



C.R.P.No.1701 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P. No.1701 of 2021
and
C.M.P. No.13182 of 2021

IDBI Bank
Salem Branch
represented by its Manager

... Petitioner

VS.

1. Pavayee W/o. Kaliyappa Gounder
2. Kaliappa Gounder S/o. Kumarappa Gounder
3. Venkatraman S/o. Kaliyappa Gounder
4. Selvam W/o. Palaniyappan
5. Sakunthala W/o. Venkatachalam
6. Karuppannan S/o. Kaliyappa Gounder
7. Prabavathi W/o. Venkatraman
8. Dineshkumar S/o. Venkatraman

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order of the learned Sessions (Fast Track Mahila) Judge, Namakkal dated 18.03.2021 passed in I.A. No.3 of 2020 in O.S. No.288 of 2018.



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For Petitioners : Mr. K. Balamurali
for M/s. Shivakumar and Suresh

For Respondents : R1 & R2 – Died
R3 to R8 – Served – No appearance.

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner bank to reject the plaint.

2. The 1st respondent herein claiming share in the suit property filed a Suit for Partition of her 1/6th share. She also prayed for injunction restraining the petitioner bank from taking any steps against the share of the 1st respondent in the suit property for recovery of the loan amount due from the respondents 2,6 and 7.

3. The petitioner herein who was arrayed as 8th defendant in the Suit filed the present application for rejection of the plaint on the ground that prayer of injunction sought for by the 1st respondent was barred under Section 34 of SARFAESI Act. The Trial Court dismissed the application mainly on



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the ground that Debt Recovery Tribunal cannot grant relief of partition in respect of the 1st respondent and plaint cannot be rejected. Aggrieved by the same, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner by taking this Court to Section 34 of SARFAESI Act submitted that the relief of injunction sought for by the 1st respondent against the petitioner is clearly barred by Section 34 of the SARFAESI Act.

5. It is settled law that the plaint cannot be rejected in part. The main relief sought for by the 1st respondent is partition of her share in the suit property. The Tribunal constituted under the SARFAESI Act is not empowered to grant the relief of partition in favour of the 1st respondent. Therefore, the relief of partition claimed by the 1st respondent against the other respondents are not barred by Section 34 of SARFAESI Act. In ***Bank of Baroda vs. Gopal Shriram Panda reported in MANU/MH/0987/2021***, the Division Bench of Bombay High Court while considering scope of bar under Section 34 of SARFAESI Act observed as follows:-



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“23.1 If the DRT is not a Court as held in Nahar Industrial Enterprises Limited (Supra), which still holds the field, and the jurisdiction of the DRT is limited and is confined to the extent of examination of the actions of the secured creditor under Section 13(4) and Section 17 of the SARFAESI Act, within the framework of Sections 17 and 19 of the DRT Act 1993, then the DRT is jurisdictionally incapable and incompetent to adjudicate and decide upon the right of a civil nature, accruing in favour of citizens, even if such rights are found to be accruing or created by law or otherwise, in the security interest. The jurisdiction to adjudicate and decide such rights of a civil nature, would then continue to vest with the Civil Courts under Section 9 of the C.P.C., whose jurisdiction though otherwise is plenary, omnipotent and unlimited, is limited only by the exclusion clause / provision in various Statutes, which exclusion clause / provision has to be strictly construed.

24. The purpose of creation of the Special Statutes i.e., the SARFAESI Act and the DRT Act, 1993 was to facilitate creation of special machinery for speedy recovery of the debts, due to Banks and Financial Institutions, which had gained alarming proportions and still are alarmingly high, and not to obviate or set at naught the civil rights as available to litigants by availing the Civil Law remedy.

25. A meaningful interpretation has to be put to the language of the bar as contained in Section 34 of the SARFAESI Act so that the object and purpose sought to be achieved by the Act is not rendered illusory and is fulfilled. However, at the same time, the civil rights, which may be available in respect of security interest, cannot be lost sight of, which also have to be protected and the common law remedy available for the enforcement cannot be rendered ineffective. No doubt, Section 34 by creating a bar of jurisdiction ensures the recovery of public money in a speedy manner; however, the bar has to be read and construed in light of the language it contains and not otherwise so as to impeach upon the rights of a civil nature as available, which are equally important for a citizen. In the zeal to ensure speedy recovery of money, the civil rights which a citizen has, cannot be permitted to be rendered redundant and balance between both the rights has to be maintained, which would only be possible



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on a case to case basis. The bar under Section 34 of the SARFAESI Act, therefore, in view of the discussion made above, in our considered opinion, is not absolute, but is restricted to examination by the DRT of the actions of the secured creditor under Section 13 of the SARFAESI Act and the rights available under Section 17 of the SARFAESI act, to be in accordance with the provisions of the SARFAESI Act and the Rules made thereunder, as indicated.

26. The propositions laid down in Para 33 of Sagar Pramod Deshmukh (supra), in our considered opinion, correctly define the distinction between the jurisdiction of the Civil Court and that of the DRT vis-a-vis Section 9 of the C.P.C. as compared to Sections 17(1) and 18 of the DRT read with Sections 13, 17 and 34 of the SARFAESI Act, though they may not be exhaustive.

27. In view of what we have discussed above, our considered opinion to the question as rendered to is as under:

Question: "Whether the jurisdiction of a Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Section 17 of the Securitisation Act, in relation to enforcement of security interest of a secured creditor, is barred by Section 34 of the Securitisation Act?"

Answer: The answer, looking to the nature of the question, in our view, is in parts:

(A) Jurisdiction of the Debts Recovery Tribunal, to decide all matters relating to Sections 13 and 17 of the SARFAESI Act, is exclusive.

(B) In all cases, where the title to the property, in respect of which a 'security interest', has been created in favour of the Bank or Financial Institution, stands in the name of the borrower and / or guarantor, and the borrower has availed the financial assistance, it would be only the DRT which would have exclusive jurisdiction to try such matters, to the total exclusion of the Civil Court. Any pleas as raised by the borrowers or guarantors, vis-a-vis the security interest, will have to be determined by the DRT.



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(C) The jurisdiction of the Civil Court to decide all the matters of Civil nature, excluding those to be tried by the Debts Recovery Tribunal under Sections 13 and 17 of the SARFAESI Act, in relation to enforcement of security interest of a secured creditor, is not barred by Section 34 of the SARFAESI Act.

(D) Where civil rights of persons other than the borrower(s) or guarantor(s) are involved, the Civil Court would have jurisdiction, that too, when it is prima facie apparent from the face of record that the relief claimed, is incapable of being decided by the DRT, under Section 17 of the DRT Act, 1993 read with Sections 13 and 17 of the SARFAESI Act”.

Therefore, it is clear jurisdiction of Civil Courts to entertain partition suit is not ousted by Section 34 of SARFAESI Act when Tribunal created under said Act is not empowered to grant the relief of partition.

6. As far as relief of injunction is concerned, the same is hit by Section 34 of SARFAESI Act. It is open to the petitioner to file his written statement by raising plea of bar under Section 34 of SARFAESI Act and resist the prayer for injunction. Admittedly, the Trial Court has not granted any interim injunction restraining the petitioner bank from proceeding further. In such circumstances, there is no impediment for the petitioner to proceed further by invoking provisions of SARFAESI Act. Hence I do not find any error in the order passed by the Trial Court dismissing the application filed by the



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petitioner to reject the plaint. However, the petitioner is at liberty to raise its plea regarding bar under Section 34 of SARFAESI Act by filing written statement.

7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The Sessions (Fast Track Mahila) Judge, Namakkal.



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S.SOUNTHAR, J.

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