A.No.4490 of 2022 in
C.S.No.277 of 2021

N.Sathish Kumar, J.

This application has been filed to reject the plaint under XIV Rule 8 of O.S. Rules read with Section 34 of thesecuritization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 read with Order 7 Rule 11 CPC.

2. This application has been taken out by the 11th defendant, who is said to have advanced money to the first defendant's husband. The application is mainly taken out on the ground that the bank has already initiated proceedings under section 34 of the SARFAESI Act and therefore, there is a clear bar under the SARFAESI Act to entertain any suit in respect of the action taken by the bank.

3. It is well settled that if any of the party, who is also a party to the SARFAESI Act, files a suit questioning the action of the bank or a tribunal, such suit is absolutely barred under section 34 of SARFAESI Act. Similarly, any action or any measure under SARFAESI Act also

cannot be questioned in a civil Court as per Section 34 of the SARFASI Act. At the same time, merely because the bank has initiated some action against one of the defendant is not corked for the bank to contend that no one can establish his right in the Civil Court. If a suit is filed claiming partition of the suit property and the allegations in the plaint clearly indicate the suit properties belonged to one Ranganathan and the said Ranganathan died as a bachelor. At the time of his death, it is stated that other brothers and sister are very much alive. Such being the position, as per the law of succession all the class II legal heirs are entitled to succeed the property of the said Ranganathan. However, it appears that suppressing the factum of other brothers and sisters, one of the sister of the said Ranganthan, viz., Saraswathi alone executed a document in the name of Settlement Deed in favour of her son one Manikandan, who is the principal borrower with the bank. The said settlement deed filed along with the plaint documents indicate as if the said Saraswathi, mother of the first defendant alone came to be entitled to the property of her brother Ranganathan.

4. The allegation in the plaint itself clearly indicate that such a stand of Saraswathi appears to be legally incorrect. She cannot be the

absolute owner of the property, particularly when other siblings are very much available at the relevant point of time. Therefore, when the documents based on which the so called advancing of the loan amount has been paid itself is out of fraudulent representation and fabrication, this Court is of the view of the bank cannot take shelter under section 34 of the SARFAESI Act to contend that the Civil Court has no jurisdiction to Act in the matters merely because the action has been initiated against one of the party. The plaintiff is neither a party nor a guarantor and no proceedings has been initiated against him. Such being the position, when a person is claiming right, they cannot be forced to go to tribunal to agitate his right and the right of the Civil Court cannot be taken away merely on the bar contained under section 34 of SARFAESI Act.

5. This Court in **Arasa Kumar and another Vs.Nallammal and others reported in 2004 [4] CTC 261**, after extensive analysis of all the provision, held as follows :

> "30. Section 9, C.P.C. and bar of jurisdiction created under relevant Sections in respect of the Co-operative Societies Act, Arbitration and Conciliation Act,

1996 and also Section 29 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and under Rule 40 of the Income Tax (Certificate Proceedings) Rules, 1962 an also the bar under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 were all considered by this Court and the Apex Court as referred supra and now, it is manifestly clear that the power under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act is not absolute and the same is subject to certain restrictions, they are:

(1) that the parties, who filed the suit must be a party to the liabilities created in favour of the secured creditor,

(2) the disputes between the parties could be resolved under the provisions of the Act itself,

(3) that if the claim made by the parties is outside the jurisdiction of the Debts Recovery Tribunal or the appellate tribunal or any action taken or to be taken under this Act and also under the Recovery of Debt due to Banks and Financial Institutions Act, 1993 and the dispute raised

by the parties can not be adjudicated by any of the tribunal or authority, created under the act or under any other Act, the right of the parties to approach the Civil Court for appropriate relief cannot be deprived and taken away.

31. Admittedly, in our case, the petitioners have filed the suit for partition including the item, in respect of which, the 3rd respondent taken out proceedings to bring the same for sale without the intervention of the Court and till the rights of the parties are determined by the Civil Court, and the Civil Court alone could decide and determine the rights of the parties in respect of their respective claims in the suit for partition, the 3rd defendant, though a secured creditor, cannot bring the property for sale by invoking the bar under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act or the bar under Section 13 of the Act. The Court below has not taken into consideration of these aspects and as a matter of fact, these salient features were not brought to the notice of the Court below, which resulted

in passing of an erroneous order, which is liable to be set aside."

6. Similarly, the Apex Court in **Nahar Industrial enterprises Limited Vs. Hong Kong & Shanghai Banking Corporation** reported in **[2009 [8] SCC 646]** has held as follows :

"The liabilities and rights of the parties have not been created under the Act. Only a new forum has been created. The banks and the financial institutions cannot approach the Tribunal unless the debt has become due. In such a contingency, indisputably a civil suit would lie. There is a possibility that the debtor may file preemptive suits and obtain orders of injunction, but the same alone, in our opinion, by itself cannot be held to be a ground to completely oust the jurisdiction of the civil court in the teeth of Section 9 of the Code. Recourse to the other provisions of the Code will have to be resorted to for redressal of his individual grievances. It is also difficult to accept the contention of leaned counsel for the banks that the civil

> court's jurisdiction is not in consonance with the Act. We do not find the same to be correct. On the ground of inconsistency in the procedures contained in the two Acts alone, the jurisdiction of the civil court cannot be said to have been ousted."

7. Therefore, considering the above settled position, this Court is of firm view that bar under section 34 of SARFAESI Act will arise only if the relief sought before the Civil Court challenging any of the measures initiated before the Tribunal. Therefore on the ground that some of the documents executed by the persons, who have no absolute title in the property, on the contrary other third parties right also involved in the property, under the pretext of taking action on borrower on the basis of the defective title, the bank cannot contend that the party cannot have a right to go to Civil Court to establish their right. If such a narrow interpretation is given for the section 34 of the SARFAESI Act, the right of innocent persons will be affected and taken away. Infact, they will be debarred from establishing their right over the property, which is their constitutional right. Hence, merely on the basis of the Section 34 of the SARFAESI Act and Section 18 of RDDB Act and on the basis of some

action in a suit, which is filed to establish their right in the property, the right of the plaintiff over the suit property cannot be taken away.

8. Further, while deciding an application to reject the plaint, primarily, the Court has to look into the allegations in the plaint and not the allegations in the statement and the documents filed by the defendant. Hence, I do not find any merits in this application.

9. Accordingly, this application is dismissed.

17.11.2023

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