IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM

**THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

C.M.A.No.2909 of 2021
and
C.M.P.Nos.16683, 16685 of 2021 and 15836 of 2023

P.Tamilselvi ... Appellant/Petitioner/Appellant

Vs.

Oriental Bank of Commerce,
Erode Branch,
now merged with Punjab National Bank,
Erode Branch,
Represented by its Authorized Officer,
Door No.43, Gandhiji Road,
Opp. Head Post Office,
Erode – 638 001. ... Respondent/Respondent/
2nd Respondent

**PRAYER:** Civil Miscellaneous Appeal filed under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908, praying to set aside the fair and final order dated 11.08.2021 made in I.A.No.1 of 2021 in A.S.No.15 of 2021 on the file of the Principal Sub Court, Erode and allow the above Civil Miscellaneous Appeal.

For Appellant : M/s.Zeenath Begum

For Respondent : Mr.M.L.Ganesh

**JUDGMENT**

This Civil Miscellaneous Appeal has been filed by the appellant/petitioner/plaintiff challenging the order passed in I.A.No.1 of 2021 in A.S.No.15 of 2021 on the file of the learned Principal Subordinate Judge, Erode, wherein, the Appellate Court has dismissed the injunction petition filed under Order 39 Rule 1 and 2 of CPC, vide order dated 11.08.2021.

2. The brief facts leading to the filing of this appeal are as follows:

(i) The appellant has instituted a suit in O.S.No.595 of 2015 against nine defendants including the contesting respondent, Oriental Bank of Commerce, Erode. The case of the plaintiff is that the suit property, which is situated at Erode, originally belonged to her paternal grandfather, namely, Appavvo Mudaliar, by way of sale deed dated 15.11.1972. Appavvo Mudaliar died on 26.04.1987 leaving behind the co-sharer, namely, Thangavelu and other legal heirs. The co-sharer, Thangavelu released his share by way of registered release deed dated 10.02.1994 in favour of one A.Thiyagarajan, father of the plaintiff. On 06.10.1994, the plaintiff's father died leaving behind the plaintiff and the defendants 3 to 7 as his legal heirs. Thereby, the plaintiff is entitled for 1/6th share in the suit property. She came to know that Oriental Bank of Commerce, Erode has taken possession of the suit property under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ['SARFAESI Act' in short]. Immediately, she verified the documents and found that the document titled as 'Memorandum of Deposit of title deeds' dated 21.10.2013, has been fabricated without her knowledge as if, she is a signatory of the Memorandum of Deposit of title deeds for the purpose of obtaining loan. The first defendant by colluding with the defendants 2 and 3 have created this fabricated deed for the purpose of obtaining loan. The said document is not binding on her. Hence, she has come forward with this suit seeking the relief of permanent injunction restraining the Bank from taking any action against the plaintiff's share in the suit property.

(ii) The suit was contested by the Bank/second defendant and the other defendants remained ex-parte.

(iii) The Trial Court has dismissed the suit after discussing the merits of the case and also based on the bar prescribed under Section 34 of the SARFAESI Act.

3. Aggrieved over the dismissal of the suit, the plaintiff has initiated appeal suit in A.S.No.15 of 2021 on the file of the Principal Sub Court, Erode, wherein, she has also filed an application in I.A.No.1 of 2021 seeking interim relief of injunction, which was dismissed by the Appellate Court on the ground that the suit is barred by Section 34 of the SARFAESI Act.

4. Aggrieved over the dismissal of the injunction petition, the present Civil Miscellaneous Appeal is filed by the appellant/petitioner/plaintiff.

5. The learned counsel for the appellant submits that it was proved by the plaintiff before the Trial Court that the signature and thumb impression

found in the Memorandum of Deposit of title deeds dated 21.10.2013, Ex.A7, is fabricated and the signature and thumb impression do not belong to the plaintiff. Having proved that the Memorandum of Deposit of title deeds is a fabricated document, the plaintiff is entitled for interim protection as prayed by her. The learned counsel further submitted that Section 34 of the SARFAESI Act is not applicable to the case of the plaintiff, since in this case, there is a forgery established by the plaintiff herein and she is entitled for interim relief of injunction.

6. In support of her submission, the learned counsel for the appellant relied on the following judgments:

(i) Judgment of this Court in ***Sri Chandru and another Vs. K.Nagarajan and others*** reported in ***2012 (3) CTC 785***

(ii) Judgment of this Court in ***Cambridge Solutions Limited Vs. Global Software Limited and others*** reported in ***2017 (1) CTC 497***

(iii) Judgment of the Hon'ble Supreme Court in ***Salim D.Agboatwala and others Vs. Shamalaji Oddhavji Thakkar and others*** reported in ***2021 (3) MWN (Civil) 225***

(iv) Judgment of this Court in ***Punjab National Bank Vs. R.Lalitha and others*** reported in ***2023 (6) CTC 140***

7. Per contra, the learned counsel for the respondent Bank submitted that it is true that the forensic expert has appeared before the Trial Court and submitted that the signature and thumb impression found in the Memorandum of Deposit of title deeds were not tallied with the signature and thumb impression of the plaintiff. However, there are several other documents executed by the plaintiff, wherein, it has been categorically established that the plaintiff is one of the guarantors for the loan borrowed by M/s.K.M. Tex/8$^{th}$ defendant, who has borrowed the loan and failed to repay the same. Even prior to the filing of the suit, several proceedings under the SARFAESI Act have been initiated and the plaintiff has not questioned those proceedings.

8. In support of his submission, the learned counsel for the respondent relied on the following judgments:

(i) Judgment of the Hon'ble Apex Court in ***Electrosteel Castings Limited Vs. UV Assest Reconstruction Company Limited and others*** reported in ***(2022) 2 SCC 573***

(ii) Judgment of this Court in ***The Hongkong and Shanghai Banking Corporation Ltd. (HSBC) Vs. R.Subramanian and others*** reported in ***2017 (3) CTC 526***

9. I have carefully considered the submissions made on both sides and also perused the records.

10. In ***Sri Chandru and another Vs. K.Nagarajan and others*** reported in ***2012 (3) CTC 785,*** the Division Bench of this Court while considering the scope of Section 34 of the SARFAESI Act, has held in paragraphs 20 to 23 as follows:

> *"**20.** Power under Section 34 of SARFAESI Act is not absolute and is subject to restrictions. They are: (1) that parties who filed Suit must be party to liabilities created in favour of secured creditors, (2) disputes between parties could be resolved under provisions of Act itself; (3) if claim made by*

*parties is outside jurisdiction of Debt Recovery Tribunal or Appellate Tribunal thereto or any action taken or to be taken under the Act and also under Recovery of Debt due to Banks and Financial Institutions Act, 1993 and disputes raised by parties cannot be adjudicated by Tribunal or Authority created under Act.*

***21.*** *As per the ratio laid down by the Supreme Court in Nahar Industrial Enterprises Ltd. v. Hong Kong And Shanghai Banking Corporation, 2009 (4) CTC 74 : 2009 (8) SCC 646, recourse to other provisions of the Code will have to be made for redressal of individual grievance. For redressal of individual grievances, they have to approach only Civil Courts. When such Civil Suits are filed, Courts are to be cautious about astute drafting of Plaint. Courts have a duty to see that whether the Plaint allegations are made by trying to bring Civil Suit within the parameters laid down by the Supreme Court in Mardia Chemicals Ltd. v. Union of India, 2004 (2) CTC 759 (SC), and under the pretext of seeking redressal of individual grievance.*

***22.*** *Observing that Courts have a greater duty to see that the allegations of fraud are made just for the purpose of maintaining a Civil Suit and categorising such Civil Suits filed challenging SARFAESI Act in 3 or 4 categories, in Punjab*

*National Bank v. J. Samsath Beevi, 2010 (3) CTC 310, V. Ramasubramanian, J., held as under:*

> *"8. But at the same time, the Court has a duty to see, if such allegations of fraud are thrown, just for the purpose of maintaining a Suit and ousting the jurisdiction of the Tribunal and to keep the Banks and Financial Institutions at bay. If by clever drafting, the Plaintiff creates an illusion of a cause of action, the Court is duty bound to nip it in the bud. To find out if it is just a case of clever drafting, the Court has to read the Plaint, not formally, but in a meaningful manner. So is the dictum of the Apex Court in T. Arivandandam v. T.V. Satyapal, 1977 (4) SCC 467. It was again reiterated by the Court in I.T.C. Ltd. v. Debts Recovery Appellate Tribunal, 1998 (2) SCC 70, by holding that clever drafting, creating illusions of cause of action are not permitted in law. The ritual of repeating a word or creation of an illusion in the Plaint can certainly be unravelled and exposed by the Court while dealing with an Application under Order 7, Rule 11(a).*
>
> *9. A Court is obliged to see if the allegations of fraud and collusion made in the Plaint, are themselves a*

*product of "fraud and collusion" between the family members of the borrowers, so as to escape liability and save the secured assets, somehow or the other. In the recent past, there is a sudden spurt in the number of Civil cases filed against the actions initiated by Banks and Financial Institutions, either under the 1993 Act or under the SARFAESI Act, 2002. All these cases fall under 3 or 4 categories viz.—*

*(i) cases filed by strangers claiming that their properties are brought to sale on the basis of forged documents or certified copies of documents submitted by borrowers to Banks;*

*(ii) cases filed by guarantors claiming that they never signed letters of guarantee or offered their properties as securities;*

*(iii) cases filed by close relatives of borrowers such as spouses, children, brothers and sisters, claiming that they have a share in the properties mortgaged by the borrowers and that they were never aware of and they never gave consent to the properties being offered as securities; and*

*(iv) cases filed by third parties claiming that the properties were sold to them by the borrowers or guarantors by suppressing the creation of the*

*mortgage and that they are bona fide purchasers for value without notice of the encumbrances.*

*10. It is not very difficult for a seasoned litigant or an intelligent lawyer to draft the Plaint in such a manner as to make a secured asset, come within anyone of the above 4 categories, by a clever drafting of the Plaint, thereby creating an illusion of fraud, collusion, misrepresentation and the like. Today, with the advancement of technology, the creation of an illusion and the creation of a virtual world are both possible. The moment the Civil Suit is taken on file, the proceedings before the Debts Recovery Tribunal or under the SARFAESI Act, 2002, gets slowed down. This results in two consequences viz., (i) out of frustration, the Banks agree for one time settlements or (ii) third party rights get created by taking advantage of the situation. Therefore, the Courts have a greater responsibility to scan the pleadings and see if the allegations of fraud and collusion made in the Plaint are actually a product of fraud and collusion between the borrowers and those making such claims."*

***23.** Courts have a duty to see whether genuine grounds* *have been made out to attract the jurisdiction of the Civil Court. No generalisation could be made as to when a Civil Suit is maintainable or when the jurisdiction of the Civil Court is ousted. In the facts and circumstances of each case, it is to be examined whether there is genuine grievance to be redressed in the Civil Court. In V. Thulasi v. Indian Overseas Bank, 2011 (3) CTC 801, this Court held that the Suit is specifically barred under Section 34 of the Act and the Plaint is liable to be rejected."*

11. In ***Cambridge Solutions Limited Vs. Global Software Limited and others*** reported in ***2017 (1) CTC 497***, the Division Bench of this Court, while considering the scope of maintaining the suit, instituted to nullify the orders passed by the Recovery Officer under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act), has accepted that if the fraud is pleaded, the plaintiff could sustain the suit. It is further held that it is the duty of the Trial Court to carefully analyze whether the cause of action pleaded in the averments in the plaint is real or fictitious. In case it is found to be surreal, the plaint must be rejected at the threshold with costs.

12. The learned counsel for the appellant has also relied on the

judgment of this Court in ***Punjab National Bank Vs. R.Lalitha and others*** reported in ***2023 (6) CTC 140***, wherein, the learned Single Judge has referred to the judgments of the Hon'ble Apex Court in ***Jagadish Singh Vs. Heeralal and others*** reported in ***AIR 2014 SC 371*** and ***Sree Anandhakumar Mills Ltd. Vs. Indian Overseas Bank and others*** reported in ***MANU/SC/0638/2018***. Further, the learned Single Judge by relying on the judgment of the Apex Court rendered by three Judges Bench in ***Authorized Officer Vs. State Bank of India Vs. Alwyn Alloys Pvt. Ltd and others*** reported in ***AIR 2018 SC 2721 (SC)***, has held that the bar under Section 34 of the SARFAESI Act cannot totally bar the jurisdiction of the Civil Court if the remedy available under the Special Act is not adequate.

13. In ***Electrosteel Castings Limited Vs. UV Assest Reconstruction Company Limited and others*** reported in ***(2022) 2 SCC 573***, the Apex Court has held in paragraph 7.2 as follows:

> "***7.2.*** *..As per the settled proposition of law mere mentioning and using the word "fraud"/"fraudulent" is not sufficient to satisfy the test of "fraud". As per the settled*

*proposition of law such a pleading/using the word "fraud"/"fraudulent" without any material particulars would not tantamount to pleading of "fraud".*

***8.*** *In Bishundeo Narain [Bishundeo Narain v. Seogeni Rai, 1951 SCC 447 : 1951 SCR 548] in para 22, it is observed and held as under : (SCC p. 454)*

> *"22. ... Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4, Civil Procedure Code." "*

14. In ***The Hongkong and Shanghai Banking Corporation Ltd. (HSBC) Vs. R.Subramanian and others*** reported in ***2017 (3) CTC 526***, the learned Single Judge of this Court has held as follows:

"***12.*** *In 2012 (3) CTC 785, the Division Bench of this Court* *has held as follows:*

*".. .. ..*

*9. A Court is obliged to see if the allegations of fraud and collusion made in the plaint, are themselves a product of "fraud and collusion" between the family members of the borrowers, so as to escape liability and save the secured assets, somehow or the other. In the recent past, there is a sudden spurt in the number of civil cases filed against the actions initiated by Banks and Financial Institutions, either under the 1993 Act or under the SARFAESI Act, 2002. All these cases fall under 3 or 4 categories viz.,*

*(i) cases filed by strangers claiming that their properties are brought to sale on the basis of forged documents or certified copies of documents submitted by borrowers to banks*

*(ii) cases filed by guarantors claiming that they never signed letters of guarantee or offered their properties as securities*

*(iii) cases filed by close relatives of borrowers such as spouses, children, brothers and sisters, claiming that they have a share in the properties mortgaged by the borrowers and that they were never aware of and they never gave consent to the properties being offered as securities and*

*(iv) cases filed by third parties claiming that the properties were sold to them by the borrowers or guarantors by suppressing the creation of the mortgage and that they are bona fide purchasers for value without notice of the encumbrances.*

*10. It is not very difficult for a seasoned litigant or an intelligent lawyer to draft the plaint in such a manner as to make a secured asset, come within anyone of the above 4 categories, by a clever drafting of the plaint, thereby creating an illusion of fraud, collusion, misrepresentation and the like. Today, with the advancement of technology, the creation of an illusion and the creation of a virtual world are both possible. The moment the civil suit is taken on file, the proceedings before the Debts Recovery Tribunal or under the SARFAESI Act, 2002, gets slowed down. This results in two consequences viz., (i) out of frustration, the banks agree for one time settlements or (ii) third party rights get created by taking advantage of the situation. Therefore, the Courts have a greater responsibility to scan the pleadings and see if the allegations of fraud and collusion made in the plaint are actually a product of fraud and collusion between the borrowers and those making such claims."*

*23. Courts have a duty to see whether genuine grounds have been made out to attract the jurisdiction of the Civil Court. No generalisation could be made as to when a Civil Suit is maintainable or when the jurisdiction of the Civil Court is ousted. In the facts and circumstances of each case, it is to be examined whether there is genuine grievance to be redressed in the Civil Court… .. .."*

***14.*** *From the above judgments and the principles set out therein, it is very clear that jurisdiction of Civil Court would be ousted with regard to the dispute relating to recovery of the proceedings. Of course, the Civil Court has jurisdiction to decide the issue if any fraud has been played by the secured creditor.*

*Otherwise, for deciding the enforcement of agreement, this Court is of the view that the Tribunal has all powers to decide the same. The Tribunal is not a mere collection agent to pass an order with regard to the issue of recovery certificate based on the documents and contracts executed by the parties. The enforcement of the contract can very well be decided by the Tribunal. Therefore, the contention of the original plaintiff that only Civil Court can decide the enforceability of Guarantee is not sustainable in law.* "

15. In this case, the plaintiff has made an allegation that her thumb impression and signature have been forged in the Memorandum of Deposit of title deeds, Ex.A7. This is the document alleged to be executed by her along with her mother. Apart from this Memorandum of Deposit of title deeds, the plaintiff has also executed an agreement for guarantee dated 30.10.2013, common agreement dated 30.10.2013. The Trial Court has given a specific finding that the signature and thumb impression in the Memorandum of Deposit of title deeds, Ex.A7 are proved to be fabricated. However, the Trial Court on different reasons has dismissed the suit filed by the plaintiff. The Appellate Court has held that the maintainability of the suit is a major question to be decided in the appeal and dismissed the

injunction petition.



16. The findings of the Trial Court as well as the exhibits marked shows that the plaintiff has executed various documents as guarantor for obtaining loan by the eighth defendant, namely, K.M.Tex Partnership Firm. Out of those documents, she claims that one of the documents is fabricated. The other exhibits marked by the respondent Bank also shows that the Bank has taken possession of the immovable properties by invoking Section 13(4) of the SARFAESI Act, after issuing demand notice dated 03.07.2015 to all the persons, i.e., the borrower and the guarantors for the default loan of Rs.25,81,290/-. These facts show that the plaintiff has not questioned the various other documents which are binding her to pay the loan amount in the capacity of guarantor. SARFAESI proceedings were initiated against her, since she is also a guarantor and those proceedings remain unchallenged.

17. As held by the Hon'ble Apex Court and this Court in the judgments cited supra, the Civil Court has jurisdiction to decide the issue if

any fraud has been pleaded against the secured creditor, otherwise for deciding the enforcement of agreement, the Tribunal is having power to adjudicate the appeals filed against the possession notice or any other proceedings initiated before the Tribunal. In this case, as stated above, the plaintiff is a guarantor and she subscribed various documents. Claiming that one of the document is a forged document, she has come forward with the suit and also seeking interim injunction from initiating action against the suit property. This Court is of the view that since the Trial Court has given a specific finding against the plaintiff that, she is not entitled for injunction against the recovery proceedings, and the same is pending final adjudication before the Appellate Court, it had rightly dismissed the injunction petition. Since there are several other documents, which supports the case of the respondent Bank that the plaintiff has borrowed the loan, and they have already initiated proceedings, taken possession of the property, interference of this Court at this stage would not be proper.

18. This Court is of the view that since there are several admitted loan documents and disputed documents are placed on record, the Appellate

Court is directed to decide the case on merits and dispose of the appeal suit at the earliest. The parties are hereby directed to co-operate for the early disposal of the appeal suit.

19. With the above direction, the Civil Miscellaneous Appeal is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**28.06.2024**

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

To
1.The Principal Sub Court,
Erode.

2.The Section Officer,
V.R. Section,
High Court, Chennai.

**K.RAJASEKAR,J.**

Lm

Judgment made in
C.M.A.No.2909 of 2021

28.06.2024