IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1724/2023

The Branch Manager, Bank of Baroda, Achalpur Branch .Vs. Sau. Amruta Kumar Agrawal and Others.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. A. T. Purohit, Advocate for petitioner.

CORAM : ANIL L. PANSARE, J.
DATE : 12.08.2024

Heard.

2. Registry's remark dated 23.02.2024 indicates that Mr.D. S. Khushlani, Advocate appeared for respondent No.1/ caveator. It appears that, thereafter, on 18.08.2023, this Court had issued notice to all the respondents. The remark further indicates that notice to respondent No.1 is now awaited. Respondent Nos 2 to 4 and 8 are served by private mode. Respondent Nos. 5 and 6 are served by usual mode. The notice issued to respondent No.7 had returned back unserved for want of correct/detailed address.

3. Thereafter, the petitioner has served respondent No.7 through substituted service. This fact has been endorsed by the Registry vide order/remark dated 14.07.2024.

4. None is appearing for respondents. The question is, whether further time should be granted?

5. Having heard counsel for the petitioner, it appears that absence of respondents before the Court is intentional. Following facts and reasons would certify/substantiate the abovesaid conclusion.

6. Respondent No.2 – Ajay Ganeshkumar Agrawal, proprietor of Mahalaxmi Industries had obtained cash credit facility as also term loan, from the petitioner – Bank. Respondent No.2 failed to fulfill the conditions of the loan and, therefore, the petitioner initiated proceedings against respondent No.2 – borrower and respondent No.3 – guarantor. Two properties were mortgaged, one was residential house and another was vacant land and building.

7. Accordingly, the petitioner – bank, initiated proceedings under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "Act of 2002"). The petitioner then approached District Magistrate, Amravati seeking assistance to take possession of the secured assets in terms of Section 14 of the Act of 2002. The District Magistrate, vide order dated 17.02.2023, directed the Tahsildar to hand over the possession of secured assets belonging to respondent Nos. 2 and 3 to the petitioner.

8. Meantime, respondent No.1 - Amruta Agrawal, claiming herself to be sister of respondent No.2 herein and daughter of respondent No. 3, filed a suit before Civil Judge Senior Division, Achalpur, being Special Civil Suit No.156/2022, claiming partition in the property under question i.e. secured assets. Respondent No.2, other members of the family and the petitioners were made party – defendants to the said suit. The Trial Court, vide order dated 25.01.2023, held that the suit is barred under Section 34 read with Section 35 of the Act of 2002. Respondent No.1 assailed the order before the Additional District Judge, Achalpur in Misc. Civil Appeal No.4/2023. The First Appellate Court, vide impugned order, has overturned the decision of the Trial Court thereby restrained the

petitioner from proceeding further with the auction process. This order is under challenge.

9. Counsel for the petitioner has invited my attention to the judgment passed by the Supreme Court in the case of ***M/s. Sree Anandhakumar Mills Ltd. Vs. M/s. Indian Overseas Bank and Ors. AIR 2018 SC (Supp) 2472***, to contend that the issue involved in the present case is no more res integra. He submits that the Supreme Court, in identical situation, has held that the person aggrieved by the proceeding under the Act of 2002 should approach the Debts Recovery Tribunal and that the Civil Court's jurisdiction in the matter is completely barred. The Court further held that the suit for partition was not maintainable. The Court observed thus:

> *"4. The matter need not engage the Court in any great detail as in view of the law laid down by this Court in Jagdish Singh v. Heeralal and others it would clear and evident that the suit filed by the second respondent (i.e. O.S. No.106 of 2009) is not maintainable. In Jagdish Singh (supra) this Court after an elaborate consideration of the provisions of the SARFAESI Act, particularly, Sections 2(zf), 2(zc), 13(1), 17, 18 and 34, took the view, on almost similar facts, that a suit for partition would not be maintainable in a situation where proceedings under the SARFAESI Act had been initiated. It was also held that the remedy of any person aggrieved by the initiation of proceedings under the SARFAESI Act lies under Section 17 which provides for an efficacious and adequate remedy to a party aggrieved. Paragraph 24 of the report in Jagdish Singh (supra) which make the above position clear may be usefully extracted below:*
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> > *"24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of*

secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have the 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. The 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"

10. As could be seen, the Supreme Court by taking aid of its earlier judgment in the case of ***Jagdish Singh Vs. Heeralal and Ors., AIR 2014 SC 371***, has categorically held that any person aggrieved by any of the measures referred to in Sub Section (4) of Section 13 of the Act of 2002 has got statutory right of approaching the DRT under Section 17. The Court then, taking aid of Section 34, has held that the Civil Court shall have no jurisdiction to entertain any suit or proceeding, "in respect of any matter", which the DRT or an appellate Tribunal is empowered by or under the Act of 2002.

Accordingly, the Supreme Court held that the suit for partition is also not maintainable.

11. Applying aforesaid principles, the order passed is clearly unsustainable.

12. No one is appearing for the respondent to dispute the aforesaid status viz. the law laid down by the Supreme Court in ***M/s Sree Anandhakumar Mills Ltd.*** and ***Jagdish Singh*** (supra). It appears that respondent No.1 has filed suit to defeat the remedy available to the petitioner in terms of the provisions of the Act of 2002. The absence of the respondent in the present petition is yet another attempt to protract the litigation, having obtained favourable order from the First Appellate Court.

13. Resultantly, the petition is allowed. Impugned order dated 13.02.2023, passed by Additional District Judge – 1, Achalpur, below Exh.-5 in Misc. Civil Appeal No.4/2023 is set aside. Order dated 25.01.2023, passed by Jt. Civil Judge Senior Division, Achalpur, below Exh.-5 in Special Civil Suit No. 156/2022 is restored.

14. The writ petition is disposed of in the above terms. No order as to costs.

(Anil L. Pansare, J.)

Kahale