



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 15.05.2023
Pronounced on: 24.05.2023

+

RFA 386/2023 & CM APPL. 24956/2023 (Stay)**VISHAL AGGARWAL & ANR.****..... Appellants**

Through: Mr. Rahul Gupta and Mr. Shekhar
 Gupta, Advocates.

versus

UNION BANK OF INDIA & ORS.**..... Respondents**

Through: Mr. Hari Kishan, Advocate for
 respondent No.1.
 Mr. S.A. Khan and Mr. Shadab
 Khan, Advocates for respondent
 No.5/Central Bank of India.

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. The Appellants are aggrieved by the impugned Judgement & Decree dated 10.04.2023 (*'Impugned Judgment'*) passed by ADJ-04 (East), Karkadooma Courts, New Delhi in Suit No.2977/2016 (Old No. 1093/2015) titled as *Vishal Aggarwal & Anr Vs Union Bank of India & Ors.*
2. Learned Trial Court, vide the impugned Judgment was pleased to dismiss the 'Suit for declaration, Permanent injunction & other reliefs' filed by the Appellants against the Respondents.



BRIEF FACTS RELEVANT FOR THE PRESENT APPEAL ARE AS FOLLOWS:

3. Respondent Nos.11 & 12 (husband and wife) were the absolute owners of Property bearing No. R-82/5, Ramesh Park, Laxmi Nagar, Delhi-110092 built on plot of land measuring 147.5 sq. yards, consisting of ground, first, second, third, fourth and the terrace floor (*'Suit Property'*). Respondent Nos.8, 9 & 10 are the proprietorship firms of Respondent No.11.
4. The father of the Appellants, Late Sh. Rajinder Kumar Aggarwal purchased the Ground floor of the suit property from Respondent Nos. 11 & 12 by virtue of the Agreement of Sale, registered Special Power of Attorney, registered General Power of Attorney, Affidavit, Money receipt, Registered Will, undertaking, Possession Certificate all dated 30.06.1993 for a total sale consideration of Rs.3,25,000/-. Since then, the Appellants through their father were running their business activities of sale of garments from the ground floor of the suit property.
5. Respondent Nos.11 & 12 had revoked the registered GPA executed in favour of Late Sh. Rajender Kumar Aggarwal vide revocation/cancellation deed dated 07.02.1995. The disputes between the parties led to the filing of CS (OS) No. 1788/1995 titled as *Mrs. K.P Nambiar Vs Rajender Aggarwal & Ors.* Later, the said suit was compromised between the parties therein vide compromise decree dated 23.04.1997. As per the compromise entered between the parties, respondent Nos.11& 12 executed registered sale deeds dated 29.01.1998 qua the ground floor of the suit property in favour of the Appellants.



6. Respondent Nos. 8-12, as principal borrowers and guarantors, took various loans and availed credit facilities from Respondent Nos. 1-7 banks by mortgaging the suit property, the details of which are as follows:

<i>S.No.</i>	<i>Name of Bank</i>	<i>Details of equitable mortgage and title deeds.</i>	<i>Details of property under equitable mortgage.</i>
1.	Union Bank of India	25.03.1991 on deposit of title deeds dated 11.12.1990	Entire suit property.
2.	Dena Bank	21.09.1998 and 11.07.2000 on deposit of title deeds dated 13.12.1993 and 05.07.2000	First Floor, Second Floor and Third Floor of the suit property.
3.	Canara Bank	02.12.1999 and 03.12.1999 on deposit of title deeds dated 13.12.1993 and 22.12.1997	Entire suit property
4.	Vijaya Bank	16.05.2006 on deposit of title deed dated 28.03.2006	First Floor
5.	Central Bank of India	Loan transaction of the year December 2006 and March 2007	First Floor and Second Floor
6.	Oriental Bank of Commerce	28.07.2008/30.07.2008 on deposit of title deeds dated 27.03.2006	First and Second Floor
7.	Punjab & Sind Bank	22.01.2009	Entire suit property.

7. It is the contention of the Appellants that they were bonafide purchasers of the ground floor of the suit property and they were



enjoying peaceful uninterrupted possession of the same since the year 1993.

8. All of a sudden, the Appellants received a notice dated 05.10.2007 under Section 13(4) of "The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002" ('**SARFAESI Act, 2002**') in respect of the suit property. The Appellants immediately approached the learned Debt Recovery Tribunal in SA No. 08/2008 titled as *Vishal Aggarwal Vs Union Bank of India*. The said objections were dismissed by the learned DRT vide Judgement dated 04.05.2012. The Appellant preferred an Appeal bearing No. 450/2012. During the pendency of the said Appeal, the learned DRT allowed the Original Application filed by Respondent No.1. In view of the same, the learned Counsel appearing for Respondent No.1/Bank stated that they are not interested in proceeding against the suit property under SARFAESI Act. In view of the statement made by Respondent No.1/Bank, the Appeal filed by the Appellants was dismissed as withdrawn vide order dated 25.08.2014.
9. Respondent banks in the meanwhile initiated the recovery proceedings and obtained Recovery certificates from learned DRT for recovery of their dues qua different floors. Respondent No.1 attached entire third and fourth floor of the suit property. Respondent No.2 bank obtained Recovery Certificate No. 78/2014 dated 29.04.2005 against the ground floor of the suit property and the Appellants received attachment notices with respect to ground floor of the suit premises from the learned DRT. The Appellants



filed their objections before the learned DRT. Respondent No.7 obtained an order dated 23.04.2010 under Section 14 of the SARFAESI Act and the bank has sealed the entire ground floor, first floor and second floor of the suit property on 23.04.2011. The Appellants approached this Court in WP(C) No.4910/2011 titled "*Vishal Aggarwal & Anr. Vs. Punjab & Sind Bank*" and hence vide judgment dated 15.07.2011, the ground Floor premises were ordered to be de-sealed and possession was handed over to the Appellants.

10. In these circumstances, the Appellants filed 'Suit for declaration, Permanent injunction & Other reliefs' before this Court with the following prayers:

- i) *Decree of declaration in favour of the plaintiffs and against the defendants and to declare that plaintiffs are the lawful owners in possession of entire Ground Floor premises in property No.R-82/5, Ramesh Park, Laxmi Nagar, Delhi- 110092 on the basis of sale deeds (two no's) both dated 29.01.1998 executed in their favour to be read with title documents all dated 30.06.1993 including Agreement to Sell, Special Power of Attorney, General Power of Attorney, Money Receipt, Undertaking, Possession Certificate, Will, affidavit etc. and the plaintiffs are not liable to any debts to defendants no.1 to 7 banks;*
- ii) *Decree of declaration that the equitable mortgage dated 25.03.1991 claimed to have been executed in favour of defendants no.1 bank (Union Bank of India) by deposit of title deeds dated 11.12.1990 in respect of the entire suit property is illegal and void and not binding upon the plaintiffs;*
(In alternative and without prejudice to relief no. ii)
- iii) *Decree of mandatory injunction in favour of the plaintiffs and against the defendant no.1 bank (Union Bank of India) to apply and follow the principle of Marshalling as envisaged in section 56 of Transfer of Property Act, 1882, for satisfaction of its mortgage debt dues against defendants no. 8 to 12 . by selling all the other floors in the suit property except the ground floor premises in the suit property under the lawful ownership and*



possession of the plaintiffs vide registered sale deeds dated 29.01.1998 .

- iv) Decree of declaration that the equitable mortgage(s) dated 21.09.1998 and 11.07.2000 claimed to have been executed in favour of defendants no.2 bank (Dena Bank) on deposit of title deeds dated 13.12.1993 and 05.07.2000 in respect of the First, Second and Third Floor of the suit property is illegal and void and not binding upon the plaintiffs;*
- v) Decree of declaration that the equitable mortgage(s) dated 02.12.1999 and 03.12.1999 claimed to have been executed in favour of defendants no.3 bank (Canara Bank) on deposit of title deeds both dated 13.12.1993 and 22.12.1997 in respect of the entire suit property is illegal and void and not binding upon the plaintiffs;*
- vi) Decree of declaration that the equitable mortgage dated 16.05.2006 claimed to have been executed in favour of defendants no.4 bank (Vijaya Bank) on deposit of title deed dated 28.03.2006 in respect of the First Floor of the suit property is illegal and void and not binding upon the plaintiffs;*
- vii) Decree of declaration that the equitable mortgage dated 28.07.2008/30.07.2008 claimed to have been executed in favour of defendants no.6 bank (Oriental Bank of Commerce) on deposit of title deed dated 28.03.2006 in respect of the First Floor and Second Floor of the suit property is illegal and void and not binding upon the plaintiffs;*
- viii) Decree of declaration that the equitable mortgage dated 22.01.2009 claimed to have been executed in favour of defendants no.7 bank (Punjab & Sind Bank) in respect of the entire suit property is illegal and void and not binding upon the plaintiffs;*
- ix) Decree of permanent injunction in favour of the plaintiffs and against the defendants, thereby restraining the said defendants, their agents, employees, servants, assigns etc from causing any kind of interference and obstruction in the peaceful possession and ownership of the plaintiffs in respect of entire Ground Floor premises in property bearing No.R-82/5, Ramesh Park, Laxmi Nagar, Delhi-110092;*
- x) Cost of the suit may kindly be awarded in favour of the plaintiffs and against the defendants no.1 to 12 in the suit;*

11. Respondent Nos. 1-7 filed their respective written statements raising objections qua the maintainability of the present suit. It is the case of Respondent Nos.1-7 that the suit filed by the Appellants was barred



by *res judicata* as the Appellants filed objections raising similar grounds before the learned DRT and the said objections were rejected by the learned DRT.

12. The learned Tribunal heard the parties on maintainability of suit and vide the impugned Judgment, was pleased to dismiss the same as not maintainable.
13. Being aggrieved by the said impugned Judgment, the Appellants preferred the present Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

14. Mr. Rahul Gupta, learned counsel for the Appellant submits that the Appellants are bonafide purchasers of the ground floor of the suit property by virtue of the registered sale deed dated 29.01.1998. The said registered sale deeds were executed in pursuance of the Judgment dated 23.04.1997 passed by this Court in CS (OS) No.1788/1995 based on the compromise entered between the parties therein. Respondent Nos.11 and 12 committed fraud in collusion with Respondent Nos.1-7/Banks by creating forged and fabricated title documents. Learned counsel for the Appellants further submits that the alleged mortgage deed executed by Respondent Nos.2 to 7 were after the execution of the registered sale deed dated 29.01.1998, hence they have no right to obtain or enforce any orders of attachment of the ground floor of the suit property. It is further the submission of Mr. Rahul Gupta, learned counsel for the Appellants that Respondent no. 1/Bank is not entitled or justified to enforce any orders of attachment and sale of the ground floor premises unless the said Respondent no. 1/Bank has first taken steps for sale of the



remaining four floors of the suit property to recover its alleged outstanding dues against Defendant nos. 8 to 12 in the principles of Marshalling as envisaged under Section 56 of the Transfer of Property Act, 1882. Learned counsel pointed out that the total recovery claimed by Respondent No.1 in the sale proclamation notice dated 15.03.2023 is Rs.1,87,59,530/- while the reserve price fixed for the first floor, second floor, third floor and fourth floor is Rs.2.40 crores. Hence respondent No.1 can recover its dues from the auction of the other floors sans the ground floor.

15. Based on these submissions, learned counsel for the Appellants prays for setting aside of the impugned Judgment.

SUBMISSION ON BEHALF OF RESPONDENTS

16. Mr. Hari Kishan, learned counsel for the Respondents submits that the suit filed by the Appellants is barred by Section 18 of the Recovery of the Debts and Bankruptcy Act, 1993 as well as Section 34 of the SARFAESI Act. Learned counsel further submits that the Appellants raised similar grounds in the objection filed before the learned DRT and vide order dated 17.07.2015, the learned DRT was pleased to dismiss the said objections. The Appellants never challenged the said Order and hence it attained finality. Learned counsel draws the attention of this Court to order dated 23.04.2015 passed by this Court in the suit filed by the Appellants. This Court granted time to the Appellants to withdraw the objections filed before the learned Tribunal. Even though, the Appellants moved an application for withdrawal of the objection, learned DRT did not permit the Appellants to withdraw the said objections and decided



the same on merits vide the order dated 17.07.2015. In view of the same, the learned counsel for the Appellants submits that the suit filed by the Appellant was barred by *res judicata*.

17. With these submissions, learned counsel for Respondent No. 1 prays for the dismissal of the present Appeal.

LEGAL ANALYSIS

18. This Court had heard the arguments advanced by learned counsel for the parties and perused the records and examined the Judgments relied upon by the parties.

19. At the outset, it is expedient to examine the question, whether the civil courts have jurisdiction to entertain the disputes falling within the jurisdiction of DRT as per Sections 17 and 18 of the Recovery of Debts and Bankruptcy Act, 1993, which read as follows:

“Section 17

Jurisdiction, powers and authority of Tribunals. — (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(1A) Without prejudice to sub-section (1), —

(a) the Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain and decide applications under Part III of Insolvency and Bankruptcy Code, 2016.

(b) the Tribunal shall have circuit sittings in all district headquarters.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

(2A) Without prejudice to sub-section (2), the Appellate Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain



appeals against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016.

Section 18

Bar of jurisdiction.—On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution in relation to the matters specified in section 17:

Provided that any proceedings in relation to the recovery of debts due to any multi-State co-operative bank pending before the date of commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 under the Multi-State Co-operative Societies Act, 2002 shall be continued and nothing contained in this section shall, after such commencement, apply to such proceedings.”

20. Section 34 of the SARFAESI Act bans the jurisdiction of the civil Court. The relevant section reads as follows:

“Section 34 of the SARFAESI Act

Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.”

21. Recently, the Full Bench of the Hon’ble Supreme Court in ***Bank of Rajasthan Ltd Vs VCK Shares and Stock Brocking Services Ltd reported as 2023 (1) SCC 1***, examined the legal right of a borrower to initiate proceedings before a Civil Court against the Bank or financial institutions which seeks to recover a loan against it. Answering the question in affirmative, the Hon’ble Supreme Court held as follows:



- “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*. 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 Agarwal (D) By LRs and Anr. v. Ramesh Chander Agarwal and Ors.* 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.
44. Now, if we turn to the objective of the RDB Act read with the scheme and provisions thereof; it is abundantly clear that a summary remedy is provided in respect of claims of banks and financial institutions so that recovery of the same may not be impeded by the elaborate procedure of the Code. The defendant has a right to defend the claim and file a counterclaim in view of sub-Sections (6) and (8) of Section 19 of the RDB Act. In case of pending proceedings to be transferred to the DRT, Section 31 of the RDB Act took care of the issue of mere transfer of the Bank's claim, albeit without transfer of the counterclaim. Thus, if the debtor desires to institute a counterclaim, that can be filed before the DRT and will be tried along with the case. However, it is subject to a caveat that the bank may move for segregation of that counterclaim to be relegated to a proceeding before a Civil Court under Section 19(11) of the RDB Act, though such determination is to take place along with the determination of the claim for recovery of debt.
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.”



22. Hence in view of the law laid down by the Hon'ble Supreme Court, it is evident that it is the choice of the borrower whether he wants to file a counter Claim before DRT or to file a separate civil suit. Hence there is no bar on a borrower to file a civil suit with respect to the dispute which is falling within the jurisdiction of DRT. However, once the borrower makes that choice, he cannot change the forum.
23. In the present case, it is an admitted position that the Appellants submitted themselves to the jurisdiction of the DRT and after considering the matter in detail, learned DRT had issued recovery Certificates in favour of Respondent Nos.1 to 7 banks. The Appellants themselves approached the learned Debt Recovery Tribunal ('DRT') in SA No. 08/2008 titled as '*Vishal Aggarwal Vs Union Bank of India*'. The said objections were dismissed by the learned DRT vide Judgement dated 04.05.2012. The Appellants preferred an Appeal bearing No. 450/2012 before DRAT. That appeal was also dismissed as withdrawn. The Appellants filed their objection before DRT-II in RC No. 297/2012 titled *Union Bank of India Vs. Mis S.S Foam and Rubber Company and Others*. Vide order dated 17.07.2015, the DRT-II had dismissed the objections of the Appellants by holding that the Respondent No.1 is entitled to recover its dues by selling the entire mortgaged property in question and hence, the objections filed by the Appellants qua the ground floor of the suit property were dismissed. Admittedly, the Appellants never challenged the order dated 17.07.2015 passed by the learned DRT-II. Hence once the appellant submitted to the jurisdiction of DRT and after suffering from an order from the DRT, the Appellants



cannot be permitted to switch over the forum and pursue his remedy before the Civil Court.

24. In this regard, it is pertinent to note that when the present matter came up for admission hearing before this Court, this Court noted that there are a number of objections filed by the Appellants before the learned DRT. Learned counsel for the Appellants expressed their intention to withdraw the objections filed before the learned DRT. In view of the same, this Court adjourned the matter clarifying that the present matter will be examined after the Appellants withdraw the objections filed before the learned DRT. It appears that the Appellants filed Applications before the learned DRT for withdrawal of the objections, however, the learned DRT vide order dated 17.07.2015, declined the said prayer of the Appellants and proceeded to decide the matter on its merit. The Appellants never challenged the said order dated 17.07.2015.

25. Hence considering the conduct of the Appellant, the learned Trial Court dismissed the suit holding, inter alia, as follows:

“36.This Court is of the opinion that plaintiff is doing forum hunting as the similar objections of the plaintiffs have been dismissed by DRT II on 17.07.2015 but instead of filing appeal against order dated 17.07.2015, the plaintiff has raised same objections in the present suit. It is not permissible in law.

*37. Touching another aspect of fraud as argued by Ld. Counsel for the plaintiffs, it is held that there are no specific and clear pleadings in the plaint as to how and who played fraud upon the plaintiffs Mere allegations of fraud are not sufficient. In the case of **HS Goutham Vs. Ramamurthi (2021) 5 SCC 241**, the Hon'ble Supreme Court held that:-*

.. As per the settled principle of law, when the fraud is alleged the same is required to be pleaded and established by leading evidence. Mere allegation that there was a fraud is not sufficient.”



38. Accordingly, in view of the aforesaid discussion, this Court is of considered opinion that this Court has no jurisdiction to try and entertain the present suit, in view of Section 18 of the Recovery of debts and Bankruptcy Act 1993 as well as Section 34 of SARFESI Act, 2002. The suit of the plaintiff is therefore found to be not maintainable. The same is resultantly dismissed with no order as to costs."

26. This Court is in agreement with the findings of the learned Trial Court. After contesting the objections filed before the learned DRT on its own merit and after accepting the Order passed by the learned DRT, the Appellants cannot pursue his remedy before the Civil Court.

27. In view of the detailed discussions herein above, the present Appeal is dismissed. It is clarified that the Appellants are free to pursue their remedy before the learned DRT in accordance with law. All the pending Applications are also dismissed. No order as to costs.

GAURANG KANTH, J.

MAY 24, 2023