IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2278 of 2023
and
C.M.P.No.13798 of 2023

M/s.India Resurgance ARC Private Limited,
Represented by its Authorized Officer,
The Executive Zone, Shakthi Towers – 1,
No.766, Anna Salai, Chennai – 600 002

Also at,
Third Floor, Piramal Tower,
Peninsula Corporation Park,
Ganpatarao Kadam Marg,
Lower Parel, Mumbai – 400 013 .. Petitioner

Vs.

1.M/s.Pro Visual Audio Private Limited,
Represented by its Managing Director
Mr.P.Natarajan,
New Door No.2/280, Old Door No.2/210,
Spring Field Salai, Uthandi,
Chennai – 600 119

2.P.Natarajan

3.Maheswari

4.M/s.Religare Finvest Limited,
Represented by its Authorised Officer,
D3, P3B, District Centre, Saket,
New Delhi – 110 017 .. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to strike down the suit in O.S.No.295 of 2023 on the file of the learned Principal District Judge at Chengalpet from the records of the learned Principal District Judge at Chengalpet.

For Petitioner : Mr.Sathish Parasaran
Senior Counsel for
Mr.M.Arunachalam

For R1 to R3 : Mr.K.Pattabi
assisted by Ms.C.Sandhya Shree

For R4 : Mr.P.Veeramalai

ORDER

The present Civil Revision Petition challenges taking the suit in O.S.No.295 of 2023 on the file of the Principal District Court at Chengalpattu.

2. The supervisory jurisdiction of this Court under Article 227 of the Constitution of India is unbridled but it is limited by self-imposed restrictions alone. If gross abuse of process of Court and the procedure are brought to the notice of this Court, then it becomes the duty of this Court to

ensure that the Courts subordinate to it are not approached with an intention to abuse their process.

3. There is no dispute that the plaintiffs are mortgagors of the suit schedule mentioned property. They had mortgaged the property with M/s.Religare Finvest Limited. The mortgage was created in and around the year 2015. Necessary documents for creating the mortgage by deposit of title deeds were also executed. On account of the fact that there was a default in payment of the loans, notice was issued by the mortgagee to the mortgagors under Section 13(2) of the SARFAESI Act.

4. Two properties had been mortgaged with the 4th defendant. The 4th defendant assigned the mortgage in favour of the civil revision petitioner. The civil revision petitioner had brought the properties situated in Sulur village, Coimbatore District for sale. It was challenged before the Debts Recovery Tribunal at Coimbatore in SA.No.648 of 2021. The sale was completed and the amounts were realized. Challenging the sale certificate, the other set of proceedings were initiated before the Debts Recovery Tribunal at Coimbatore in SA.No.104 of 2022. However, the same came to

be dismissed.

5. Mr.Sathish Parasaran, learned senior counsel for Mr.M.Arunachalam, would submit that insofar as Sulur properties are concerned, the properties have been sold, the sale certificate was registered and the amounts were also realized. He would point out that even after the alienation of the Sulur properties at Coimbatore, there was still an amount of Rs.18,00,00,000/- due from the plaintiffs. Therefore, notices were issued under the SARFAESI Act to bring the suit schedule mentioned property for sale. This was challenged by the respondent before the Debts Recovery Tribunal at Chennai in SA.No.101 of 2022. The Debts Recovery Tribunal had came to the conclusion that the SARFAESI proceedings had been properly initiated and conducted. The Debts Recovery Tribunal No.III at Chennai dismissed the Securitization Application in SA.No.101 of 2022 on 02.05.2023, since there were no bidders. However, it gave a finding that there were no infirmities in the procedure that had been adopted by the civil revision petitioner. On the strength of this finding, the secured creditor yet again took interest to bring the property for sale. This was yet again challenged before the Debts Recovery Tribunal in SA.No.516 of 2022.

SA.No.516 of 2022 was renumbered before the Debts Recovery Tribunal No.III as T.S.A.No.246 of 2023. Even for this auction, there were no bidders. Therefore, the secured creditor yet again issued the sale notice and brought the property again for sale which was yet again challenged in SA.No.449 of 2022. As the secured creditor withdrew the sale notice this time, the Debts Recovery Tribunal dismissed the SARFAESI proceedings in SA.No.449 of 2022.

6. The litigation game was commenced by the respondents when a fresh notice was issued on 29.04.2023. From the affidavit which has been filed in support of W.P.No.14624 of 2023, it becomes clear that the respondents/debtors filed a suit before the District Munsif Court at Alandur seeking declaration that the debtor does not owe any amount to the civil revision petitioner. From the facts it seems that those proceedings were abandoned.

7. Then, the debtors proceeded to file a petition in W.P.No.14624 of 2023 challenging the sale notice dated 29.04.2023. That came to be

dismissed by the vacation bench of this Court on 11.05.2023 granting liberty to the petitioner to approach the Debts Recovery Tribunal for appropriate reliefs. It is also clear that on the basis of the liberty granted by this Court, the debtors approached the Debts Recovery Tribunal No.III in SA.No.274 of 2023 challenging the sale notice. The Debts Recovery Tribunal was pleased to grant an interim order of *status quo* on a condition that the debtors deposit a sum of Rs.1,80,00,000/-. This sum is not a figure which the Debts Recovery Tribunal determined on its own but on the basis of the memo that was filed by the debtors themselves before the Debts Recovery Tribunal.

8. After having failed to pay the said amount, the debtors came up with an ingenious idea of invoking the jurisdiction of the Civil Court, namely the learned Principal District Judge at Chengalpet. In this proceeding, the following reliefs were sought for :

(a) to declare the invocation of Chapter III of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 as null and void.

(b) to declare the assignment deed between the 1st and the 2nd defendants to be invalid with regard to the properties of the plaintiffs.

(c) to annul all the transactions with regard to the plaint schedule mentioned properties and for costs.

9. I should point out here that though the debtors had given an undertaking to pay a sum of Rs.1,80,00,000/- and obtained an interim order from the Debts Recovery Tribunal, they seem to have been successful in convincing the learned Principal District Judge to deposit only 10 % of the admitted loan amount, and the time that was granted for deposit was 40 days. The amount deposited is a paltry sum of Rs.4,00,000/-.

10. Feeling aggrieved by the manner in which they have been made to run from pillar to post, the secured creditor, who is empowered to bring the property for sale under the provision of the SARFAESI Act, has invoked the jurisdiction of this Court to strike off the plaint.

11. When the matter came up for admission, this Court ordered notice regarding admission on 06.07.2023. Thereafter, an order of *status quo* of all

further proceedings was granted on 25.04.2024. I heard this matter on 21.06.2024 and today i.e., on 24.06.2024.

12. It is the submission of Mr.Sathish Parasaran that respondent Nos.1 to 3 have invoked the jurisdiction of the Civil Court to bypass Section 34 of the SARFAESI Act, and therefore, have abused the process of the Court. He would draw my attention to the several proceedings that have taken place between the parties before the Debts Recovery Tribunal and before this Court in a Writ Petition, and point out that invocation of jurisdiction of the Civil Court and the orders passed thereon were an abuse of process without jurisdiction. Therefore, they deserve to be interfered by this Court through the exercise of power under Article 227 of the Constitution of India.

13. The gist of the argument is since the Principal District Court has exceeded its jurisdiction, it is the duty of this Court to ensure that the District Court is brought within its jurisdiction and appropriate orders be passed on maintainability of the suit itself.

14. Originally, Ms.C.Sandhya Shree had made her submissions, and thereafter, she submitted that Mr.K.Pattabi, learned senior counsel appearing on her behalf, is feeling under weather and that the matter may be adjourned to an other date. Taking into consideration that the counsel was not feeling well, I have posted the matter today. Mr.K.Pattabi argued the matter at length, and he made the following submissions :

(1) This revision is not maintainable as the petitioner has an effective and alternative remedy.

(2) He would state that the Debts Recovery Tribunal has no jurisdiction to determine its own jurisdiction and consequently it is a Tribunal of limited jurisdiction and hence, the civil suit filed by the respondents before the Principal District Court, Chengalpet is maintainable.

15. He would further plead as follows :

(i) that Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) registration for the property is incomplete;

(ii) that the document of assignment executed by M/s.Religare Finvest Limited in favour of the civil revision petitioner is pending registration and therefore, no rights will accrue on the civil revision petitioner;

(iii) He would state that since arbitration agreement between the parties had been invoked, and the money decree had been obtained, the creditor has given up his right over the mortgage and cannot proceed under the SARFAESI Act, and on these grounds, he would state that since a fraud has been played on his client by the Creditor/Assignee, the civil suit is maintainable.

16. To that end, he would rely upon the following judgments :

(i) ***Nahar Lal Shah and Another vs. Baij Nath Shah and Others [(1927-28) 32 CWN 241]***

(ii) ***Kaaiser Oils Private Limited vs. Allahabad Bank [(2017) 4 CHN 410]***

(iii) ***A.Venkatasubbiah Naidu vs. S.Chellappan and Others [(2007) 7 SCC 695]*** and

(iv) ***Chaube Jagdish Prasad and Another vs. Ganga Prasad Chaturvedi [AIR 1959 SC 492]***.

17. Since the issue of maintainability has been raised, I have to deal with that issue first.

Maintainability of the Civil Revision Petition

18. Under Article 227 of the Constitution of India, this Court is empowered to ensure that the Courts subordinate to it are kept within their prescribed limits of jurisdiction and in case they exceed the said jurisdiction, appropriate directions can be passed by this Court in exercise of the said power to keep them within their jurisdiction. This is clear from Article 227 (1) of the Constitution of India. In case, the trial Court has exceeded its jurisdiction, by virtue of Article 227 of the Constitution of India, I am certainly entitled to pass appropriate orders including the order of striking off the plaint from its file.

Debts Recovery Tribunal is not interdicted from determining issues of its own jurisdiction

19. The argument of Mr.K.Pattabi is that the Debts Recovery

Tribunal does not have the jurisdiction to deal with its own jurisdiction. I would not agree with this submission for a simple reason that under Section 17 of the SARFAESI Act, wide powers have been given to the Debts Recovery Tribunal to deal with the pleas that have been raised in the present case by the debtor. In fact, Section 17(1) of the said Act would specifically hold that the Debts Recovery Tribunal having jurisdiction can determine whether any of the measures taken by the creditors in terms of Section 13(4) of the said Act is in accordance with the said provision. This would also be amplified by virtue of Sections 17(2) to 17(4) of the said Act. In case, the Debts Recovery Tribunal comes to a conclusion that the steps taken by the creditor are not in accordance with the Act, it has the power to declare the said measures as illegal and contrary to the statute. Therefore, the argument of Mr.K.Pattabi that the Debts Recovery Tribunal is a Tribunal akin to the Rent Tribunal as seen in ***Chaube Jagdish Prasad***'s case does not appeal to me.

20. In fact, Lord Esher, M.R., cited in the very judgment that was relied upon by Mr.K.Pattabi, would point out that if the Tribunal has the power to determine facts, then if the said state of facts exists, it shall have

the jurisdiction to do so. In the present case, the Debts Recovery Tribunal has to decide whether the measures that had been taken by the secured creditor under Section 13(4) are in accordance with the said Act. A judgment dealing with the power of the Rent Controller cannot be compared with that of a Tribunal created under the SARFAESI Act. In fact, in certain cases, the landlord can waive the exemption granted under the Rent Control Act and proceed to file an eviction petition before the Rent Controller. Rent Controller is the Court of limited jurisdiction and it certainly cannot be compared with the Tribunal created under the SARFAESI Act.

Civil Courts cannot decide matters to be specifically adjudicated by the Debts Recovery Tribunal

21. Furthermore, the intention of the Parliament is very clear as it would be seen from Section 34 of the SARFAESI Act. Under Section 34 of the SARFAESI Act, no civil Court will have jurisdiction to deal with matters specifically included under the Act. I should add here that the Civil Court also includes the learned Principal District Judge at Chengalpet. Therefore, the learned Principal District Judge cannot entertain any matter which the Debts Recovery Tribunal or Debts Recovery Appellate Tribunal are empowered to determine.

22. The plea of respondent Nos.1 to 3/plaintiffs is that the secured creditor ought not to have invoked the Chapter III of the SARFAESI Act. I am not in agreement with this submission. A secured creditor, by virtue of the SARFAESI Act, is entitled to take such measures as that may be necessary in order to enforce his rights conferred on him by invoking the provisions of the SARFAESI Act. Such an action initiated by the secured creditor is susceptible for challenge only under Section 17 of the SARFAESI Act. When Section 17 of the said Act very clearly states that this power is vested with the Debts Recovery Tribunal. By virtue of Section 34 of the SARFAESI Act, the Civil Court will not have the jurisdiction to decide with this issue.

23. At this juncture, Mr.K.Pattabi would state that the Division Bench of the Calcutta High Court in ***Kaaiser Oils Private Limited vs. Allahabad Bank [(2017) 4 CHN 410]*** had held that a Civil Court does not have the jurisdiction to entertain the suits of nature under scrutiny. A careful reading of the judgment of the Calcutta High Court would show that alleging breach

of trust against the bank/Allahabad Bank, the plaintiff filed a suit for damages for a sum of Rs.15,86,00,000/-. The plaintiff in that case had, in fact, approached the Debts Recovery Tribunal at the first instance. The Debts Recovery Tribunal came to the conclusion that it does not have the power to deal with the issues relating to the damages and breach of contract, and had directed the parties to approach the Civil Court. Accordingly, he had approached the Civil Court. Yet again the Civil Court had come to the conclusion that it does not have the jurisdiction to deal with this issue. That was put in test before the Division Bench of the Calcutta High Court. The Calcutta High Court upheld the contentions of the debtor and held that matters relating to damages claimed by the debtor for breach of contract cannot be dealt with by the Tribunal.

24. The point flowing out of this judgment is that if the Debts Recovery Tribunal or Debts Recovery Appellate Tribunal does not have the jurisdiction to deal with that issue, a party cannot be remedy less. The suit for damages certainly not be entertained by the Debts Recovery Tribunal.

Hence, the maintainability of that suit was upheld. Such is not the case before me.

25. The power of Debts Recovery Tribunal is circumscribed by virtue of Section 17 of the SARFAESI Act. That deals only with measures that would be taken by the secured creditor in terms of Section 34 of the said Act. It was in such nature of things that the Division Bench came to the conclusion that a civil suit for damages is maintainable at the instance of the debtor. This judgment is certainly not a proposition of law and I will not read it to be so that even when the Debts Recovery Tribunal/Debts Recovery Appellate Tribunal is empowered to deal with the issue, still the Civil Court will have jurisdiction to adjudicate upon the same.

26. The prayer in this suit, as extracted above, would show that the secured creditor must not invoke Section 13 of the SARFAESI Act. By adroit and clever drafting, the provision of law has been left out and the chapter under which the Section 13 falls alone has been enumerated. I have to look through the plaint and see whether the prayer that has been made by

the party indirectly seeks what he can directly seek before the Debts Recovery Tribunal. I feel this is one such plaint.

Mere non-registraton with CERSAI does not vitiate the actions of the petitioner

27. At this stage, Mr.K.Pattabi would rely upon the judgment of Calcutta High Court in ***Nahar Lal Shah and Another vs. Baij Nath Shah and Others [(1927-28) 32 CWN 241]*** to argue that as the registration of the civil revision petitioner with the CERSAI is not complete, the entire transaction that has been initiated by him is illegal. CERSAI is a creature which has come into being after the SARFAESI Act was enacted in the year 2002. A registration with the CERSAI is not akin to the registration under the Registration Act of 1908. The judgment of the Division Bench relates to the position where the registration under the Registration Act was incomplete. It certainly could not have dealt with CERSAI, because the entity came to existence only 80 years thereafter. Therefore, nothing flows out of the judgment in favour of the respondent Nos.1 to 3.

The allegations of fraud must be specifically pleaded

28. The argument of Mr.K.Pattabi that a fraud has been played by the civil revision petitioner and therefore, he has invoked the jurisdiction of the Civil Court also needs to be tested here. In terms of Order VI Rule 4 of the Code of Civil Procedure, the allegation of fraud, misrepresentation, coercion, and such vitiating factors would have to be specifically pleaded. I went through the plaint, in vain, searching for the allegations of fraud. All that has been pleaded is the violation of 26D of the SARFAESI Act. If there has been non-compliance of Section 26D of the SARFAESI Act, certainly the Debts Recovery Tribunal can decide that issue.

29. Rejecting this submission, Mr.Sathish Parasaran would invite my attention to the CERSAI report, dated 02.11.2023, and would submit that this very property, which is the subject matter of the suit, has already been registered with the said Authority. He would point out that this is also a plea which can be gone into by the Debts Recovery Tribunal.

30. A fraud means an act that has been committed by the secured creditor in a manner acting contrary to either law or to the admitted facts. The registration with CERSAI is the requirement in terms of Section 26D of the SARFAESI Act. In fact, if the registration has not taken place, I am

certain that the Debts Recovery Tribunal would treat it as a condition precedent for invocation of Section 13(4) and would come to the appropriate conclusion. The fact that the secured creditor is not registered with CERSAI will not give the cause of action for the other party to approach the Civil Court. It is certainly a cause of action to approach the Debts Recovery Tribunal.

31. I am able to see from the plaint that a reason why respondent Nos.1 to 3 have approached the Munsif Court, Writ Court, Debts Recovery Tribunal and finally, the highly charitable Court of the learned Principal District Judge at Chengalpet. This is because the secured creditor has invoked the provision of Section 14 and obtained an order to take possession of the property. A debtor will ofcourse fight with all his might and throw everything including the kitchen sink against the secured creditor in order to prevent the latter from taking possession. This does not mean that the Civil Court must fall prey to such tactics. When Section 34 of the SARFAESI Act stares at the Civil Court; obeying the Parliamentary mandate, it ought not to have entertained the suit.

The power of High Court to strike off a plaint

32. After these points failed to appeal to the Court, Mr.K.Pattabi would argue that the plaint cannot be rejected in part. I am alive to the position of law that the plaint cannot be rejected in part. I am not dealing with the situation under Order VII Rule 11 of the Code of Civil Procedure but with the jurisdiction under Article 227 of the Constitution of India. This encompasses within itself the power under Order VII Rule 11 of the Code of Civil Procedure and also the one available under Order VI Rule 16 of the Code of Civil Procedure.

33. If I were to find the plaint as an abuse of process of Court, I can certainly reject it invoking that provision. In fact, even if no provisions are available, still the inherent power of the Court can always be tapped into to ensure that the plaint, such as this, which has been illegally entertained by the Court below is thrown out at the earliest. The stream of justice has to be maintained pure and it cannot be permitted to be sullied by the persons like respondent Nos.1 to 3.

34. Mr.K.Pattabi argued that the civil revision petition is not

maintainable because, M.K.Ragini/the defendant has not been authorized by the board to file the same. For this purpose, he would rely upon the provision of the Companies Act to substantiate his arguments.

35. The resolution that has been passed by the Board of Directors of India Resurgence Arc Private Limited, dated 24.01.2022, has been placed before me. Apart from that, the specific averment available is that Ms.M.K.Ragini has been authorized by the Company, and the institutions is a financial institution in terms of Section 2(m)(iiib) of the SARFAESI Act. When the averments are available that the defendant has been empowered, I need not conduct a probe to find out whether the said resolution has been passed by the Board of Directors or not.

36. All these points urged by Mr.K.Pattabi failing, and finding that the suit is barred by Section 34 of the SARFAESI Act, nothing further remains than to pass an order striking off the plaint as an abuse of process of Court. The learned Principal District Judge at Chengalpet is requested to pass consequential orders on the basis of this Order.

37. Mr.K.Pattabi would plead that as the arbitration award has been passed, the security interest has been lost by the secured creditor. This plea is one which has been raised for the first time in the revision. It is not supported by any pleading. It was not the plea that has been taken in the plaint enabling the Court to entertain the suit. Prima facie, I am of the view that invocation of arbitration proceedings does not bar a secured creditor from invoking Section 13(4) of the SARFAESI Act.

38. I have rendered the above finding only for the purpose of allowing the revision. It is always open to the parties of this revision to convince the Debts Recovery Tribunal about their respective cases.

Decision

39. In fine, the plaint in O.S.No.295 of 2023 on the file of the learned Principal District Judge at Chengalpet is struck off.

40. Accordingly, the Civil Revision Petition stands allowed with a cost

of Rs.50,000/-. The connected Civil Miscellaneous Petition is closed.

24.06.2024

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Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.

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To

The learned Principal District Judge,
Chengalpet

C.R.P.(PD)No.2278 of 2023
and
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