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C.R.P.No.859 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.859 of 2023
and C.M.P.No.6447 of 2023

S.Kumar

... Petitioner

-Vs-

1.Kavitha
2.Soundararajan
3.The Authorized Officer
Axis Bank Ltd., Maha Complex
No.28, Square Market
Mettur - 636 401.

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to strike off the suit in O.S.No.201 of 2022 pending on the file of the District Munsif, Mettur.

For Petitioner	:	Mr.C.R.Gokul Visvas for Mr.T.Elumalai
For Respondents	:	Mr.M.A.Gowthaman for Mr.M.A.Muthalakan - for R1 R2 and R3 - No appearance

ORDER

This Civil Revision Petition challenges the filing of the suit in O.S.No.201 of 2022 on the file of the learned District Munsif at Mettur. The petitioner seeks to strike off the suit as an abuse of process of law and as one barred in terms of Section 34 of the SARFAESI Act.



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2. While dealing with an application to strike off a suit under Article 227 of the Constitution of India, I cannot look into the evidence or documents of the defendants. I have to take the averments made in the plaint to be true and proceed to verify if there is a cause of action in the suit or whether it is an act of abusing the process of the Court and the procedure. Keeping these principles in mind, I shall now approach the proceedings before me.

3. O.S.No.201 of 2022 was presented by one Kavitha. She had mortgaged a property in favour of Axis Bank. As the loan of the plaintiff became "sticky", it was declared as a Non Performing Asset. The authorized officer of Axis Bank initiated proceedings invoking the powers vested in him in terms of the SARFAESI Act. Thereafter, as a measure under Section 13 he brought the mortgaged property for sale. The property was purchased by the first defendant. The first defendant thereafter sold the property in favour of the second defendant who is the revision petitioner.

4. It is not in dispute that the plaintiff and her husband Mr.Rajendran have initiated proceedings under Section 17 of the SARFAESI Act challenging the sale made by the Authorized Officer, the third defendant in favour of the purchaser, the first defendant. After having purchased the property, the first defendant had alienated the property in favour of the second defendant. The plaint in Para 7 concedes that the sale by the first defendant in favour of the second defendant is



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for a valuable consideration. Para 7 would bring to the notice of the Court that as the appeal in S.A.No.11 of 2022 is pending before the Debts Recovery Tribunal (DRT) at Coimbatore, the sale that had been made by the first defendant in favour of the second defendant is hit by the doctrine of *lis pendens*.

5. On the undisputed facts in the plaint, one can perceive that it is an attempt of the mortgagor who has lost her right of redemption to somehow or other prevent a purchaser of a property under SARFAESI Act from alienating it in favour of a third party. In order to maintain a suit, it requires a cause of action. If there is no cause of action, then the suit can be rejected by the trial Court or by this Court in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India. The plaintiff does not claim that she is entitled to the property independently. She concedes to the fact she had mortgaged the property to the bank and that the bank had invoked SARFAESI proceedings and sold the property to the first defendant, who is the successful auction purchaser.

6. Whether the auction was conducted in a proper manner or whether it is riddled with illegalities is a matter to be gone into only by the Debts Recovery Tribunal. Having invoked the jurisdiction of the Debts Recovery Tribunal, it is not open for the plaintiff to ride on two horses at the same time and seek for a declaration that the auction purchaser in SARFAESI proceedings is not entitled to alienate the property further.



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7. By virtue of the SARFAESI sale, whatever right, title and interest that the plaintiff had in the property, stood transferred in favour of the first defendant. If the plaintiff had the right to alienate by way of mortgage in favour of the bank, certainly the purchaser also has such right to alienate the property to any person he so desires. As pointed out, the plaint concedes that the sale made by the purchaser is for a valid and valuable consideration.

8. Therefore, I do not find any right, title or interest left in the plaintiff to challenge the sale made by the purchaser in favour of a third party ie., the second defendant, the civil revision petitioner. The entire suit is an abuse of process of law. Keeping it on the file of the Court would not only add to the pendency, but also grant a right to a debtor who has lost her right over the property to continue to agitate the so-called non-existent right before the Court. I do not see a cause of action and I am only able to see the abuse of process of court. The plaint does not deserve to be on the file of the Civil Court even for a second.

9. The Civil Revision Petition is allowed. O.S.No.201 of 2022 on the file of the District Munsif Court at Mettur shall stand struck off. The learned District Munsif is requested to pass a consequential order on the basis of the order of this Court. No costs. Consequently, connected miscellaneous petition is closed.



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10. At this stage, Mr.Gowthaman appearing for Mr.M.A.Muthalakan would submit that this order must not affect the rights of his client to agitate her right in S.A.No.11 of 2022 pending on the file of the Debts Recovery Tribunal at Coimbatore. I have only held that this proceeding is an abuse. In case the Securitisation Appeal in S.A.No.11 of 2022 is allowed, it is needless to state that the purchase made by the first defendant would automatically stand nullified and consequently his sale in favour of the second defendant would also not come to the rescue of the civil revision petitioner. I only have to state that any sale made during the pendency of S.A.No.11 of 2022 would be subject to the result of those proceedings.

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Index : Yes/No

Neutral Citation : Yes/No

KST

To

The District Munsif
Mettur.



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V. LAKSHMINARAYANAN, J.

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