

22.03.2024
Item No.15
RP
Ct. No.7

CO 3407 of 2023

**State Bank of India
Vs.
Gholam Sarwar & Ors.**

Mr. Sudeep Pal Choudhuri
Ms. Shilpi Paul

.... For the petitioner

1. This civil order is at the instance of the State Bank of India and is directed against an order dated 10th May, 2023 passed by the learned Judge, 5th Bench, City Civil Court, Calcutta in Title Suit No.952 of 2020.
2. By the order impugned the application under Order 7 Rule 11 of the Civil Procedure Code at the instance of the State Bank of India stood dismissed.
3. In spite of service none appears to oppose this application when this matter is taken up for hearing.
4. Mr. Pal Choudhury, learned advocate appearing for the petitioner submits that the bank took possession of the immovable property, which is the subject matter of the suit by invoking the provisions laid down under Sub-Section 4 of Section 13 of the Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (for short “SARFAESI Act”). He further submits that in view of the provisions laid down under Section 17 of the said Act any person aggrieved by any of the measures referred to in Sub-Section 4 of Section 13 taken by a secured creditor or its authorized officer under Chapter III of the said act has to make an application before the Debt Recovery Tribunal having jurisdiction in the matter within 45 days from the date on which such measure had been taken. He submits that Section 34 of the SARFAESI Act states that no civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which are Debt Recovery Tribunal or the Appellate Tribunal is empowered by or under the said 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 the power conferred by or under the said Act or under the Recovery of Debts due to Banks and Financial Institutions Act, 1993. He, thus, submits that the instant suit is barred under the provisions of Section 34 of the SARFAESI Act.

5. Upon a bare reading of the plaint this Court finds that it has been stated that one Qamrunnesa Bibi was the original owner of the suit property and by

virtue of successive transfer as well as by way of inheritance the title of the suit property devolved upon the plaintiffs. It has been further stated in the plaint that the said Qamrunnesa Bibi transferred the property in the year 1959, which is more than 23 years before execution of the deed, by virtue of which the defendant no.1, namely, Sk. Rustam, claimed title in respect of the suit property. It was further stated Sk. Rustam claimed to have purchased the suit property from Sk. Ashgar Ali, Sk. Ahmad Ali and Sk. Akhtar Ali, who claimed themselves to be the legal heirs of Qamrunnesa Bibi. It was further stated therein when Qamrunnesa Bibi during her lifetime transferred her right, title and interest in respect of the suit property by executing a deed of conveyance, no right, title and interest in respect of the suit property could devolve upon her heirs by virtue of inheritance.

6. The plaintiffs have prayed for declaration of their right, title and interest in respect of the suit property and for a further declaration that deed of conveyance dated 30th September, 1981 purportedly executed by legal heirs of Qamrunnesa Bibi in favour of defendant no.1, namely, Sk. Rustam, is tainted by fraud,

misrepresentation, illegal, invalid, null and void, ab initio and not binding upon the plaintiffs.

7. It is well-settled that in exercise of power under Order 7 Rule 11 of the Civil Procedure Code a plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law.
8. Section 34 of SARFAESI Act bars the jurisdiction of the civil Court to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or Appellate Tribunal is empowered by or under the said Act to determine. Upon going through the plaint it does not appear to this Court that the plaintiffs have challenged any of the measures taken by the State Bank of India under Section 13(4) of the SARFAESI Act. The suit pertains to an immovable property based on title. In the considered view of this Court, such a dispute cannot be entertained and/or decided by Debt Recovery Tribunal and in view of the provisions laid down under Section 9 of the Civil Procedure Code the civil Court shall have the jurisdiction to try a suit of instant nature.
9. The learned trial Judge, after considering the averments made in the plaint, rightly held that the plaintiffs in the instant suit have challenged the title of the borrower in the suit property. In

view thereof, this Court is of the considered view that the learned trial Judge was right in rejecting the application under Order 7 Rule 11 of the Civil Procedure Code. The order impugned does not suffer from any infirmity, warranting interference under Article 227 of the Constitution of India.

10. For the aforesaid reasons, CO 3407 of 2023 accordingly stands dismissed. There shall, however, be no order as to costs.

11. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)