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C.R.P. No. 4168 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2024

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. No. 4168 of 2024

and

C.M.P. No. 22960 of 2024

1. Rajan Madhavan

Rep by its Power agent Vedhambal

2. M.Vedhambal

... Petitioners / Petitioners / Defendants

Vs.

EL-OS Formusols India Private Ltd,

Rep by its Director

B.Venkatesh

Residing at "Kanishya Arcade" 3/FA

Warners Road, Cantonment

Trichy

... Respondent / Respondent / Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 24.06.2024 passed by the learned IV Additional District Munsif, Coimbatore in I.A. No. 4 of 2023 in O.S. No. 828 of 2020.

For Petitioners : Mr. T.Saikrishnan



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ORDER

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The respondent as the plaintiff presented O.S. No. 828 of 2020 on the file of the IV Additional District Munsif Court at Coimbatore. He sought for the relief of permanent injunction restraining the civil revision petitioners from alienating or encumbering the suit schedule mentioned properties without due process of law.

2. The case of the plaintiff is that the property in which the machineries are situated was mortgaged to the Punjab National Bank. The bank in exercise of the powers under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as 'SARFAESI Act'), brought the mortgaged land and building for auction sale on 27.03.2020. The civil revision petitioners / defendants were the successful bidder and had purchased the same. A sale certificate was also issued on 13.05.2020.

3. According to the plaintiff, though the purchase is for the land and building, the civil revision petitioners / defendants are attempting to alienate the plant and machinery which is found therein. Pleading that the suit is



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barred by virtue of Section 34 of the SARFAESI Act, the defendants took out an application for rejection of the plaint. This application was received in I.A. No. 4 of 2023. The learned IV Additional District Munsif at Coimbatore dismissed the said application on 24.06.2024. Hence, this revision.

4. Mr. T.Saikrishnan pleads that apart from the bar under Section 34, there is no cause of action against the defendants, since the defendants had not purchased the plant and machineries. He invites my attention to the written statement in paragraph nos. 7 and 8 to point out that the plant and machinery were sold separately by the Punjab National Bank pursuant to a notification dated 06.07.2020. Hence, he states the plaint need not continue on the file of the learned District Munsif.

5. I have carefully considered the submissions of Mr. T.Saikrishnan.

6. For the purpose of the bar under Section 34 of the SARFAESI Act to be attracted, the relief that is sought for by the plaintiff in the suit must be one which can be granted by the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal. It must also be a measure in terms of Section 13 of the SARFAESI Act. There is no dispute that the civil revision petitioners /



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defendants had purchased only the land and building. In case the suit related to the land and building, certainly Mr. T.Saikrishnan is correct and the suit would not be maintainable. This is because, in such a case, the plaintiff would be indirectly attacking the sale that had taken place at the instance of the bank in his favour. That is not the situation as seen from the plaint.

7. The plaintiff concedes that the defendants are the owners of the land and building. He relies upon the sale certificate to plead that all that the civil revision petitioners / defendants had purchased was the land and building and he does not have any right over the plant and machinery. This relief cannot be granted by the Debts Recovery Tribunal. The only remedy is before the Civil Court, as it falls outside the scope of Section 34 of the Act.

8. Insofar as the plea that the plant and machinery were sold separately by way of separate auction dated 06.07.2020, that is not a matter which is admitted in the plaint. It is essentially the defendants' plea which cannot be looked into under Order VI Rule 11 of the Code. The Court has to see only the averments made in the plaint and the documents annexed thereto for the purpose of deciding whether the application under Order VII Rule 11 deserves acceptance. The notification dated 06.07.2020 and the letter issued



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by one Jagdeep Dugar dated 16.07.2020 to Punjab National Bank are the documents produced by the defendants. The Court rightly did not look into the said documents at the time of disposal of Order VII Rule 11.

9. At this stage, Mr. T.Saikrishnan would submit that the suit is listed on 19.10.2024 for the purpose of trial. Considering the limited scope in which O.S. No. 828 of 2020 operates, and in the light of averments made in paragraph nos. 7 and 8 of the written statement, there shall be a direction to the learned IV Additional District Munsif at Coimbatore to dispose of the said suit within a period of 4 months from the date of receipt of a copy of this order.

10. With the above directions, the civil revision petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

17.10.2024

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No
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To



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The IV Additional District Munsif, Coimbatore.

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V.LAKSHMINARAYANAN, J.,

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