A.No.908 of 2024
in C.S.No.701 of 2016

Reserved on: 10.04.2024	Pronounced on: 26.04.2024

P.B.BALAJI, J.,

This application has been taken out by the Bank, the defendants in the suit to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure.

2.I have heard Mr.R.Imayavaramban, learned counsel for M/s.Ramalingam and Associates for the applicants/defendants and Mr.V.Selvaraj, learned counsel for the respondent/plaintiff.

3.Mr.R.Imayavaramban, learned counsel for the applicants/Bank would submit that the suit as prayed is barred under SARFAESI Act. Under Section 34 of the SARFAESI Act, 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 proposed legislation.

4.The learned counsel for the applicants/Bank would state that the plaint as filed is not maintainable in the eye of law and the plaintiff can only seek remedy before the Debt Recovery Tribunal and not before the Civil Court. He would invite my attention to the language employed under Section 34 of the SARFAESI Act. He would also place reliance on the decision of this Court reported in ***2021 SCC Online Mad 2349,*** where this Court held that the auction purchaser can only approach the appropriate forum to seek remedy as to forfeiture and that it was only before the appropriate forum, namely the Debt Recovery Tribunal. He would therefore pray that the plaint rejected.

5.Per contra, Mr.V.Selvaraj, learned counsel for the respondent/plaintiff would submit that the suit has been filed on the ground that the sale executed by the Bank in favour of the plaintiff was itself a nullity and therefore, in such circumstances, it was necessary for the purchaser to take proceedings under SARFAESI Act. He would further submit that according to the plaintiff, when the sale itself is a nullity, it amounts to 'no sale' in the eye of law and the suit is very well maintainable before this Court. He would therefore, pray for dismissal of the application seeking rejection of the plaint. The learned counsel would also place reliance on the decisions of the Hon'ble Supreme Court in ***Vimal Chand Ghevarchand Jain and Others Vs. Ramakant Eknath Jadoo***, reported in ***(2009) 5 SCC 713*** and the decision of the Hon'ble Supreme Court in ***Leelamma Mathew Vs. Indian Overseas Bank and Others***, reported in ***2022 SCC Online 1601*** in support of his contentions.

6.The suit has been filed for the following reliefs:

a) For recovery of Rs.2,26,14,712/- with 24% interest per annum on the principal sum of Rs.1,26,84,550/- from the date of plaint till the date of realization.

b) Award of damages of Rs.25,00,000/-.

7.It is the specific case of the plaintiff at paragraph No.12 of the plaint that the conduct of the 1st defendant in selling the property to the plaintiff, executing the Sale Certificate as if possession was given and sending the letter dated 16.07.2015 stating that the property was sold in "as is where in" and "as is what is condition" is unconscionable and therefore, the Sale Certificate has no value. The plaintiff further alleges that he has been cheated and therefore, he is entitled for full compensation. In such circumstances, I am unable to countenance the submissions of the learned counsel for the applicant as to how the plaintiff can be driven to initiate proceedings under the SARFAESI Act. Admittedly the suit is for refund of the money paid by the plaintiffs, as an auction purchaser, together with interest and also for damages to the tune of Rs.25,00,000/-. The plaint cannot be rejected in part and even though the first prayer may amount to the plaintiff avoiding the sale in his favour, in view of the allegation of cheating and fraud, the same can be tested only before the Civil Court and the plaint cannot be rejected at this stage, especially, when there is also a claim for damages to the tune of Rs.25,00,000/-. The *lis* can be decided only before the Civil Court and not before the authorities constituted under the SARFAESI Act.

8.The Hon'ble Supreme Court in ***Leelamma Mathew's*** case held that the suit for damages/compensation cannot be decided by the Debt Recovery Tribunal or the Appellate Tribunal and Section 34 of the SARFAESI Act cannot be put against the plaintiff who has filed the suit seeking damages/compensation.

9.In ***Vimal Chand Ghevarchand Jain's*** case, the Hon'ble Supreme Court relying on Section 54 of the Transfer of Property Act, 1882, held that the right of possession over the property is a facet of title and as soon as the deed of sale is registered, title passes to the vendee and the vendor in terms of the stipulations made in the deed of sale is bound deliver possession of the property sold and where he does not do so, he makes himself liable for damages.

10.As seen from the plaint, the plaintiff alleges that the Bank has sold the property to the plaintiff making the plaintiff believe that possession was only with the Bank. However, when the sale transaction was concluded and the plaintiff realized that the defendant did not have possession and was also not in a position to hand over the possession, the plaintiff has approached the Court alleging fraud at the hands of the defendants, officials. In such circumstances, the suit reliefs can be decided only on evidence to be adduced by the parties and the suit being not only for refund of sale consideration, together with interest but also claiming damages, as laid down by the Hon'ble Supreme Court in ***Leelamma Mathew's*** case, the plaintiff cannot be called upon to invoke Section 34 of the SARFAESI Act, which is clearly out of reach for such a plaintiff. In such circumstances, I do not find any merit in the application seeking rejection of plaint.

11.For all the above reasons, this application is dismissed.

26.04.2024

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P.B.BALAJI, J.
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