IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 22 OF 2024
WITH
INTERIM APPLICATION NO. 431 OF 2024
IN
SECOND APPEAL NO. 22 OF 2024

Arun Sampatrao Patil .. Appellant

Versus

ICICI Bank & Ors. .. Respondents

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Ms. Janhavee Joshi i/b Mr. Mohan B. Jadhave for the Appellant.
Mr. Firoz Bharucha a/w Ms. Dhamini Nagpal i/b Manilal K. Ambalal & Co. for Respondent No. 1 (ICICI Bank Ltd.)

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CORAM : SANDEEP V. MARNE J.
DATE : 12 MARCH 2024.

P.C. :-

1) By this Appeal, Appellant challenges the Judgment and Decree dated 9 October 2023 passed by District Court, Pune in Regular Civil Appeal No. 197 of 2023, by which the First Appellate Court has dismissed the Appeal filed by Appellant and has confirmed the Order dated 8 August 2023 passed by Civil Judge Senior Division, Pune allowing Application filed by Respondent-Bank for rejection of Plaint under Order 7 Rule 11 (d) the Code of Civil Procedure, 1908 **(the Code)**.

2) Plaintiff claims to be a businessman and his daughter-Rutuja is married to Defendant No. 2-Mr. Shivraj Rajendra Koratkar in May 2013. Plaintiff claims that at the insistence of the second Defendant, he became Director in Company incorporated in name of Ms. Rutuja Auto Pvt. Ltd. That the said companies were mainly controlled by the second defendant who used to look after the affairs of the Company. That Plaintiff, for his own business purposes, has availed several credit facilities from Defendant No.1-Bank, which he has been repaying from time to time. That additionally loan amount of Rs.75,80,000/- was sanctioned by Defendant No.1-Bank to Defendant No.3- Company in July 2020 and the Plaintiff executed various documents including a mortgage declaration by deposit of title deeds. Plaintiff pleaded that except the loan of Rs.75,80,000/-, he was not aware about any other loans sanctioned by Defendant No.1-Bank to Defendant No. 3- Company. That matrimonial disputes have arisen between Plaintiff's daughter-Rutuja and Defendant No.2. That the second Defendant has mismanaged the affairs of Defendant No.3-Company, on account of which, Plaintiff has resigned from the post of Director on 28 October 2020 and after tendering resignation, he is not associated with Defendant No.3-Company in any manner.

3) Plaintiff has pleaded that he was shocked to receive recall notices in respect of three loan accounts bearing Account Nos. 739705000096, 939755000002 and 091505006217. Plaintiff claims that he is aware of only one loan bearing Account No. 739705000096 of Rs.75,80,000/- and that he is totally oblivious about the other two loans allegedly availed by Defendant No. 3-Company. That the recall notice vaguely quoted sum of Rs.2,00,64,003/- as due amount, as on 2 December 2022 without any particulars. It appears that Defendant No.1-Bank issued notices dated 28 October 2022, 27 December 2022 and

24 May 2023 for recovery of amount due towards loan amount disbursed to Respondent No. 3-Company. The notice dated 24 May 2023 is possession notice to take symbolic possession of the secured assets belonging to the Plaintiff. Plaintiff accordingly filed Special Civil Suit No. 1343 of 2023 in the Court of Civil Judge Senior Division, Pune seeking a declaration that notices issued by Defendant No.1 that were illegal, void and non-est and seeking injunction against Defendant No.1-Bank from proceeding under the impugned notices.

4) Defendant No. 1-Bank appeared in the suit and filed Application under Order 7 Rule 11 (d) of the Code seeking rejection of plaint on the ground that suit filed by the Plaintiff was barred under Section 34 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 **(SARFAESI Act)**. The Bank claimed that the notices were issued under Section 13(2) of SARFAESI Act and notice for symbolic possession dated 24 May 2023 was issued under Section 13(4) of SARFAESI Act and that therefore the suit was barred under Section 34 of the SARFAESI Act. The Application filed by Defendant No. 1-Bank came to be allowed by the Trial Court by Order dated 8 August 2023 and Plaintiff's plaint was rejected under Order 7 Rule 11(d) of the Code.

5) Aggrieved by the Order rejecting the plaint, Plaintiff filed Regular Civil Suit No. 197 of 2023 before District Court, Pune. However, by Judgment and Decree dated 9 October 2023, the First Appellate Court has dismissed the Appeal filed by the Appellant. Appellant has accordingly filed the present Appeal challenging the decisions of the Trial Court and the First Appellate Court.

6) I have heard Ms. Joshi the learned counsel appearing for the Appellant. She has placed reliance mainly on judgment of the Apex Court in ***Mardia Chemicals Ltd. And Ors Vs. Union of India and Ors.***[1] in support of her contention that a suit where the action of the secured creditor is alleged to be fraudulent would be maintainable before a Civil Court. That the issue of fraud cannot be decide by Debts Recovery Tribunal (**DRT**). She would take me through the plaint to demonstrate as to how fraud is committed by the second Defendant in connivance with Defendant No.1-Bank. She would submit that the plaint contains specific pleadings about the manner in which fraudulent loan transaction is shown by Defendant No.1-Bank. She would submit that since plain reading of the plaint demonstrates commission of fraud, the allegations of fraud pleaded in the plaint must be permitted to be proved by taking the suit to Trial Court. That the Trial Court has erred in rejecting the plaint at the threshold despite case of fraud being pleaded in the plaint.

7) Ms. Joshi would also rely upon judgments of this Court in ***State Bank of India Vs. Shri. Sagar s/o Pramod Deshmukh*** Civil Revision Application No. 33 of 2010 decided on 11 February 2011 and ***Bank of Baroda Vs. Gopal Shriram Panda*** Civil Revision Application No. 29 of 2011 decided on 25 March 2021. She would submit that both the judgments have laid down a law that jurisdiction of Civil Court to decide all matters of civil nature, excluding those to be tried by DRT under Section 17 of SARFAESI Act, are not barred by Section 34 of the Act.

8) *Per contra* Mr. Bharucha the learned counsel appearing for Respondent No. 1-Bank opposes the Appeal and supports the concurrent findings recorded by the Trial and the First Appellate Court. He would

[1] (2004) 4 SCC 311

submit that the entire case of alleged resignation from directorship of the Company by Appellant on 28 October 2020 is *ex facie* false as Appellant never raised the defence of such resignation at any point of time. That even in the legal notice served on Appellant's behalf on 13 May 2023 did not contain an assertion about any such resignation. He would submit that the suit is filed only for the purpose of somehow frustrating the recovery process initiated by Defendant No.1-Bank. The suit is clearly barred under Section 34 of SARFAESI Act and the plaint has rightly been rejected by the Trial Court.

9) I have considered the submission canvassed by Ms. Joshi and Mr. Bharucha. Ms. Joshi does not dispute the position that jurisdiction of Civil Court to entertain any suit or proceeding in respect of any matter which a DRT is empowered to determine under SARFAESI Act, is barred. She however relies on judgment of Apex Court in ***Mardia Chemicals*** (supra) in support of her contention that in cases where there is allegation of fraudulent claim by secured creditor, jurisdiction of Civil Court is not barred. No doubt in *Mardia Chemicals* (supra), Apex Court has held that when a specific case of fraud is made out in respect of claim raised by a secured creditor, such fraud can be established only before Civil Court.

10) I have gone through the plaint in Special Civil Suit No. 1343 of 2023. Though Plaintiff has repeatedly used the word fraud through the complaint, perusal of details given in support of allegations of fraud in para 9 of the plaint would indicate that Plaintiff has essentially attempted to pluck holes in some of the documents pertaining to the loan transaction. It is incomprehensible as to how any discrepancy in a document relating to loan transaction would tantamount to commission of fraud by the officials of the Bank. Commission of fraud vis-a-vis a loan transaction would essentially mean that the credit facilities are either not availed and false documents are

prepared by the Bank or that a person filing suit has actually not executed any document in support of the loan transaction. In the present case, though Plaintiff attempted to raise the issue of misuse of his digital signature, after tendering of alleged resignation on 28 October 2020. It appears that he never raised the defence of alleged resignation till May 2023. Plaintiff served a legal notice on Respondent - Bank on 13 May 2023 and if he had indeed tendered resignation on 28 October 2020 he ought to have raised the defence of such resignation in the notice dated 13 May 2023. The Appellate Court has recorded finding that several documents have been signed by Plaintiff and his daughter manually. Thus the plea of fraud sought to be set up by the Plaintiff in the Plaint is nothing but a clever drafting with a view to fit the suit within the jurisdiction of Civil Court. In ***Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd.***[2], the Apex Court has held as under:

> *9. **Having considered the pleadings and averments in the suit more particularly the use of word "fraud" even considering the case on behalf of the plaintiff, we find that the allegations of "fraud" are made without any particulars and only with a view to get out of the bar under Section 34 of the Sarfaesi Act and by such a clever drafting the plaintiff intends to bring the suit maintainable despite the bar under Section 34 of the Sarfaesi Act, which is not permissible at all and which cannot be approved**. Even otherwise it is required to be noted that it is the case on behalf of the plaintiff-appellant herein that in view of the approved resolution plan under IBC and thereafter the original corporate debtor being discharged there shall not be any debt so far as the plaintiff-appellant herein is concerned and therefore the assignment deed can be said to be "fraudulent".*
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> *(emphasis added)*

11) Bare reading of the plaint does not make out any demonstrable case of commission of any positive fraudulent activity by any official of the bank. Plaintiff has not named any particular official of the bank, who had

[2] (2022) 2 SCC 573

motive of committing fraud or who actively performed any act of fraud. Even if the allegations in the plaint that believed to be correct, no case of commission of fraud by any bank official is pleaded. In my view therefore, the Trial Court has rightly rejected the plaint under the provisions of Order 7 Rule 11 (d) of the Code.

12) Reliance of Ms. Joshi on Division Bench of judgment of this Court in ***Bank of Baroda*** (supra) does not cut any ice. In that case, this Court has held that when civil rights of persons other than the borrowers or guarantors are involved, Civil Courts would have jurisdiction. In the present case Plaintiff is/was a Director of Defendant No.3-Company and claim against him is raised on the basis of mortgage created by him. Therefore, the judgment of division bench of this Court in *Bank of Baroda* does not assists the case of Appellant. Similarly ***State Bank of India*** (supra) merely follows the judgment of the Apex Court in *Mardia Chemicals*. In the present case since plain reading of the plaint does not make out any case of fraud on the part of any official of the Bank in creating security interests, the jurisdiction of the Civil Court would be barred under Section 34 of the SARFAESI Act.

13) Perusal of various findings recorded by the First Appellate Court would leave no manner of doubt the Civil Suit is filed by Plaintiff with the ulterior objective of delaying the recovery proceedings. In Para 4 of its Order. the First Appellate Court has held that Plaintiff's daughter Rutuja has executed declaration on 24 March 2022 thereby belying the claim of alleged strained relationship between Rutuja and her husband–Defendant No. 2 leading to Plaintiff's alleged resignation from the Company on 28 October 2020. The Trial Court as well as the First Appellate Court have noted that several documents are manually signed by Plaintiff, once again belying his theory of misuse of digital signature. The concurrent findings

recorded by Trial Court and the First Appellate Court do not warrant any interference in exercise of jurisdiction by this Court under Section 100 of the Code of Civil Procedure. If indeed there is any discrepancy in any document allegedly executed by Plaintiff in connection with the loan transaction, he would be at liberty to raise the same by filing proceedings under SARFAESI Act.

14) No substantial question of law is involved in the present Appeal. The Second Appeal is accordingly rejected.

15) In view of rejection of the Second Appeal, Interim Application No. 431 of 2024 do not survive and the same is accordingly disposed of.

[SANDEEP V. MARNE J.]