**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Miscellaneous Appeal No.397 of 2023**

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Meena Devi wife of Patal Dubey, C/o Late Suresh Chaubey Resident of Village-Fulwaria, P.O. Baijani P.S. Jagdishpur, District-Bhagalpur, At Present residing at C.D. Dware Lane, Near Ginni Vatika Belasi Deoghar, P.O. and P.S. Deoghar, District-Deoghar (Jharkhand).

... ... Appellant/s

Versus

1. Gopal Chaubey son of Late Suresh Chaubey, Resident of Village Ketpura, P.O. and P.S. Barahat, District Banka.
2. Shiv Nandan Choudhary Son of Late Suresh Chaubey, Resident of Village-Ketpura, P.O. and P.S. Barahat, District-Banka.
3. Munni Devi Wife of Lalan Chaubey, D/o-Late Suresh Choubey, Resident of Village-Sondiha, P.S. Jagdishpur, District-Bhagalpur.
4. Pushpa Devi Wife of Prabhash Tiwari, D/o Late Suresh Choudhary, Resident of Village-Sitalpur, P.O. Churiya, P.S. Banka, District-Banka.
5. The Branch Manager, Bank of Baroda, Branch-Banka, P.O. and P.S. and District-Banka.
6. The Branch Manager, Punjab National Bank, Branch-Banka, P.O. and P.S. and District-Banka.

... ... Respondent/s

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**Appearance :**

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| For the Appellant/s | : | Mr. J.S. Arora, Sr. Advocate. |
| | | Mr.Manoj Kumar, Advocate. |
| For the Respondent/s | : | Mr.Siddharth Harsh, Advocate. |
| | | Mr. Mritunjay Kumar, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**
**C.A.V. JUDGMENT**

**Date : 18-09-2024**

**1.** Heard Sh. J.S. Arora, learned Senior Counsel for the appellant as well as Sh. Siddharth Harsh and Sh. Mritunjay Kumar the learned Counsels for the respondents/Banks.

**2.** This Miscellaneous Appeal has been filed under Order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908 (hereinafter referred as "CPC") against the Order dated

02.05.2023, passed by the learned Sub Judge-I, Banka (hereinafter referred as “Trial Court”), in T.S. Case No. 143 of 2021, whereby and where under the learned Trial Court rejected the petitions filed by the plaintiff/appellant dated 22.10.2021 and 14.03.2023 under Order XXXIX Rule 1 & 2 read with Section 151 of the CPC to restrain the defendants from alienating the suit land.

**3.** The learned Trial Court vide the impugned order dated 02.05.2023 held that the suit land includes Schedule II land against which a proceeding for recovery of loan and declared Non Performing Assets (N.P.A.) started under the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') and the court has no power to interfere in that proceeding. It is also held that there is no *prima facie* case made out in favour of plaintiff and there is no question of balance of convenience and irreparable loss in favour of plaintiff.

**4.** It appears form the record that plaintiff/appellant claiming sister of defendant/respondent No. 1 and 2 has filed the partition suit bearing Title Suit No. 143 of 2021 seeking portion of her 1/5$^{th}$ share in suit land which includes Schedule II land which are mortgaged with defendant 2$^{nd}$ set i.e., Bank of Baroda (defendant No. 5) and Punjab National Bank (defendant No. 6) by respondent No. 1 and 2 namely Gopal Choubey and Shivnandan Chaubey both son of Suresh Chaubey jointly to secure the loan by one Ankit Choubey for the purpose of facilitating his business in the name and style of 'Anjani Agrotech' (Proprietor Ankit Chaubey). The borrower/guarantors failed to deposit the outstanding amount resulting into declaration of all loan accounts as Non Performing Assets (N.P.A.) on 31.03.2021 and thereafter proceeding started under SARFAESI Act including the demand notice, possession notice upon borrower/guarantors and the bank also taken physical possession over the secured asset under the SARFAESI Act.

**5.** The case of plaintiff/appellant is that she has 1/5$^{th}$ share in the joint family property i.e., mortgaged property and as such the *prima facie* case is in favour of plaintiff/appellant. The mortgaged property is a residential house also, and as such balance of convenience also lies in favour of appellant, therefore, she is going to suffer irreparable loss as she with her family would be forced to live under open sky.

**6.** The learned Senior Counsel for the appellant submits that the learned Trial Court has not considered necessary ingredients which is required to grant/non-grant of Injunction order. It is further submitted that the learned Trial Court failed to appreciate that the bank negligently sanctioned the loan without holding proper enquiry with regard to rights, title, interest and possession of the mortgaged land. It is further submitted that the suit property was joint family property with unity of title and possession of all co-parceners thereby the plaintiff has a very strong case for grant of injunction. He has further submitted that the partition suit cannot be maintainable in DRT hence, the Civil Court has jurisdiction to entertain the petition under Order XXXIX Rule 1 & 2 CPC with respect to injunction to the other party in suit property. Moreover, it is submitted that seeking partition of joint family property has nothing to do with the proceeding under SARFAESI Act, thus, the impugned order passed by the learned Trial Court is fit to be set-aside.

**7.** The learned Counsel for the respondents have submitted that Section 34 of the SARFAESI Act bars jurisdiction of Civil Court over any matter related to the Act thus, the suit is not maintainable at least with respect to the properties which are secured assets. Furthermore, it has been stated under Section 17 of SARFAESI Act, DRT is the right forum to approach for redressal of grievances arising out of action taken by Bank under SARFAESI Act. It has further been stated that the motive behind filing Title Suit is to abscond the liability arising out of the mortgaged land and to indirectly frustrate the proceeding under SARFAESI Act. He has further submitted that suit and the petition for the injunction filed by the plaintiff is collusive suit to frustrate the proceeding under the SARFAESI Act with respect to the mortgaged property. The appellant is entitled to file appropriate petition before the concerned DRT for redressal of her grievances, if any with respect to mortgaged property. What cannot be done directly should not be permitted to be done indirectly. It is further submitted that defendant Nos. 1 and 2 had never disclosed that they have three sisters and as per heirship certificate which is issued by the *Sarpanch*, Ward Member and Member *Panchayat Samiti* clearly shows that Suresh Chaubey had no daughter but only two sons namely Shivnandan Chaubey and Gopal Chaubey. Learned Counsel further submitted that even otherwise the secured assest can be treated in the share of the borrower/mortgagors out of area of 21.90 acres in *Khata* No. 635 which belongs to the family of Suresh Chaubey. Learned Counsel further submitted that the plaintiff has neither the *prima facie* case nor the balance of convenience and the irreparable loss in her favour. There is no merit in the appeal as the learned Trial Court has rightly dismissed the petition thus, the instant appeal is liable to be dismissed.

**8.** It is apparent that the purpose of enacting SARFAESI Act is to provide legal framework, without the intervention of the Courts, to enable the Banks and Financial Institutions to realise long term assets and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assests (NPA) by adopting measures for recovery or reconstruction.

**9.** After consideration of the submissions made on behalf of the parties and perusal of the records, it would be apposite to refer to Sections 13 and 34 of the SARFAESI Act, which are as follows:-

**<u>Section 13 of the SARFAESI Act</u>**

*"13. Enforcement of security interest.--(1)-(3)*
***xxx xxx xxx xxx xxx xxx xxx***
***(4)*** *In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--*
*(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;*
*(b) take over the management of the business of the borrower including the right to transfer by way of*

*lease, assignment or sale for realising the secured asset: Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt: Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;*

*(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;*

*(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.*

***xxx xxx xxx xxx xxx xxx xxx***

**Section 34 of the SARFAESI Act**

***"34. 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"*

***(emphasis supplied)***

From bare reading of the above provision it can be inferred that the jurisdiction of the civil court is barred with respect to entertain, try and decide any suit or proceedings the subject matter of which is security interest created in favour of secured creditor, which the DRT or DRAT is empowered to entertain under the SARFAESI Act.

**10.** In the case of **Jagdish Singh v. Heeralal** reported in **(2014) 1 SCC 479** Hon'ble Supreme Court held as under:-

> ***"24.*** *..... The opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.*
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> ***25.*** *We are of the view that the civil court jurisdiction is completely barred, so far as the "measure" taken by a secured creditor under sub-section (4) of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal. to determine as to whether there has been any illegality in the "measures" taken. The bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondent Nos.6 to 8 have been crystalised, before creating security interest in respect of the secured assets."*

**11.** It can be said in view of the aforementioned judgment and the same reiterated in **The Authorised Officer, State Bank of India v. Allwyn Alloys Pvt. Ltd. & Ors.** reported in **(2018) 8 SCC 120** and **Sree Anandhakumar Mills Limited v. Indian Overseas Bank & Ors.** reported in **(2019) 14 SCC 788** , that no civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under this Act to determine and no injunction can be granted by any Court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the SARFAESI Act.

**12.** The law is therefore well settled that where any person is aggrieved by any notice or action pursuant thereto under the provisions of SARFAESI Act, the only remedy available to such person would be to approach the concerned DRT by filing an appropriate application under the provisions of the Act.

**13.** It is not in dispute that Civil Court has jurisdiction to decide the partition suit and to grant injunction order not to alienate the suit land if required in fact and circumstances of the case. But in the present case, admittedly, Schedule II property is mortgaged property and proceeding/action with respect to same is taken by the Banks under the SARFAESI Act, the Civil Court cannot grant injunction and the appropriate forum is DRT for redressal of the grievance, if any, concerning any action by the bank with respect to mortgaged property.

**14.** The cardinal principles for grant of temporary injunction is well settled. No temporary injunction should be issued unless the three ingredients are made out, namely, (i) *prima facie* case, (ii) balance of convenience and (iii) irreparable injury which could not be compensated in terms of money. If a party fails to make out any of the three ingredients he would not be entitled to the injunction and the Court will be justified in declining to issue injunction.

**15.** The Hon'ble Supreme Court in **Dalpat Kumar v. Prahlad Singh** reported in **(1992) 1 SCC 719** it has been observed as follows:

> *"5...Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the*

> *injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."*

**16.** In the aforesaid facts and circumstances and the law discussed above, in my considered opinion, the learned Trial Court has rightly held that in proceeding under SARFAESI Act, the Court has no power to interfere in that proceeding and that the appellant has no *prima facie* case, balance of convenience does not lies in her favour and no irreparable loss would cause if temporary injunction is not granted in favour of the plaintiff/appellant. There is no valid reason to interfere in the finding of the learned Trial Court. The present appeal has no merit and liable to be **dismissed**. Hence, the instant appeal stands dismissed with no order as to costs.

**17.** Pending Applications, if any, stand disposed of.

**18.** Litigation between the parties are pending before the learned Trial Court, this Court at this stage, refrain from returning findings of facts or express any opinion on merits of the suit. Nothing in the present Judgment/Order shall be deemed or construed as any expression of opinion or observation by this court at the final hearing of the suit which naturally will have to be decided on its own merit.

**(Sunil Dutta Mishra, J)**

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