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Application No.3549 of 2022 in CS.No.97/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.08.2023

PRONOUNCED ON : 25.09.2023

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Application No.3549 of 2022

in

C.S.No.97 of 2022

Punjab National Bank
Rep. By Its Authorised Officer And Chief
Manager, 150 Luz Church Road,
Mylapore,
Chennai 600 004.

...

Applicant / 5th Defendant

Vs.

1.R.Lalitha
2. M.Kamakshi
3.R.Badrinarayanan
4.S.Karthikeyan
5.K.Ramya
6.S.Namasivayam
7.N.Nagalakshmi
8.P.V.Sriram
9.S.Anthony Micheal
10.S.Martina A.Micheal
11.M/S.RARE Realtors
A Partnership Firm Rep.by Its Partner
S.Muralidharan
12.D.Paranthaman

... Respondents 1to10/ plaintiffs 1 to 10



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13.M.Jayanthi

14.S.Muralidharan

... Respondents 11 to 14/ Defendants 1 to 4

PRAYER: Application filed under Order XIV Rule 8 of O.S. Rules read with

Order 1 Rule 10(2) of CPC read with 151 CPC, praying to reject the plaint on the ground that civil court jurisdiction is ousted in terms of Section 34 of SARFAESI Act and Section 18 of Recovery of Debts and Insolvency Act.

For Applicant : Mr.M.L.Ganesh

For Respondents : Mr.K.V.Babu for M/S.Dipthi Monoth.A

ORDER

This Application has been filed seeking to reject the plaint on the ground that civil court jurisdiction is ousted in terms of Section 34 of SARFAESI Act and Section 18 of Recovery of Debts and Insolvency Act.

2. The averments of the plaint in brief:

The applicant/5th defendant is the Bank. Since the loan account of the 11th respondent/ 1st defendant is classified as an NPA as per extant RBI guidelines, the loan account has been migrated to Circle Sastra South in terms of the internal policy of the bank for proper resolution. The present suit is filed under the provisions of Section 18 of the Recovery of Debts Due to Banks and Financial



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Institutions Act, 1993 and Section 34 of the SARFAESI Act, 2002. If the statutory remedies are available under a fiscal statute, the exercise of jurisdiction before the Civil Court jurisdiction is barred. The Debt Recovery Tribunal is vested with powers and the respondents/ plaintiffs could have very well raised all these points before the Debt Recovery Tribunal. The plaintiffs cannot seek an authentic direction from the 2nd defendant to execute and register a sale deed in his favour without paying the sale consideration for the schedule-mentioned property. Since the 2nd defendant has already parted away the Schedule 'B' mentioned property after conveying an undivided share of land in favour of the 3rd and 4th defendants, the plaintiffs cannot sustain the relief sought in the plaint. Despite knowing that a valid mortgage has been created in favour of the applicant/ 5th defendant, respondents 1 to 10/ plaintiffs 1 to 10 have filed this suit without seeking any relief as against the applicant/ 5th defendant.

2.1. In fact, the plaintiffs set the law in motion by filing a SARFAESI application in S.A.No.272 of 2019 by challenging the possession notice dated 04.05.2019 issued under Section 13(4) of the SARFAESI Act before the Debt Recovery Tribunal-II, Chennai and the same was dismissed on 30.06.2022 by



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observing that the applicant has a valid mortgage over the schedule 'B' mentioned property.

2.2. Since the plaintiffs themselves have applied for regularization of authorized construction before the Housing and Urban Development Department, they cannot question the ownership of mortgagors in respect of 'B' Schedule property. In view of the above-mentioned reason, the plaint filed by the plaintiffs should be rejected.

2.3. In support of his above contention, the learned counsel for the applicant / 5th defendant has relied on the following citations:

Sl. No	Citations submitted by the applicant/5 th defendant's counsel	Reported in
1	Sau Rajani Vs. Sau Smita and Another	2022 SCC Online SC 1016
2	Tajunissa Vs. Vishal Sharma	2022 SCC Online Del 18
3	J.Sekar Vs. Indian Overseas Bank	2019 SCC Online Mad 13368
4	State Bank of India Vs. G.Moorthi	2019 SCC Online Mad 863
5	Mardia Chemicals Ltd. Vs. Union of India	Manu/SC/0323/2004

3.The counter of the respondents1-10 /plaintiffs is in brief:

The applicant/ 5th respondent is a secured creditor. The respondents 1 to 10 / plaintiffs 1 to 10 have filed a suit for the relief of declaration to declare the sale deed dated 02.02.2017 executed by the 12th respondent/ 2nd defendant in favour



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of respondents 13 & 14/ defendants 3 & 4 as null and void and consequently direct the 12th respondent/ 2nd defendant to execute and register a sale deed in respect of 'B' schedule property in favour of respondents 1 to 10/ plaintiffs 1 to 10 herein. These reliefs can be granted only by a Civil Court of Competent Jurisdiction and the same cannot be agitated before the Debt Recovery Tribunal under Section 17 of the SARFAESI Act. The respondents 1 to 10 / plaintiffs 1 to 10 have not challenged the validity of the mortgage executed in favour of the applicant/ 5th defendant bank by respondents 13 & 14. Section 34 of the SARFEASI Act and Section 18 of the Recovery of Debts Due to Banks Act very clearly and categorically state that the ouster of civil jurisdiction is only in respect of the matters which the Debt Recovery Tribunal is empowered to decide and not the matters that do not fall within the purview of the said legislation.

3.1. On 04.05.2019 the officers of the applicant's bank /5th defendant came to the premises and affixed a possession notice on the wall of the security/lumber room. On enquiry, respondents 1 to 10/ plaintiffs 1 to 10 came to know that the 12th respondent/ 2nd defendant had fraudulently conveyed the 161 sq. ft. of undivided share, which was originally earmarked for security/lumber room, in



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favour of respondents 13 & 14 / defendants 3 & 4 and they have in turn mortgaged the same with the applicant / 5th defendant. During that course, they created fraudulent records to reflect as though a flat measuring 815 sq.ft has been put on the slit floor by the 12th respondent in respect of 161 sq. ft. undivided share over the appurtenant land.

3.2. Subsequent to the notice dated 04.05.2019, on 23.05.2019 the respondents 13 & 14/ defendants 3 & 4 with the help of rowdy elements, hurriedly constructed a hollow block wall covering the space of 815 sq.ft which is inclusive of the security/lumber room and was made to believe that the particular built up area belongs to the respondents 13 & 14/ defendants 3 & 4 for which facilities were already availed from the applicant / 5th defendant by the respondents 13 & 14 / defendants 3 & 4. The construction erected was objected by the respondent 1 to 10/plaintiff 1 to 10 and a police complaint was also lodged. However the respondents 13 & 14 / defendants 3 & 4 were able to complete the construction on a war footing basis and a Commissioner was appointed on the application filed by the plaintiffs.

3.3. After the possession notice was issued, the respondents 1 to 10 /



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plaintiffs 1 to 10 were compelled to challenge the same on the ground that no valid mortgage could have been created by the respondents 13 & 14 / defendants 3 & 4.

The said application was dismissed on 30.06.2022. In the said order the Debt Recovery Tribunal has observed that the title claimed by the plaintiffs is beyond the scope and jurisdiction of the Tribunal. Further, it is stated that the validity of the sale deed dated 02.02.2017 executed by the 12th respondent in favour of the respondents 13 & 14 cannot be decided by the Tribunal. Before the Tribunal, the applicant/5th defendant bank vehemently contested that respondents 1 to 10 / plaintiffs 1 to 10 should file a civil suit.

3.4. On coming to know about the fraud committed by the respondents 13 & 14/ defendants 3 & 4, the applicant/ 5th defendant bank itself has filed a criminal complaint against them on 28.10.2021 before the Commissioner of Police and it was registered in FIR No.236/21 on 17.12.2021. After completion of investigation, charge sheet was filed and the case was taken on file in CC.No.2853/2022 on the file of the learned Chief Judicial Magistrate, Egmore. The applicant/ 5th defendant has been blowing hot and cold with an intention to recover the loan which was disbursed based on fraudulent documents and a super structure which never



existed. Merely because 'B' schedule property has been mortgaged with the applicant/ 5th defendant bank, the respondents 1 to 10/ plaintiffs 1 to 10 cannot be precluded from seeking recovery relief before this Court. The applicant/ 5th defendant has not made out any grounds for rejection of the plaint and hence this application should be dismissed.

4. Heard the submission of both sides counsels in their pleadings, supported by relevant documents.

Discussion:

5. The respondents 1 to 10 / plaintiffs 1 to 10 have filed a suit seeking various reliefs against the respondents 11 to 14 / defendants 1 to 4 and the applicant/ 5th defendant including the relief of declaration of the sale deed in respect of 161 sq.ft of undivided share in the land of the plaintiffs apartments is sham and nominal and it does not bind upon the plaintiffs and a direction against the 2nd defendant to execute a sale deed in respect of the undivided share to an extent of 161 sq.ft in favour of the plaintiffs and also for mandatory injunction to remove the illegal construction put up therein and for permanent injunction not to



encumber or alienate the suit property and hand over the original title deeds along with relief of damages.

6. The long and short story of the suit filed by the plaintiffs is that their undivided shares in the suit property measuring an extent of 161 sq.ft is meant for lumber room and over which no one has any individual right. The plaintiffs are the owners of a residential apartment complex building to an extent of 2775 sq.ft of land area. The flat development was undertaken by the 12th respondent/ 2nd defendant. Despite the an undivided land area of 161 sq.ft was allotted to be utilized for common purpose like security / lumber room, the 12th respondent/2nd defendant had conveyed the said property in favor of the respondents 13 & 14/ defendants 3 & 4.

7. It is alleged by the plaintiffs that the purchasers namely defendants 3 &4 had created a mortgage in respect of the said property in favor of the applicant/5th defendant bank for availing loan. It is further submitted that fraudulent records have been created as though a flat measuring an extent of 850 sq.ft had been built on over the common area of 161 sq.ft along with a portion in the appurtenant land. Since the loan availed by the defendants 3 & 4 has not been paid properly, the



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applicant/5th defendant has initiated SARFEASI proceedings and taken possession of the suit property. The Respondents 1 to 10/ plaintiffs 1 to 10 have filed an application under Section 17 of the SARFEASI Act by challenging the proceedings initiated by the applicant/ 5th defendant bank. The property has been purchased by the defendants 3 & 4 as partners of the 1st defendant firm. Since the SARFEASI proceedings have been initiated and possession has been taken under the said Act, the plaintiffs have filed an application under Section 17 of the SARFEASI Act by challenging the possession notice dated 04.05.2019 and the same was dismissed by the Debt Recovery Tribunal by holding that the plaintiffs who were applicants in the said proceedings did not claim ownership over the petition mentioned property and the respondents 1 to 10 / plaintiffs 1 to 10 who were unsuccessful before the Debt Recovery Tribunal had filed this suit seeking certain reliefs of declaration and other connected reliefs.

8. The applicant bank who is the 5th defendant has claimed that suit itself is not maintainable in view of bar under Section 17 of the SARFEASI Act. The applicant/ 5th defendant bank had opted to give financial assistance to the respondents 13 & 14 / defendants 3 and 4 for purchasing the property from the



12th respondent / 2nd defendant. Since the SARFEASI proceedings have been initiated and possession notice has also been issued against the respondents 1 to 10 / plaintiffs 1 to 10, the respondents 1 to 10 / plaintiffs 1 to 10 have found no other option except to file an application under Section 17 of the SARFEASI proceedings and challenged the possession notice.

9. The Debt Recovery Tribunal in its order dated 30/5/2022 had chosen to dismiss the application filed by the plaintiffs by holding that the plaintiffs do not claim ownership over the subject matter which has been offered as security to the bank and they only claimed right to use and for which they have to seek remedy elsewhere and not before the Tribunal. Subsequently the respondents 1 to 10 /plaintiffs 1 to 10 have filed this suit claiming the above reliefs. Having known that the application filed by the respondents 1 to 10 /plaintiffs 1 to 10 before the Debt Recovery Tribunal was dismissed as not maintainable, the applicant / 5th defendant bank had once again taken a stand that the remedy for the respondents 1 to 10 /plaintiffs 1 to 10 can be only made under the SARFEASI proceedings and not by way of filing a separate suit.

10. The respondents 1 to 10 /plaintiffs 1 to 10 being the flat owners of a land



which was developed by the 12th respondent / 2nd defendant they could have only an undivided common share in the land. In the common area which has been allotted for the common use no one can claim the right of ownership.

11. As per the case of the plaintiffs, the land area comprised in the suit property is inclusive of the area allotted for the common use over which the 2nd defendant did not have any right. It is alleged that the defendants have chosen to purchase the property from the 2nd defendant who did not have any right of ownership. The defendants 3 & 4 had availed loan by mortgaging the said property also in favour of the applicant/ 5th defendant bank and availed financial assistance. So far as the respondents 1 to 10 /plaintiffs 1 to 10 are concerned, they alleged that the applicant/ 5th defendant bank has also joined with the defendants 2 to 4 to materialize their fraudulent transaction.

12. In support of his contention Mr.M.L.Ganesh, learned counsel for the applicant / 5th defendant has cited the judgment of the Division Bench of the Hon'ble Supreme Court in ***Jagadish Singh Vs. Heeralal and ors*** reported in ***AIR 2014 SC 371***, wherein it has been held that the suit is not maintainable in view of



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the bar under Section 34 of SARFEASI Act. The later judgment of the Division

WEB COPY Bench of the Hon'ble Supreme Court rendered in the case of **Sree Anandhakumar Mills Ltd Vs. Indian Overseas Bank and Ors** dated 03.05.2018 reported in **MANU/SC/0638/2018** had also approved and followed the earlier position of law held in **Jagadish Singh** (cited supra).

13. The Hon'ble Full Bench of the Supreme Court in the later judgment rendered in ***The Authorized Officer, State Bank of India Vs. Alwyn Alloys Pvt. Ltd and Ors (AIR 2018 SC 2721)*** had disapproved the approach of the High Court, which warranted a full fledged trial for a matter which has been adjudicated before the Debt Recovery Tribunal and confirmed by the Debt Recovery Appellate Tribunal. It was held that the High Court has not analyzed the efficacy of the concurrent finding of facts recorded by the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal. The said judgment is applicable to the facts of its own facts.

14. In the case on hand even the Debt Recovery Tribunal has made an observation that if the claim of the respondents 1 to 10/ plaintiffs 1 to 10 over the suit property is joint possession, that can be dealt only by a civil court and not by



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the Debt Recovery Tribunal. But the plaintiffs in this case not only claim their entitlement of joint possession but also a joint title over the suit property. The applicant/ 5th defendant bank has got a favorable order before the Debt Recovery Tribunal on making a submission that the plaintiffs can only maintain a suit, and now he has taken a different stand when the plaintiffs have chosen to file the present suit.

15. It is the consistent submission of Mr.K.V.Babu for Ms.Dipthi Munoth.A, learned counsel for the respondents 1 to 10 / plaintiffs 1 to 10 that the bar under Section 34 of the SARFEASI Act cannot totally bar the jurisdiction of the civil court if the remedy available under the Special Act is not adequate. The attention of this court was drawn to the judgment of the Hon'ble Division Bench of the Supreme Court in held in *Sau Rajani Vs. Sau Smita and another (2022 SCC Online SC 10106)*. By citing the above judgment it is claimed that the reliefs claimed by the plaintiffs 1 to 10 is beyond the scope of the Act and hence the civil court jurisdiction cannot be barred and the suit is maintainable before the civil Court.

16. A direct reference was made by this Court in *State Bank of India Vs.*



G.Moorthi and another reported in **2019 SCC OnLine Mad 863** with regard to

bar under Section 34 of the SARFEASI Act and in the said case it is held that the bar is only in respect of any matter which the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal would have jurisdiction. In the said case the plaintiff has come out with a case for specific performance and the court has held that the plaintiff can maintain the suit only before the civil court and not before the Debt Recovery Tribunal. It is worthwhile to extract the relevant paragraphs of the above judgment which reads as under:

“9. A reading of Section 34 would show that what is barred under the said provision are only proceedings, in respect of any matter which a Debts Recovery Tribunal or Appellate Tribunal, would have jurisdiction. The second limb of the Section only prohibits grant of an order of injunction, in respect of any action taken in pursuance of power conferred under the Securitisation Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

...

12. From the above pronouncement of the Hon'ble Full Bench of this Court, it is clear that the bar enacted that any provision which creates a bar on the jurisdiction of a Civil Court must be construed strictly and it would apply only to proceedings, which are completely covered by the bar. I have already extracted both Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, Act 2002. The language of the both the provisions do not cover a dispute between third parties relating to specific performance of an agreement of sale. It may sometime happen that the jurisdiction will over lap and in deciding the question of specific performance, the Civil Court may also be compelled to decide on the validity of certain encumbrances created by the agreement vendor. Such question cannot be said to be



barred by the provisions of the two enactments referred to above.

.....

20. I have already adverted to the main prayer in the suit, which is one for specific performance. It cannot be granted by the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal. Therefore, I am of the considered opinion that the present suit cannot be said to be barred either under Section 17 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, or under Section 34 of SARFAESI Act. "

17. So far as the allegation of fraud is concerned, especially when the fraud has been alleged against the bank itself, it is consistently held by both the Hon'ble Supreme Court and the High Court that the plaintiff's remedy lies only before the Civil Court. In this regard, it is relevant to refer the judgment of the Hon'ble Full Bench of the Supreme Court held in ***Mardia Chemicals Ltd and Ors Vs. Union of India (UOI) and Ors*** reported in ***(2004) 4SCC 311***. In the recent judgment of the High Court of Delhi rendered in the case of ***Tajunissa and Another Vs. Vishal Sharma and others*** reported in ***2022 SCC Online Del 18***, it is held that if a fraud is alleged on the part of the secure creditor, the recourse to ordinary civil remedies cannot be denied to the plaintiffs.

18. In the case in hand the respondent 1 to 10 / plaintiffs 1 to 10 have alleged that the applicant/ 5th defendant bank knowing pretty well that there was no



building on the site on the date when the loan was sanctioned, had proceeded to sanction loan to the defendants 3 and 4. In fact a criminal action has also been initiated by the applicant / 5th defendant bank against its own staff by alleging that they had done something fishy by being hand in glove with the defendants 3 to 4. Though it is claimed by the applicant / 5th defendant bank that the criminal proceedings has been quashed, some shortsighted action has been shown on the part of the bank in sanctioning the loan.

19. It is right on the part of the applicant / 5th defendant bank to claim a plaintiff can not be allowed to take shelter under an intelligent drafting of a plaint, which is otherwise not maintainable. But the plaintiffs have made allegations and produced materials to make out a *prima facie* case that there was collusion between the bank officials and the defendants 3 & 4 in getting financial assistance for purchasing the suit property from the 2nd defendant. The various facts revolving the suit can be proved before the Court only through an exhaustive trail, which is possible before the Civil Court and not before the Tribunal.

20. Even if the mortgage made in favour of the applicant / 5th defendant bank by the defendants 3 & 4 is valid in the eye of law, that will not deprive the



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plaintiffs from claiming their undivided share and interest in the suit property which according to them has been attached to their respective residential flat in the apartment complex. So in all possibilities, I find no reason to reject the plaint on the basis of the averments and allegations made in the plaint. The plaintiffs have established the case and there are also materials available to show that the remedy which has been sought by the plaintiffs before the civil court cannot be effectively addressed before the Debt Recovery Tribunal. So I am of the considered view that the bar under Section 34 of SARFAESI Act cannot be extended to the nature of the claim raised by the applicant/5th defendant in the present suit.

In the result, the Application No.3549 of 2022 stands **dismissed**.

25.09.2023

jrs

Index : Yes/No
Speaking Order : Yes / No
Internet : Yes/No
Neutral : *Yes/No*



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R.N.MANJULA, J.,

jrs

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