII Rule 11 of Code of Civil Procedure is extracted hereunder:

*"**11. Rejection of Plaint-***

The plaint shall be rejected in the following cases:-
(a) where it does not disclose a cause of action;
…..
(d) where the Suit appears from the statement in the Plaint to be barred by any law;"

13. In support of his contention, the learned Counsel for the Petitioner relied on the following rulings:

(i) ***1956-41-L.W.69*** in the case of ***K.Syamalambal Vs. Namberumal Chettiar***. The relevant portion is extracted hereunder:

"*….. Thereupon the plaintiff filed an application under O.21, R.58, C.P.Code (E.A.No.130 of 1947) praying that the attachment may be raised because the properties belonged to her and did not belong to the judgment debtor. The defendant opposed the application on the ground that the sales under which the plaintiff claimed were intended really for the benefit of the judgment debtor who it was alleged was in possession of the properties.*

…..On 19th March 1948, the plaintiff brought the suit out of which this appeal arises, claiming the sum of Rs.10,300 as

damages for the unlawful attachment of her properties procured by the defendant.

......But he also found that the defendant cannot be said to have acted without reasonable or probable cause; nor could it be said that he was actuated by malice, and that in his opinion the attachment was made by the defendant in the honest belief that he was making use of the process of the Court in order to recover the moneys due to him.

.......Learned Counsel for the plaintiff-appellant contended that once the learned trial Judge had found that the attachment was not lawful, the plaintiff would be entitled to damages. Before this contention can be dealt with, it is necessary to discuss the basis of the Plaintiff's action. The claim obviously arises in tort. In our opinion the claim can fall under one of two heads, namely (1) trespass (2) abuse of civil process.

..... But there is another aspect of the matter, when the act of attachment complained of was done under judicial sanction, though at the instance of a party, the remedy is an action for abuse of process. The law is thus summed up by Mr.Ramaswami Ayyar in his hook on Torts. 4th Edn.:

"An arrest or attachment in execution before judgment is an act of the Court and therefore if a person procures it improperly against another he can be sued only in that form of

action. If, however, the act complained of is not authorised by the order or warrant of the Court, then the party who procures it can be sued for trespass without proof of damage or malice, e.g., seizure of property not specified in the warrant of attachment."

There are substantial points of distinction between an action for abuse of civil process and an action for trespass to property. In the former, which resembles an action for malicious prosecution, the plaintiff has to prove absence of reasonable and probable cause. But in an action for trespass the plaintiff has only to prove the trespass and it is for the defendant to prove a good cause or excuse. In an action for abuse of process the plaintiff has further to prove malice on the part of the defendant; but in an action for trespass this is not necessary."

(ii) ***(1977) 4 SCC 467 in the case of T.Arivandandam Vs. T.V.Satyapal and another***. The relevant portion reads as follows:

"*5........ From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he* *should exercise his power under Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled."*

(iii) ***1955-1-L.W-86 in the case of K.Rajammal Vs. B.Thirugnanamurthy***. The relevant portion is extracted hereunder:

10. The following is the substantial question of law that has been framed for consideration in this second Appeal:-

"Whether or not the element of malice is necessary to make a claim for compensation on the allegedly wrongful attachment?"

13.......... An action for damages arising from the conduct of the defendant in securing an order which is void, as being in excess of authority and which is allowed to operate prejudicially is maintainable even without proof of malice, as it is in effect an action in trespass. But if the defendant has procured an order of court even on insufficient grounds he is not answerable for damages merely by reason of the fact that he obtained such order from the Court without sufficient grounds or even falsely. It is because, damage is caused not by his own act but by an act of the Court and unless it is show that the Court was caused to act in that manner by reason of the malicious conduct of the defendant and there was no reasonable or probable cause for setting in motion the machinery of the civil Court, he would not *be liable as on an actionable wrong.*

20. On the basis of the above settled position, it has to be held in this case that the plaintiff has to prove malice before he is entitled to get any damages against the defendant. The attachment was effected by order of Court. He has to allege and prove that the appellant has initiated proceedings in a Civil Court and has obtained interim order of attachment without reasonable and probable cause and with a malicious intention. Only if the same is alleged and proved, the question of compensation or quantum of compensation deserves to be decided.

22. In Salmond & Heuston on the Law of Torts – Twentieth Edition (1993), the learned Authors say at page 411 thus:-

"No action will lie for the institution of legal proceedings, however destitute of reasonable and probable cause, unless they are instituted maliciously – that is to say, from some wrongful motive. Malice and absence of reasonable and probable cause must unite in order to produce liability. So long as legal process is honestly used for its proper purpose, mere negligence or want of sound judgment in the use of it creates no liability; and, conversely, if there are reasonable grounds for the proceedings (for example, the probable guilt of

an accused person) no impropriety of motive on the part of the person instituting these proceedings is in itself any ground of liability. Therefore, it is necessary to distinguish between honesty of belief and honesty of motive; the former is relevant to the question of reasonable and probable cause, the latter to the question of malice.

Malice means the presence of some improper and wrongful motive- that is to say, an intent to use the legal process in question for some other than its legally appointed and appropriate purpose. It can be proved either by showing what the motive was and that it was wrong, or by showing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor; for example, prosecuting a person for theft in order to deter others from committing similar depredations, the levying of blackmail, or the correction of the accused in respect of some unconnected matter, such as the obtaining of compensation or restitution from the accused (the civil law, not the criminal, being the appropriate instrument for this purpose). Again, a prosecution is not malicious merely because inspired by anger for the injury suffered, for this is one of the motives on which the law relies to secure the prosecution of offenders against the criminal law".

24........... The learned authors further say at page 48 that In the tort of malicious prosecution malice must be shown as an additional requirement of proof separate from absence of reasonable probable cause.

“Reckless” has both a subjective and an objective sense. In the former it connotes foresight of consequences without desire for them, but with either indifference or willingness to run the risk. In this sense it is bracketed with intention for purposes. In its objective sense recklessness is sometimes spoken of as gross negligence and connotes a serious failure to act reasonably. In this sense it is not bracketed with intention”.

The lower appellate Court has held that the appellant has acted recklessly and has initiated the earlier proceedings without ascertaining the real facts. 'Recklessness' is a species under the law of negligence. Malice will not come within the tort of negligence as held in Salmond on Jurisprudence - 12th Edition – 1966 -at pages 370 and 371.

(iv) ***(2000) 3 SCC 640*** in the case of ***Bank of India Vs. Lekhimoni Das and Others***. The relevant portion reads as follows:

“ 3........... Therefore, the trial Court came to the conclusion that the pledged articles belonged to the partnership

firm M/s. Bansidhar Baijnath and Bank of India is a mere pledge of those articles............

..........Compensation in the form of damage can be allowed if it appears that the injunction was made on insufficient ground and, therefore, the plaintiffs are not entitled to any damage as the defendants obtained an injunction order against them in the miscellaneous cases...........

9. In justifying a claim for damages apart from Section 95 CPC, a distinction has to be drawn between acts done without judicial sanction and acts done under judicial sanction improperly obtained. Proof of malice is not necessary when the property to a stranger, not a party to the Suit, is taken in execution but if the plaintiff bringing a suit for malicious legal process is a party to a suit, proof of malice is necessary. The Plaintiff must prove special damage. The claim of a person for damages for wrongful attachment of property can fall under two heads – (1) trespass, and (2) malicious legal process. Where property belonging to a person, not a party to the suit, is wrongly attached, the action is really one grounded on trespass. But where the act of attachment complained of was done under judicial sanction, though at the instance of a party, the remedy is an action for malicious legal process. In the case of malicious legal process of the Court, the plaintiff has to prove absence of a probable and reasonable cause. In cases of *trespass the plaintiff has only to prove the trespass and it is for the defendant to prove a good cause or excuse."*

(v) ***2011 (3) CTC 153*** in the case of ***N.Ravindran Vs. Ramachanran***.

The relevant portion reads as follows:

10. The well settled position is that while considering the Application under Order 7, Rule 11 CPC., Court is not required to take into consideration the defence set up by the Defendant in his Written Statement or other documents. The question whether Plaint discloses any cause of action and whether it is barred by any law is to be decided by looking at the averments contained in the Plaint itself and not the defence set up in the Written Statement. While considering the Application, the strength or weakness of the case of the Plaintiff is not to be examined. It is fairly well settled that the Court has to find out from the allegations made in the Plaint itself and not beyond it as to whether any vexatious or frivolous litigation has been initiated by the Plaintiff. The Court cannot take into account materials beyond the Plaint to declare that the case of Plaintiff is frivolous or is barred by any law."

14. The first Defendant in the Suit had filed the Petition under Order VII Rule 11 CPC before the learned Second Assistant Judge, City Civil Court which was dismissed as per Order dated 14.12.2015 stating that the

Plaintiff had not sought compensation from the Bank. Therefore, the first Defendant on his individual capacity filed second Petition under Order VII Rule 11 CPC.

15. The learned Counsel for the Revision Petitioner also invited the attention of this Court to the Plaint filed for impleading Defendants 1 to 6. At that stage the designation of the Bank as Senior Manager alone was mentioned for the first Defendant and subsequently, the name of the Senior Manager, who was the Manager holding the post of Senior Manager on the relevant point of time was included in the Plaint by way of amendment. Long cause title also shown as he was a Senior Manager. Subsequently, second Petition was filed by the Revision Petitioner under Order VII Rule 11 CPC. The second Petition was also dismissed by the learned Assistant Judge – IV holding the post of the Second Assistant Judge by Order dated 04.01.2020. Aggrieved by the same, the first Defendant had approached this Court by filing this Civil Revision Petition seeking to set aside the Order of dismissal of the Petition in I.A.No.9830/2016 in O.S.No.3286/2014 dated 04.01.2020.

16. The learned Counsel for the Revision Petitioner submitted that the Plaintiff/Respondent herein had fairly narrated the entire events and facts. As per Section 95 of CPC, Order VII Rule 11 (a) and (d) of CPC and Section 33 of Recovery of Debts and Bankruptcy Act, 1993, for the official conduct of the Officer dealing with the Recovery of Debts and Bankruptcy Act, the Officials acting in good faith cannot be made liable. Also, it is the contention of the learned Counsel for the Petitioner that the first Defendant had retired from service of the Bank. At the post-retirement age, the Petitioner is in old age cannot be forced to face the rigors of the trial for the lapses committed by the REGENET service of the State of Tamil Nadu in which he is fair and honestly believed to be true and acted on good faith. Therefore, the Officials are protected for their Official function. By the statute, there cannot be a Suit for compensation for the act done in good faith by the Officials of the Bank and the Debt Recovery Tribunal. Therefore, the learned Counsel for the Petitioner seeks to set aside the Order of dismissal of learned Assistant Judge – IV in additional charge as learned second Assistant Judge, City Civil Court dismissing the I.A.No.9830/2016 in O.S.No.3286/2014 dated 04.01.2020.

17. In the light of the above rulings, the learned Counsel for the Revision Petitioner sought to set aside the dismissal order in I.A.No.9830/2016 in O.S.No.3286/2014 dated 04.01.2020.

18. The learned Senior Counsel for the Respondent vehemently objected to the line of the argument of the learned Counsel for the Revision Petitioner stating that the Plaintiff in the Suit is the Chartered Accountant by profession. He had not borrowed money by furnishing his property as security with the first Defendant/Bank. While so, for no fault of his, his property is the valuable immovable property within the local limits of Sub Registrar, Vadavalli, Coimbatore was brought to attachment and subsequently sale by public auction as though the Plaintiff had committed default of the loan obtained from the first Defendant. It is the contention of the learned Senior Counsel for the Respondent that the Plaintiff had clearly fairly narrated the entire facts leading to the Plaintiff seeking the relief of compensation of Rs.5,00,000/-. It is the further contention of the learned Senior Counsel for the Respondent that the Defendants 2 to 5 had availed loan from the first Defendant/Bank. At the time of availing loan, the Defendants 2 to 5 i.e., second Defendant is a partnership firm and

Defendants 3 to 5 are partners of the firm. They had furnished the property, valuable property at Adyar in Chennai as security for the loan and mortgaged the same in favour of the Bank. Apart from that, accepting the contention of the Revision Petitioner as first Defendant, Defendants 2 to 5 had furnished additional security as collateral security which is a property at Coimbatore. If what had been stated by the learned Counsel for the Revision Petitioner is to be accepted, the Bank on coming to know that the Defendants 2 to 5 are the partnership firm and partners had committed the default of the loan. What had been committed by the first Defendant/Manager of the Bank to initiate auction on the property had mortgaged with the Bank. They had not taken steps to recover the loan by bringing property mortgaged with the Bank which was the valuable property in Adyar in Chennai which could have easily brought to public auction which could have fetched the amount towards the loan instead of this property which is faraway in Coimbatore. Therefore, the Plaintiff had sought relief against fraud played by Defendants 1 to 6. Instead of taking action against the mortgaged property with the Bank, the Bank had avoided the mortgaged property by selling in public auction for which the Bank had not gathered details like encumbrance and connected documents of the property for which the first Defendant's submission is to be accepted. The Defendants 2 to 5 had to be provided collateral security. Therefore, it is the duty of the Bank Manager to verify with the Sub Registrar instead relying on the REGENET on the Tamil Nadu State. That is why, the Plaintiff had stated that the Bank Officials had not acted fairly and honestly. They wanted to protect the property, the Defendants 2 to 5 had valuable property in Chennai which has to be brought to the public auction which could have easily settled the loan. Therefore, blaming the REGENET will not hold good. The other submission is that the Bank Officials had acted in good faith and there was no collusion and fraud played on the Plaintiff, is not acceptable. It is to be proved through the evidence in Court of law. It is at the risk of the Plaintiff and the Plaintiff is ready to take the risk. Only on the full-fledged trial, the pleadings of the Plaintiff had to be proved by the Plaintiff, the Plaintiff is ready to take the risk.

19. If what had been argued by the learned Counsel for the Revision Petitioner is to be accepted, the entire plaint will be rejected. The Plaintiff will be left high and dry for the sufferings of the Plaintiff for no fault of the Plaintiff. The Plaintiff is a Chartered Accountant, a man of repute, for no

fault of his, his property was brought to public auction by issuing notice in local daily in Tamil and English having circulation in Coimbatore. The Plaintiff was declared as the successful bidder of the property in public auction for whom the sixth Defendant had issued sale certificate, after declaring him as the successful bidder in the public auction. Only when the successful purchaser of the property in the public auction had approached the Sub Registrar, Vadavalli to register the sale certificate, he came to know that the property is in the name of the Plaintiff. As the Plaintiff had purchased from the Defendants 2 to 5, during the sale deed registered by the Sub Registrar, Vadavalli. The Plaintiff himself had approached Canara Bank and the Recovery Officer/sixth Defendant seeking to set aside the sale in C.P.No.28/2013. Also, the purchaser of the property filed C.P.No.24/2013 seeking to set aside the sale and to refund the purchased money paid by him at the time of sale by public auction. In these two Petitions, the first Defendant as Respondent had filed counter denying the contention of the Petitioner/Plaintiff as Petitioner in C.P.No.28/2013 and the successful purchaser of the property in the public auction as Petitioner in C.P.No.24/2013. It is the contention of the first Defendant that the first Defendant had acted in good faith and sale cannot be set aside, even after filing of the Petition to set aside the sale by the public auction by the purchaser of the property as well as by the Plaintiff herein who had not availed loan before the first Defendant/Bank. That is why, the Plaintiff had stated in the Plaint that the first Defendant colluded with the Defendants 2 to 5 to protect their valuable property at Adyar in Chennai which was mortgaged to the first Defendant/Bank which was not at all brought to the recovery proceeding either by attachment or by sale in public auction. Even after the Plaintiff had approached the Defendants1 to 6, first Defendant had expressed that he had acted in good faith and expressed apologies. Further submitted that the Plaintiff had issued lawyer's notice to the Chairman and Managing Director of the Canara Bank for the collusion, fraud and lapses committed by the Bank Officials in bringing the property of the Plaintiff who had no fault in loan from the first Defendant/Bank for which he had suffered mental strain, physical stress and injury suffered in his reputation also. Therefore, seeking compensation. The Officials of the Bank up to the level of Chairman and Managing Director never offered any apologies to the negligence and *mala fide* of the officials of the Bank. Therefore, for the Plaintiff having suffered depression due to the damage to his reputation and standing in the society was running from pillar to post to protect his property. Unnecessarily, spending time and money for no fault of the Plaintiff. The Plaintiff had to seek compensation for the damages and injuries suffered to his reputation as well as to his health because of the auction initiated by the Defendants 1 to 6 in collusion. The action of the first Defendant and the sixth Defendant for protecting the property of the Defendants 2 to 5, valuable property in Adyar at Chennai is protected till date. That is why, he had used the words “fraud and collusion” among the Defendants. Therefore, the Suit has to necessarily be proceeded. It cannot be drawn up under Order VII Rule 11 CPC by invoking Provisions to reject the Plaint under Order VII Rule 11 CPC. The submission of the learned Counsel for the Revision Petitioner that the Provisions of Section 33 of Recovery of Debts and Bankruptcy Act, 1993 and Order VII Rule 11 (a) and (d) CPC will not be applicable to the facts of this case. The cause of action was clearly narrated in this case. Further, at the time of admission in Civil Revision Petition, this Court had not granted interim stay. The Plaintiff had let in evidence and the trial had commenced. Therefore, the Petition has to be dismissed since the trial had commenced.

20. It is the further submission of the learned Senior Counsel that the

first Defendant is shy in facing trial as he is a Senior Manager. Only due to his conduct, Plaintiff suffering damages to the reputation from pillar to post running to his valuable immovable property.

21. The learned Senior Counsel also invited the attention of this Court to Section 3 of Indian Evidence Act and Section 3 (22) of General Clauses Act stating that what had been submitted by the learned Counsel for the Petitioner is not at all acceptable. The Plaintiff has not shared the out-come of the Suit, but he knows cause of action, accepting the course and passing the decree in his favour. That cannot be rejected out-right. It is for the Plaintiff to prove that the Defendants 1 to 6 had colluded and played fraud. The entire details cannot be pleaded in the plaint. He had claimed briefly. Already he had issued notice to the Chairman and the Managing Director and narrated the entire facts. The Bank Officials up to the Chairman and the Managing Director did not make apologies for their lapses.

22. In support of the submission of the learned Senior Counsel for the Respondent relied on the following Rulings:

(I) ***2008 (1) CTC 471 in the case of S.V.Subramaniam Vs. M/s. Cypress Semi Conductor***. The relevant portion is extracted hereunder:

7. (f) The Tribunal did not choose to see that the properties which are situated at Pune, Bombay, Bangalore, etc and at different parts of Andhra Pradesh, the cost of the same will not be less than Rs.70 to 100 Crores, but they colluded and playing fraud on the Tribunal, the total property was purchased without the auction by the appellant-S.V.Subramaniam for a petty sum of Rs.2 Crores. The Tribunal did not follow the procedure as stipulated under the Debts Recovery Tribunal (Procedure) Rules, 1993.

Fraud on Court:-

(a) Section 29 of the 1993 Act reads as follows:

"Section 29: Application of certain provisions of Income tax Act.-- The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate proceedings)Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income-tax:

Section 29 of the 1993 Act stipulates that the provisions of the second and third schedules to the Income-Tax Act, 1961

(43 of 1961) and the Income Tax (Certificate Proceedings) Rules, 1963 will apply with necessary modifications, as if the said provisions and the Rules referred to the amount of debt due under the Act instead of the Income Tax. In view of Section 29 of the 1993 Act and Rule 9 pf Second Schedule to the Income Tax Act, 1961, which is applicable, wherein, while jurisdiction of the civil Court has been barred, under proviso to the said Rule 9, it has been made clear that such bar is not applicable in respect of a suit which can be filed in Civil Court if order has been obtained on fraud.

(c) In State of Andhra Pradesh and another Vs. T.Suryachandra Rao, reported in 2006 (1) L.W. 547 (SC), the Supreme Court observed as follows:

"10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party

makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v Savitri Devi and Ors. (2003 (8) SCC 319 = 2004-2-L.W.70).I"

As the plaintiff cannot be made remedy-less, we are of the view that the learned single Judge has not committed any error while rejecting the application preferred by the appellant/fourth defendant under Order 7 Rule 11 C.P.C. to reject the plaint.

(II) ***CRP(PD)No.4128 of 2017 in the case of Natesan Poosari Vs. K.M.Sundaramoorthy***. The relevant portion reads as follows:

“33. From the above discussions it is therefore clear that the suit filed by the respondents 1 to 5 cannot be rejected at the

threshold without going to trial where either parties have to prove the contentions raised by them. In the circumstances I do not find any infirmity in the order passed by the learned Additional District Judge, Namakkal in I.A.No.38 of 2016 in O.S.No.164 of 2015."

(III) ***2020 (17) SCC 260*** in the case of ***Shakthi Bhog Food Industries Ltd. Vs. The Central Bank of India and anr***. The relevant portion reads as follows:

> *15. That Senior Manager of the defendant No.2 vide letter dated 19.09.2002 had informed that everything was done according to rules and the matters need not to be pursued any further and thereafter the plaintiff sent another letter dated 3.06.2003.*
>
> *19. That reply to the above noted notice was sent by the defendants through Sh. Sanjeev Kumar Gupta, Advocate, vide letter dated 23.12.2003 wherein averments relating to the excess charges were denied and it was stated that the interest was charged on DD/cheques as per Central Officer Circular No. C09495; 233 upto 01.12.1999 and thereafter as per Circular No. CO/OPR/SCHGS/CIR/LET/20002001 dated 18.08.2000." (emphasis supplied) Again, in paragraph 28, it is stated as follows:*

"28. That the cause of action to file the suit accrued in favour of the plaintiff and against the defendants when the illegal recoveries were noticed and letter dated 21.07.2000 was sent to the defendants to clarify as to how the interest was being calculated and recovered and on various other dates when the letters were sent to the defendants with request for refund of the excess amounts charged and on 9.7.2001 when assurance for proper calculation and refund was conveyed to the plaintiff and on 8.5.2002, 12.7.2002 and 22.9.2002 when requests were again made to settle the matter on 19.9.2002, 3.6.2003 and their cause of action arose on 28.12.2003 where the legal notice was served upon the defendant and on 23.12.2003 when the reply to the notice was received and finally on 08.01.2005 when the legal notice for rendition of accounts was served upon the defendants and the cause of action still subsists as the accounts have not been rendered so far nor the excess amount charged has been refunded by the Defendants."

3. We have considered the factual position in the present case, which is similar to the facts in the companion appeal. Therefore, for the reasons stated in the judgment in companion appeal arising from SLP(C) No. 30209/2017, even this appeal should succeed on the same terms. Accordingly, this appeal is also allowed and the impugned judgment and order of the trial

Court, the first appellate Court and the High Court in second appeal are set aside and the plaint is restored to the file of the trial Court to be disposed of on the same terms as indicated in the companion appeal (arising from SLP(C) No. 30209/2017). There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

(iv) ***Civil Appeal Nos.8972-8973 of 2014*** in the case of ***Bank of Rajasthan Ltd. Vs. VCK Shares & Stock Broking Services Ltd.*** The relevant portion reads as follows:

"39. On a plain reading of the provisions, the conclusion reached was that Section 17 of the RDB Act bars the jurisdiction of the Civil Court only in respect of applications filed by the bank or financial institution. This provision did not bar the jurisdiction of the Civil Court to try a suit filed by the borrower. There was also an absence of provisions in the Act for transfer of suits and proceedings except Section 31, which relates to pending suit proceedings by a bank or financial institution for recovery of debt.

40.......If the DRT were to find in the bank's favour, the defendant would have to approach the Civil Court in respect of such excluded counterclaim, as the DRT does not have jurisdiction to try an independent claim against the bank/financial institution.

43. We must note at the threshold itself that there are no restrictions on the power of a Civil Court under Section 9 of the Code unless expressly or impliedly excluded. This was also reiterated by a Constitution Bench of this Court in Dhulabhai vs. State of Madhya Pradesh *11. Thus, it is in the conspectus of the aforesaid proposition that we will have to analyse the rival contentions of the parties set out above. Our line of thinking is also influenced by a Three-Judges Bench of this Court in Dwarka Prasad 1968 SCR (3) 660. Agarwal (D) By LRs and Anr. v. Ramesh Chander Agarwal and Ors. 12 where it was opined that Section 9 of the Code confers jurisdiction upon Civil Courts to determine all disputes of civil nature unless the same is barred under statute either expressly or by necessary implication and such a bar is not to be readily inferred. The provision seeking to bar jurisdiction of a Civil Court requires strict interpretation and the Court would normally lean in favour of construction which would uphold the jurisdiction of the Civil Court.*

45. We are thus of the view that there is no provision in the RDB Act by which the remedy of a civil suit by a defendant in a claim by the bank is ousted, but it is the matter of choice of that defendant. Such a defendant may file a counterclaim, or may be desirous of availing of the more strenuous procedure established under the Code, and that is a choice which he takes *with the consequences thereof.*

47. We may also refer to the judgment of this Court in Transcore (supra) opining that the DRT, being a Tribunal and a creature of the Statute, does not have any inherent power which inheres in Civil Courts such as Section 151 of the Code.

58. Now coming to the factual scenario of the case. The fact is that the proceedings under the RDB Act in any case have reached a culmination with satisfaction of the claim and, thus, no proceedings instituted by the appellant are pending before the DRT. As for the suit, there is no question of a counterclaim or a transfer or any other manner other than trial of the suit instituted by the respondent. In fact, some part of the claim of the bank was not even allowed and some adjustments were directed to be made. Even thereafter so far as any other claims of the respondent are concerned, the DRT in terms of the order dated 19.05.2003 permitted the respondent to pursue the remedy in accordance with law - which can only mean the civil proceedings. Thus, the suit is liable to proceed accordingly. "

Therefore, the learned Senior Counsel submitted that the Petition has to be dismissed.

23. The learned Senior Counsel has furnished the daily status of the proceedings of the Court of the learned Second Assistant Judge in

O.S.No.3286/2014 wherein it is shown as P.W-1 was examined, affidavit filed, examination in chief under Ex.A-1 marked and subsequently the case records had been sent to the Adhoc Judge for recording evidence and the same is pending for further marking of documents. Therefore, when the trial had commenced, the Petition is not maintainable and it has to be dismissed. Otherwise, the Plaintiff left high and dry, he had suffered the injury and depression and to take medication which are document to be filed at the time of trial. That is why, he had asked compensation of Rs.5,00,000/-.

24. If the submission of the learned Counsel for the Revision Petitioner is to be accepted that the the first Defendant act honestly and fairly, he himself only initiate auction through the Debt Recovery Officer, Tribunal for raising the attachment of the wrong person. He had not done so. In spite of the Respondent/Plaintiff had purchased the property on filing C.P.No.28/2013 to set aside the sale, the first Defendant filed counter resisting the same. Therefore, it is not honest and fairness, it is contrary to the same. The first Defendant is aware of facing the trial, he has to bring out the truth. The Plaintiff has to be provided an opportunity which is

mortgaged to protect his reputation in a Civil Court. Therefore, this is not a fit case to reject the Plaint for which case the auction initiated by the Plaintiff to protect reputation and standing in a society will be left high and dry without any relief. Only in full-fledged trial, what had been argued by the learned Counsel for the Petitioner will be put to test by adducing evidence. Therefore, the Order passed by the learned IV Assistant Judge holding additional charge of Second Assistant Judge dismissing the I.A.No.9830/2016 in O.S.No.3286/2014 dated 04.01.2020 need not be interfered by this Court exercising powers under Article 227 of Constitution of India. Further, the learned Senior Counsel for the Respondent submitted that this is the second Petition, earlier Petition filed by the first Defendant was dismissed by the learned Second Assistant Judge in I.A.No.5395/2015, dated 14.12.2015 and he had not preferred any Revision. Only after commencement of trial, this Petition had been filed and therefore, it is not maintainable. As per the latest ruling of the Hon'ble Supreme Court ***Civil Appeal Nos.8972-8973 of 2014 (Bank of Rajasthan Ltd., Vs. VCK Shares & Stock Broking Services Ltd)***, the Revision Petition is not maintainable. The Order of the learned IV Assistant Judge full additional charge of learned II Assistant Judge dismissing the I.A.No.9830/2016 in

O.S.No.3286/2014 dated 04.01.2020 is to be confirmed in the light of the latest Judgment of the Hon'ble Supreme Court in ***Civil Appeal Nos.8972-8973 of 2014 (Bank of Rajasthan Ltd., Vs. VCK Shares & Stock Broking Services Ltd)***

25. Point For Consideration:

Whether the Order passed by the learned IV Assistant Judge in full additional charge of learned Second Assistant Judge, City Civil Court dismissing the I.A.No.9830/2016 in O.S.No.3286/2014 dated 04.01.2020 is to be set aside?

26. On perusal of the Order passed by the learned Second Assistant Judge in I.A.No.5395/2015, dated 14.12.2015, Order passed by the learned IV Assistant Judge holding additional charge of learned II Assistant Judge in I.A.No.9830/2016 in O.S.No.3286/2014 dated 04.01.2020 and on perusal of the Plaint averments, the submission of the learned Counsel for the Petitioner herein cannot at all be accepted.

27. As pointed out by the learned Senior Counsel for the Respondent,

the first Defendant had not initiated an action over the mortgaged property in Adyar at Chennai in the loan availed by the Defendants 2 to 5. Instead of the additional amount as an abundant caution, the first Defendant having taken action over the property far away from Chennai, Coimbatore, within the jurisdiction of Sub Registrar, Vadavalli is found unacceptable which had given raise to the filing of the Suit. As rightly pointed out by the learned Senior Counsel for the Respondent, the Plaintiff had issued notice to the officials of the Bank up to the level of Chairman and Managing Director. They had not expressed apologies for the lapses committed by them. It is true that a person who is a Chartered Accountant having a reputation was made to run from pillar to post for no fault of his and who came to know that the property was brought to attachment and brought to sale by public auction through the publication of notice in Tamil Daily and English Daily. Subsequent to which, the property was brought to public auction. Only when the property was allotted to the successful purchaser who went to register the sale certificate before the Sub-Registrar, Vadavalli he came to know about the property being in the name of the Plaintiff. He had informed the Plaintiff that he is the purchaser of the property and requesting the Plaintiff to move the appropriate Authorities to set aside the sale by public auction.

28. As rightly pointed out by the learned Senior Counsel for the Respondent, when the Plaintiff had approached the first Defendant for appropriate action to recall the public auction and raise the attachment. The Defendant expressed his helplessness and contended that he had acted in good faith which made Plaintiff to file appropriate Petition before the Debt Recovery Tribunal. Also, purchaser of the property had filed C.P.No.24/2013 before the Debt Recovery Tribunal seeking refund of the amount paid by him. As rightly contended by the learned Senior Counsel for the Respondent/Plaintiff, the first Defendant as Respondent in C.P.Nos.24 & 28/2013 filed by the Plaintiff as well as the purchaser of the property had resisted the same which had resulted in unnecessary sufferings, strains and mental agony affecting the health of the Plaintiff resulted in his undertaking medical treatment. Not only strain, the Plaintiff is alleged to have suffered damage to his reputation. He has lost his mental peace by running from pillar to post.

29. As rightly contended by the learned Senior Counsel for the

Respondent, the first Petition was filed by the first Defendant in the Suit under Order VII Rule 11 CPC in I.A.No.5395/2015 was dismissed by the learned Second Assistant Judge against which the first Defendant had not preferred any Civil Revision Petition. This is the second Petition preferred by the first Defendant which was also dismissed by the learned IV Assistant Judge holding full additional charge of learned II Assistant Judge in I.A.No.9830/2016 in O.S.No.3286/2014, dated 04.01.2020.

30. Also, as rightly pointed out by the learned Senior Counsel for the Respondent, as per the case status uploaded, it is shown that the Suit is part-heard at the stage of marking documents of the Plaintiff. The trial in the Suit had commenced. At this stage, the Plaint cannot be rejected. Usually, there was no stay, at the time of admission of Civil Revision Petition. Under those circumstances, when the Officials of the Bank up to the Chairman and the Managing Director had not expressed their apologies for the lapses committed by them. Also as rightly pointed out by the learned Senior Counsel for the Respondent before initiating proceedings regarding attachment and sale of the property at Vadavalli, it is the duty of the first Defendant to check with the Sub Registrar concerned. He had not

done so and he cannot blame the REGENET for their lapses. The word, “the first Defendant had acted in good faith” is comparative term. As per the duty of the Manager, he should have obtained the documents regarding the property at Vadavalli before bringing it to attachment and sale, he ought to have verified the documents at the office of the Sub Registrar, Vadavalli. He had not done so. Again, as rightly pointed out by the learned Senior Counsel for the Respondent, after the plaint is rejected on the application of the first Defendant, the Defendants 2 to 5 who had colluded with the first Defendant go scot free. As per the Plaint averments, the Defendants are individually and collectively are liable to pay damages as compensation to the Plaintiff.

31. The reliance placed by the learned Counsel for the Revision Petitioner on Section 33 of the Recovery of Debts and Bankruptcy Act, 1993 will not hold good in the light of the ruling of the Hon'ble Supreme Court cited by the learned Senior Counsel in ***Civil Appeal Nos.8972-8973 of 2014 (Bank of Rajasthan Ltd., Vs. VCK Shares & Stock Broking Services Ltd).*** Therefore, in the light of the ruling cited by the learned Senior Counsel for the Respondent in ***Civil Appeal Nos.8972-8973 of***

2014 (Bank of Rajasthan Ltd., Vs. VCK Shares & Stock Broking Services Ltd) and in the light of the reported decision of this Court in ***CRP(PD).No.4128/2017 dated 16.08.2019 (Natesan Poosari Vs. K.M.Sundaramoorthy)*** relied by the learned Senior Counsel for the Respondent are squarely applicable to the facts of this case. In the Bank of Rajasthan's case, the Hon'ble Supreme Court had stated that the Order VII of CPC is not acceptable, the trial shall proceed. Therefore, the facts of the Rajasthan's case is squarely applicable to the facts of this case.

32. The ruling of this Court in ***CRP(PD).No.4128/2017 dated 16.08.2019 (Natesan Poosari Vs. K.M.Sundaramoorthy)*** is the case wherein HR&CE Officials who had acted in that case also applicable to the facts and circumstances of the case under Order VII Rule 11 CPC having been dismissed by the learned Judge. It does not warrant any interference by this Court while exercising powers under Article 227 of Constitution of India.

33. As per the aforesaid rulings cited by the learned Senior Counsel for the Revision Petitioner, when the trial had commenced, it is not a

ground to dismiss the Petition under Order VII Rule 11 of CPC. The Petition under Order VII Rule 11 of CPC can be filed at any stage and the commencement of the trial is not a bar to consider the Petition under Order VII Rule 11 CPC. Accepting the same, also this Court is not inclined to interfere with the Order passed by the learned IV Assistant Judge holding full additional charge of the learned II Assistant Judge, City Civil Court dismissing I.A.No.9830/2016 in O.S.No.3286/2014 dated 04.01.2020. Here, the submission of the learned Senior Counsel for the Respondent is accepted in the facts of this case. All the facts narrated in the Plaint gives a presumption against the first Defendant in the Suit. Instead of taking action over the property that was mortgaged with the Bank, valuable property within Chennai at Adyar. The first Defendant had taken an alternative action against another property which is far away from Chennai. Therefore, the averments in the Plaint that the Defendants colluded to protect the property in Chennai and had taken action over the property which is far away from Chennai which was already sold by the Defendants 2 to 5 to the Plaintiff. Under those circumstances, the contention of the learned Senior Counsel for the Respondent is found acceptable regarding either negligence or *mala fide.* Therefore, they are put to test only during trial. As rightly pointed out by the learned Senior Counsel for the Respondent, if Order VII Rule 11 CPC is allowed, this Court exercising powers under Article 227 of Constitution of India cause injury and damage to the reputation of the Chartered Accountant, who is also a senior citizen will be left high and dry without any relief. In cases of this nature, it is for the trial Court to proceed with trial to its logical conclusion based on the evidence collected during trial. That cannot be preempted by the Court under Article 227 of Constitution of India. Therefore, even accepting the submission of the learned Counsel for the Revision Petitioner that commencement of trial is not a bar to consider the Petition under Order VII Rule 11 of CPC. This Court is not inclined to set aside the Order of the learned IV Assistant Judge holding full additional charge of II Assistant Judge, City Civil Court in dismissing the Petition in I.A.No.9830/2016 in O.S.No.3286/2014. In short, this Court placed reliance on the latest Judgment in the Bank of Rajasthan and rejected the ruling cited by the learned counsel for the Petitioner in the facts as narrated by the learned Senior Counsel for the Respondent that the first Defendant had not acted fairly and by initiating auction against the valuable property mortgaged to the first Defendant by the Defendants 2 to 5 at Chennai. Also, as rightly pointed out by the learned Senior Counsel for the Respondent, before initiating auction, the Bank Manager ought to have verified by collecting the details including relevant documents regarding the property with the Sub Registrar. Under these two circumstances, the rulings cited by the learned Counsel for the Petitioner and the submission of the learned Counsel for the Petitioner that the Plaint averments had not given a cause of action is rejected.

34. In the light of the Bank of Rajasthan's case which is similar to this case, direction under Section 33 of the Recovery of Debts and Bankruptcy Act, 1993 will not be a bar and it is to be put to test only during trial.

35. In the light of the above discussion, Point for Consideration is answered against the Revision Petitioner and in favour of the Respondent.

36. The Order of the learned IV Assistant Judge holding full additional charge of II Assistant Judge, City Civil Court in dismissing the I.A.No.9830/2016 in O.S.No.3286/2014 dated 04.01.2020 is confirmed.

In the result, this ***Civil Revision Petition is dismissed*** as having no merits. Consequently, connected Miscellaneous Petition is closed.

20.12.2023

dh
Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order

To

1. The II Assistant Judge,
   City Civil Court,
   Chennai.

2. The IV Assistant Judge,
   City Civil Court,
   Chennai.

3. Section Officer,
   V.R.Section,
   High Court, Madras.

SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
CRP.No.813 of 2021

20.12.2023