



2024:DHC:1364



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 22nd February, 2024**

+ **C.R.P. 115/2022 & CM APPL No. 35157/2022**

IFCI VENTURE CAPITAL FUNDS LIMITED Petitioner

Through: Mr. Sanjiv Kakra, Sr. Advocate with
Mr. Som Raj Choudhury, Ms.
Shrutee Aradhana, Advocates with
Mr. Saajan Rathi, AR.

versus

SRGP CORPORATION LIMITED Respondent

Through: Mr. Sanjeev Bhandari, Mr. Ravi Data
and Mr. Rajesh Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of the petitioner seeking the following reliefs:

"(a) Call the records of C.S. No. 901/2021 titled as "SRGP Corporation VS. IFCI Venture Capital Funds Limited" is pending before the Ld. Trial Court Shri Aviral Shukla, Ld. Civil Judge, District (South-East) Saket Court, New Delhi.

(b) Set aside the impugned order dated 22.12.2021 passed by the Hon'ble Court of Shri Aviral Shukla, Ld. Civil Judge,

Signature Not Verified

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By: GAURAV SHARMA
Signing Date: 22.02.2024
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C.R.P. 115/2022

Page 1 of 79



2024:DHC:1364



District (South-East) Saket Court, New Delhi in C.S. No. 901/2021 titled as “SRGP Corporation Ltd. VS. IFCI Venture Capital Funds Limited”.

(c) Allow the application under Order VII Rule 11 CPC filed by the Petitioner and Suit filed by the Respondent/Plaintiff may kindly be rejected.

(d) Any other relief/ reliefs, which this Hon’ble Court may think fit and proper in the interest of justice.”

FACTUAL HISTORY

2. The petitioner, i.e., the defendant before the learned Trial Court is a public financial institution under the Ministry of Finance, Government of India, incorporated under the Companies Act, 1956 having its registered office at IFCI Tower, 61 Nehru Place, New Delhi – 110019. *inter alia* the petitioner entity is involved in the business of assisting the innovation and development including application and commercialization of technology and/or granting financial assistance by way of equity participation, debentures or advances.

3. The respondent, i.e., the plaintiff before the learned Trial Court is a company incorporated under the provisions of Companies Act, 2013, also registered with the Ministry of Micro, Small and Medium Enterprises, Government of India (hereinafter “MSME”) and has its registered office at Ganges Nagar, 365, Harris Ganj, Kanpur, Uttar Pradesh-208004.

4. A project was proposed by the respondent company wherein it was agreed that the petitioner shall takeover/refinance all the loans advanced by



M/s Venus India Asset Finance Pvt. Ltd. to the respondent and the project also included for financing of development/finishing work of Ganges Nagar Mall (Phase I) & Ganges Nagar Plots TAT Mill (Phase II) respectively situated at 365 & 364, Harris Ganj, Kanpur, Uttar Pradesh (hereinafter “the project”).

5. The respondent company through its director namely Mr. Raghu Raj Kanudia (plaintiff no. 2 before the learned Trial Court) approached the petitioner company for financial assistance to the tune of Rs. 17.50 Crores for refinancing/taking over of all the existing four loans aggregating to Rs. 13.50 Crores of M/s Venus India Asset Finance Pvt. Ltd. and Rs. 4 Crores for development/finishing work of the above said project.

6. The petitioner agreed to finance the amount of Rs. 17.50 Crores in favour of the respondent vide Corporate Loan Agreement dated 8th August, 2017 for a period of 48 months including moratorium period of 12 months from the date of first disbursement subject to certain terms and conditions. Further, a Deed of Guarantee dated 8th August, 2017 was also executed by the Director of the respondent company namely Mr. Raghu Raj Kanudia in favour of the petitioner. An Undertaking dated 22nd August, 2017 was also executed on behalf of the respondent company by its managing director/authorized representative wherein an equitable mortgage of a property admeasuring 3695 sq. mtrs. Situated at Haris Ganj, Kanpur, Uttar Pradesh along with other conditions was created in favour of the petitioner.

7. It is stated that after a while, the respondent became irregular and negligent in repayment of its outstanding dues and failed to adhere to the



2024:DHC:1364



terms and conditions in the above said loan agreement, therefore, defaulting in making necessary payments despite repeated reminders.

8. It is stated that the last payment received against the respondent's loan account was in December, 2019 and no payment was received in the month of February, 2020. Subsequently, the moratorium period of six months was availed by the respondent company from 1st March, 2020 to 31st May, 2020 and 1st June, 2020 till 31st August, 2020 in terms of the various circulars issued by the Reserve Bank of India (hereinafter "RBI") due to then prevailing COVID-19 pandemic. Further, the respondent's loan account was already irregular by 60 days due to non-payment of the due amount even before the moratorium period of six months was availed.

9. It is stated that as soon as the moratorium period was over, the default period with regard to the said loan account continued from 1st September, 2020. It has further been stated that the loan account was in default from 1st January, 2020 to 31st January, 2020; 1st February, 2020 to 28th February, 2020 and 1st September to 30th September, 2020.

10. In the meanwhile, the respondent company, vide its letter dated 29th January, 2021 requested for restructuring of its loan account which was approved in-principle by the petitioner vide its letter dated 31st March, 2021, wherein, the respondent company was asked to accept the terms and conditions as provided in the restructuring. However, the respondent company failed to confirm with the terms of the said restructuring plan despite several reminders. Since no confirmation was given by the



2024:DHC:1364



respondent company, the petitioner vide its letter dated 21st May, 2021 revoked the said restructuring plan.

11. As the repayment of the loan amount was due since 1st January, 2020; the petitioner issued a loan recall notice dated 8th July, 2021 and the respondent's loan account was declared as a Non Performing Asset (hereinafter "NPA") w.e.f. 30th September, 2020.

12. Thereafter, vide letter dated 30th July, 2021, the petitioner cancelled all the NOC's issued to the respondent on the ground that the respondent company had registered only 3 shops and 13 plots in favour of the buyers whereas the petitioner had issued NOC for sale of 45 plots and 22 shops. It has been stated by the petitioner that as per the above said loan agreement, the respondent company were to receive the NOCs for sale of plots and shops with a condition that the same shall be registered before the concerned Sub-Registrar in favour of the buyer and in the event, the sale is cancelled, the NOCs so issued shall stand automatically revoked forthwith and that the respondent would have to apply for a fresh NOC in relation to the sale of the said units.

13. Subsequently, the petitioner issued a notice dated 23rd August, 2021 under Section 13 (2) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter "SARFAESI"), thereby, initiating action against the respondent for recovery of debt.

14. Meanwhile, the respondent issued several cheques to the petitioner in lieu of the loan advanced to it and the same were dishonoured for



2024:DHC:1364



insufficient funds on 31st May, 2021, 12th July, 2021 and 1st September, 2021 which were later challenged in case bearing nos. CC 5809/2021, CC 7331/2021 and CC 8319/2021.

15. In the interim, the respondent company filed a suit for declaration along with an application before the learned Civil Judge-01, South East District, Saket Courts, New Delhi, against the present petitioner and the said suit was registered vide C.S. No. 901/2021 which is pending for adjudication. In the said suit, the respondent company sought for declaration of the respondent's account being classified as NPA as illegal, null and void on the ground that the same is violative of RBI's guidelines and contrary to the orders passed by the Hon'ble Supreme Court in *Gajendra Sharma v. Union of India*¹.

16. Further, the petitioner herein filed an application under Order VII Rule 11 of the CPC, seeking rejection of the respondent's suit along with reply to the respondent's application under Order XXXIX Rule 1 & 2 of the CPC in the above said suit.

17. Thereafter, on 21st October, 2021, the respondent filed its preliminary objection under Section 13 (3) of the SARFAESI. Pursuant to the same, the petitioner filed its detailed reply on 5th November, 2021 under Section 13 (3A) of the SARFAESI. Further, on 30th November, 2021, the petitioner issued intimation letters to the guarantor and the respondent and accordingly, the petitioner took symbolic possession of the secured assets under Section 13 (4) of the SARFAESI.

¹ (2021) 1 SCC 210



2024:DHC:1364



18. Subsequently, on 1st December, 2021, the petitioner filed an original application bearing OA No. 1103/2021 under Section 19 read with Section 2 (g) of the Recovery of Debts due to Financial Institutions and Financial Institutions Act, 1993 (hereinafter “RDB Act”) against the respondent for recovery of Rs. 12,60,63,546/- before the Debt Recovery Tribunal, New Delhi (hereinafter “DRT”). The respondent also filed a securitisation application on 25th June 2022 before DRT Allahabad, under Section 17 (1) of the SARFAESI against the petitioner’s various acts such as issuance of notice under Section 13 (2) and 13 (4) and taking possession of the respondent’s assets.

19. Meanwhile, the learned Trial Court vide order dated 22nd December, 2021 dismissed the petitioner’s application filed under Order VII Rule 11 of the CPC and further granted *status quo ante* in the respondent’s application under Order XXXIX Rule 1 & 2 of the CPC with respect to the status of the respondent’s loan account. Thereafter, the petitioner filed an appeal against the said order in appeal bearing no. MCA DJ 4/2022, thereby, challenging the *status quo ante* order. The said appeal pending before the District Judge which was withdrawn in terms of the undertaking given before this Court on 22nd August, 2022 and the same was noted vide order dated 13th December, 2022 by the Predecessor Bench of this Court.

20. The petitioner has filed the instant civil revision petition challenging the impugned order by virtue of which the application filed by the petitioner under Order VII Rule 11 of the CPC was dismissed. It is pertinent to state



here that in the captioned petition, the petitioner is aggrieved only by the dismissal of his application mentioned herein above.

PLEADINGS

21. The petitioner had filed the instant civil revision petition on 30th May, 2022 and submitted the below stated arguments:

“.....CIVIL COURT’S JURISDICTION OUSTED BY SARFAESI ACT

A. BECAUSE the Ld. Trial Court failed to appreciate the settled principles in law, that stipulates that the Civil Court has no jurisdiction to entertain any matter arising out of proceedings/ actions either initiated or likely to be initiated under the SARFAESI Act or / and RDDBFI Act. Section 34 of the SARFAESI Act is extracted herein below for ready reference of the Hon’ble Court:

B. BECAUSE the Ld. Trial Court did not appreciate that the jurisdiction of a civil court was expressly barred in all matters as provided under Section 34 of the Act, wherein cognizance may be taken by DRT/DRAT. In the instant case, the appellant herein had initiated the action under SARFAESI Act by issuing a notice under Section 13(2) of the SARFAESI Act on 23.08.2021. Also, the respondent company had raised objections to the said notice in terms of Section 13(3) of the SARFAESI Act; wherein the said objections were duly considered by the appellant herein and rejected vide its reply as per the provisions under Section 13(3A) of the SARFAESI Act.

*C. BECAUSE the Ld. Trial Court failed to appreciate that the Hon’ble Apex Court in **Mardia Chemicals Limited vs. Union***



of India, (2004) 4 SCC 311, has carved out the exception to the bar of jurisdiction of the Civil Court to interfere in any case where either the SARFAESI actions have been initiated or likely to be initiated and the same are provided below:

- i) In respect of an action of a secured creditor alleged to be fraudulent;
- ii) When a claim of the secured creditor be so absurd and untenable which may not require any probe whatsoever;
- iii) Where the scope is permissible to bring an action in Civil Court in the cases of English mortgages.....

F. BECAUSE the Hon'ble Supreme Court in the case of **Jagdish Singh vs. Heeralal**, (2014) 1 SCC 479, was of the view that the jurisdiction of the civil court is completely barred insofar as the measures of the secured creditors are concerned. The Hon'ble Court also considered Section 35 of the SARFAESI Act that overrides all other laws, if they are inconsistent with the provisions of the Act, including Section 9 of the CPC as well. (Followed in Shree Anandha kumar Mills vs. Indian Overseas Bank (2019) 14 SCC 788).

G. BECAUSE the Hon'ble Supreme Court in the matter of **Authorized Officer, State Bank of India Vs. Allwyn Alloys Pvt Ltd.** (2018) has held that "after having considered the rival submissions of the parties, we have no hesitation in acceding to the argument urged on behalf of the bank that the mandate of Section 13 and, in particular, Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the 2002 Act"), clearly bars filing of a civil suit. For, no civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under this Act to determine and no injunction can be granted by any Court



or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act”.

SEPARATE SUIT NOT MAINTAINABLE AS A DEFENCE TO A CLAIM OF BANK/FI(s)

*J. BECAUSE the Trial Court failed to appreciate the view of Supreme Court in **State Bank of India Vs. Ranjan Chemicals Ltd. and Anr**, (2007) 1 SCC 97, dealing with the issue whether a separate suit was maintainable in the nature of a defence to a claim of a bank under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 held that even a claim of set off would fall under Sub-Section (6) to (11) of Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and thus, the proceedings are required to be instituted before the Debt Recovery Tribunal. In para 5 and 6, the Supreme Court held as under:-....*

L. BECAUSE the Ld. Trial Court erred in law by misconstruing the fact leading to the respondent's loan account being declared as NPA. It is stated that the loan account of the respondent was declared as NPA as per the IRAC norms issued by the RBI. The declaration of NPA, whether rightfully or wrongfully done, is completely under the purview of the Ld. DRT as per the provisions laid down under Section 17 & 18 of SARFAESI Act, for which the jurisdiction of Civil Court is ousted in view of Section 34 of the SARFAESI Act....

TRIAL COURT OVERLOOKED THE PROVISION ENUNCIATED UNDER SECTION 17 & 19 OF THE SARFAESI ACT



*L. **BECAUSE** the Ld. Trial Court erred in law by misconstruing the fact leading to the respondent's loan account being declared as NPA. It is stated that the loan account of the respondent was declared as NPA as per the IRAC norms issued by the RBI. The declaration of NPA, whether rightfully or wrongfully done, is completely under the purview of the Ld. DRT as per the provisions laid down under Section 17 & 18 of SARFAESI Act, for which the jurisdiction of Civil Court is ousted in view of Section 34 of the SARFAESI Act.*

*M. **BECAUSE** the Ld. Trial Court had erred in law in relying only on Para 22.5 of the judgment of Hon'ble High Court of Bombay in '**Bank of Baroda, through Branch Manager Vs. Gopal Shriram Panda**, (2021) SCC Bom 466, wherein the Hon'ble Court has wrongly held that the SARFAESI Act does not permit the DRT to go into the classification of borrowers account as NPA. It is stated that the Hon'ble High Court in the said judgment has overlooked the provisions enunciated under section 17(3) of the SARFAESI Act.*

Furthermore, the Ld. Trial Court, while selectively referring to the said judgment passed by the Bombay High Court, lost sight of the conclusions/findings in the said case by the Hon'ble High Court, the power of DRT to deal with matters in terms of Section 13 & 17 is clearly carved out and the same is extracted hereunder for reference of this Hon'ble Court:...

*N. **BECAUSE** the Ld. Trial Court has transgressed in law while relying on Para 85 and 86 of **Nahar Industrial Enterprises Limited vs. Hong Kong and Shanghai Banking Corporation**, (2009) 8 SCC 646, wherein the Hon'ble Court has passed a specific order in context that DRT could neither pass a decree nor could a debtor seek a declaratory relief by DRT. The said judgment was passed on 29.07.2009. However,*



the said provision has undergone a change after introduction of Section 17 (3) Amendment dated 01.09.2016.

*S. BECAUSE Hon'ble Supreme Court in the matter of **M/S. Sree Anandha Kumar Mills Ltd. V. M/s. Indian Overseas Bank** in Civil Appeal Nos. 7214-7216/2012 disposed of on 03.05.2018, has clearly held that in respect of a secured asset to a Bank or financial institution, a suit is not maintainable, either by a borrower or any other person; that the plaintiff can approach the DRT under Section 17 of SARFAESI Act and seek relief by assailing the action taken by the Bank.*

WHEN A SUIT OF DECLARATORY NATURE IS ENTERTAINED, IT FRUSTRATES THE LEGISLATIVE INTENT OF THE ACT

*Y. BECAUSE the Hon'ble High Court of Delhi in the case of **Radnik Exports vs. Standard Chartered Bank**, 2014 SCC OnLine Del 2404, held that the aforesaid bar of the jurisdiction of civil courts applies in suits wherein the declaration claimed is the same as the defense which could be raised by the plaintiff to a claim of the defendant Bank before the DRT. Further, the court held that the initiation of proceedings before the DRT as on date of institution of suit is irrelevant while determining the maintainability of the suit. The Hon'ble Court also observed that if the jurisdiction of the Court to grant the consequential relief of injunction is barred, the court ought to refuse to grant the relief of declaration also, which is but a discretionary relief...."*



22. In response to the present petition, the respondent had filed his reply dated 9th December, 2022 wherein it has opposed the present petition by advancing the following arguments:

“...1.. That the present Petition under reply is not maintainable either in facts or in law and the same deserves to be dismissed and be dismissed with heavy and exemplary costs, being frivolous, baseless and devoid of any merits.

32. That in order to minimize the hardships, being faced by the entire Nation, during Lock-down period and even thereafter, Government of India, Reserve Bank of India and all the State Governments, issued various Guidelines/Notifications, from time to time, announcing various Benefits/Moratoriums/Tax Relief(s) etc. to all the Sectors particularly for companies who are registered with MSME and GST.

33. That RBI issued a Statement on Developmental and Regulatory Policies on 27.03,2020, the object of which was to inter-alia, mitigate the burden of Debt Servicing and ease the Financial Stress, caused ‘by COVID-19 Pandemic disruptions, by relaxing repayment pressures and improving access to Working Capital and further improving the functioning of markets, in view of the high volatility, experienced with the onset and spread of the Pandemic.

34. That Clauses 5-and 6 of the Statement on Developmental Regulatory Policies dated 27.03.2020, issued by RBI, deals with Moratorium on Loans. Clause 5 inter alia, reads as under :-

35. That RBI issued detailed instructions on 27.03.2020 itself namely COVID-19 Regulatory Package, in pursuance to the Statement on Developmental and Regulatory Policies dated



27.03.2020, which further provides for Rescheduling of the Payments of Term Loans and Working Capital Facilities and other conditions. Clauses 2, 3 & 7 thereof, inter alia, read as under:-

55. That the alleged classification of account of Respondent as NPA, during the period when the above order/direction of the Hon'ble Supreme Court of India was in force, is blatantly illegal. The act of the Petitioner is also illegal, arbitrary and void in view of the mandatory Guidelines, issued by RBI and narrated herein below for the ready reference of this Hon'ble Court.

56. That in view of the Master Circular, issued by The Reserve Bank of India, vide Circular bearing RBI No. 2007-2008/39, DBOD. No.BP.BC.12/21.04.048/2007-2008, dated July 02, 2007, on "Prudential Norms on Income Recognition, Asset Classification and Provisioning Pertaining to Advances" (as amended from time to time), which squarely applies on the account of Respondents also, the accounts of Respondents cannot be classified as Non-Performing Asset.

PARAWISE REPLY:-

6. The contents of Para 6 of the Petition under reply are wrong, incorrect, against the law and therefore are vehemently denied. It is vehemently denied that the suit for declaration preferred by the Respondent before the Ld. Trial Court is a fit case under clauses of order 7 rule 11 CPC. It is submitted that the Ld. Trial court in its judicial wisdom and after going through the merits of the case, taking consideration of the facts and circumstances and settled law on the subject had passed a well reasoned order dated 22.12.2021. The contents of the aforesaid Preliminary submissions and objections may also be read as



part and parcel of the present Para as the same are not repeated herein for the sake of brevity. Contents of para A of the Petition are incorrect to the extent that the Ld. Civil Judge while granting “status quo ante” has not appreciated the facts, circumstances or evidence available on the record. It is further submitted that the Petitioner malafidely initiated the action under SARFAESI Act after the summons of the suit were served on the Petitioner. Even: otherwise the initiation of the alleged action under the SARFAESI Act does not affect the maintainability of the suit filed by the Respondent for the reason that the reliefs prayed by the Respondent in the suit cannot be tried or granted by the DRT. The suit of the Respondent is for declaration and mandatory injunction and the said reliefs are outside the purview of the SARFAESI Act or the Recovery Act and DRT has no power or jurisdiction to grant declaratory reliefs as prayed by the Respondent herein in the suit.

24. The contents of Para 24 of the Petition under reply are wrong, and incorrect and therefore are vehemently denied. It is categorically denied that the Respondent willingly abstained from complying with the terms and conditions of the restructuring plan. It is, however, submitted that vide various letters the Respondent intimated to the Petitioner the unforeseen circumstances beyond the control of the Respondent; due to which, the Respondent was unable to comply/accept the restructuring of the loan offer made by the Petitioner vide letter dated 31.03.2021. It is, however, unfortunate that the Petitioner, due to malafide reasons, did not consider the genuine requests/difficulties of the Respondent and chose to unilaterally revoked the restructuring vide letter dated 29.05.2021. It is well known that during the said time the pandemic caused by Covid'19 was at its peak and the entire country was facing lockdown and the circumstances were



beyond the control of the citizens. In the said prevailing situation the Petitioner chose to revoke the restructuring plan without giving adequate opportunity and/or time to the Respondent to fulfill the conditions of the offer. The contents of the aforesaid Preliminary submissions and objections may also be read as part and parcel of the present Para as the same are not repeated herein for the sake of brevity....”

23. The petitioner has also filed rejoinder dated 25th July, 2023 and advanced the following arguments in response to the above reply:

“...IV. Also, it is submitted that all the regulatory guidelines issued by the Reserve Bank of India has been duly complied with by the Petitioner in the present case. Even if there is any dispute to the said fact, the said issue with regard to regulatory compliance, the appeal to the same would lie under the Writ Jurisdiction, and therefore, the said Suit could not have been maintainable before the Ld. Court below.

*V. That the suit under challenge is being hit by provisions under Section 34 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002; **No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and Section 34 of the Recovery of Debts & Bankruptcy Act, 1993_ Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistency therewith contained in any other law for the time being in force or in***



any instrument having effect by virtue of any law other than this Act, 1993.

8. That the contents of Para No. 17 are denied for being baseless. The averments made by the respondent therein are misleading. It is further submitted that petitioner had taken commercial decision in line with its own lending policy/ guidelines issued by both Reserve Bank of India as well as the Central Government; and not by the glory of the projects of the respondent company. The Respondent had only approached petitioner for availing the Corporate Loan of Rs. 17.50 Crore, for which the said facility was extended to the Respondent.

14. That the content of Para No. 24 is only admitted to the extent that they form a part of record. It is further submitted that as per the terms of sanction under Clause 1 Sub Clause I (ix), the respondent shall undertake that, in case at any time, the Respondent company approaches the Petitioner herein for issuance of NOC for release of partial mortgaged shops/space/plots or part of mortgaged inventory, the Respondent company shall pay the amount on proportionate basis i.e. the ratio of outstanding loan and Distress Sale Value (DSV) of the mortgaged property or amount advised by the Petitioner herein; subject to no dilution in security cover i.e. 2.50 times of the loan amount computed on DSV and the loan account being regular.

32. That the contents of Para No. 55, 56, 57, 58, 59 and 60 are denied. That after the order of the Hon'ble Supreme Court in Writ Petition (C) No 825/2020, RBI vide its notification/circular No. RBI/2021-22/17 dated 07.04.2021 had clarified at point No 5 (ii) " that the asset classification for the



period from March 1 to 31.08.2020 shall be governed in terms of circular dated 17.04.2020 read with circular dated 23.05.2020 AND; for the period commencing 01.09.2020, the asset classification of such accounts shall be as per the extent IRAC norms."...

24. The petitioner and the respondent have also filed their judgment compilations dated 17th August, 2023 and 12th September, 2023 respectively.

SUBMISSIONS

(submissions on behalf of the petitioner)

25. Learned senior counsel Mr. Sanjiv Kakra, appearing on behalf of the petitioner submitted that the learned Trial Court erred in passing the impugned order as it failed to take into consideration the entirety of the facts and circumstances of the instant dispute.

26. It is submitted that Order VII Rule 11 of the CPC provides that a suit shall be rejected, where the suit appears, from the statements therein, to be barred by any law. It is further submitted that in order to decide whether the suit is barred by any law, it is the statement in the suit which will have to be construed.

27. It is submitted that the respondent's suit is barred by Section 34 of the SARFAESI as per which the Civil Courts are barred from exercising their jurisdiction in respect of any matter which a DRT or its appellate authority is empowered by or under the SARFAESI. The said provisions also states that no injunction shall be granted by any Civil Court or other authority in



respect of any action taken or to be taken in pursuance of any power conferred by or under the RDB Act.

28. It is submitted that above said suit is barred by Section 34 of SARFAESI since the respondent has clearly prayed for relief in the suit *qua* the loan account being declared as NPA. It is further submitted that it is barred specifically when action has been already taken by the petitioner under Section 13 (4) of the SARFAESI.

29. It is submitted that the respondent's loan account being declared as NPA is an admitted position in the suit. It has been stated therein that the loan account of the respondent, i.e., the plaintiff therein, was declared as NPA as per the Income Recognition and Asset Classification (hereinafter "IRAC") norms issued by the RBI.

30. It is further submitted that the declaration of NPA, whether rightfully or wrongfully done, is completely under the purview of DRT for which the jurisdiction of Civil Court is ousted in view of Section 34 of SARFAESI.

31. It is further submitted that the reliefs sought for by the respondent in the suit itself bars the Civil Court's jurisdiction and the learned Trial Court ought not to have entertained the same. Further, the efficacious remedy available to the respondent is an application under Section 17 of the SARFAESI.

32. It is submitted that the Hon'ble Supreme Court in the case of *Jagdish Singh v. Heeralal*², held that the jurisdiction of the Civil Courts is

²(2014) 1 SCC 479



completely barred insofar as the measures of the secure creditors are concerned.

33. It is submitted that while dealing with the issue whether a separate suit was maintainable as a defence to a bank's claim, the Hon'ble Supreme Court in *State Bank of India v. Ranjan Chemicals Ltd. & Anr.*³, held that even a claim of set-off would fall under Sub-Section (6) to (11) of Section 19 of the RDB Act and thus, proceedings are required to be instituted before the DRT which is the appropriate forum in the instant matter.

34. It is submitted that the learned Trial Court overlooked the provisions enunciated under Section 17 and 19 of the SARFAESI. The learned Court below erred in law by misconstruing the fact leading to the respondent's loan account being declared an NPA.

35. It is submitted that the learned Trial Court erred in law in relying only on paragraph 22.5 of the judgment of the High Court of Bombay in *Bank of Baroda, though Branch Manager v. Gopal Shriram Panda*⁴, wherein, the High Court has wrongly held that the SARFAESI does not permit the DRT to go into classification of borrowers account as NPA. The learned Trial Court erred in appreciating that the said judgment has overlooked the provisions enunciated under Section 17 (3) of the SARFAESI.

36. It is submitted that the learned Trial Court failed to appreciate that while entertaining a suit as that of the instant matter, wherein, the respondent has challenged the classification of its account as NPA being illegal, the

³(2007) 1 SCC 97

⁴(2021) SCC Bom 466



legislative intent of SARFAESI is defeated. Entertaining such suit is illegal and barred by Section 9 of the CPC.

37. It is further submitted that the learned Court below failed to consider that the dispute involved in the present case is not concerned with rights of civil nature and nowhere it has been pleaded by the respondent in its suit that there is violation of its civil rights *qua* its loan account being declared as an NPA.

38. It is submitted that the learned Trial Court erred in not appreciating that the suit as valued by the respondent is grossly undervalued and that the impugned order could not have been passed before calling upon the respondent company to pay deficit court fees.

39. It is submitted that in case of an admitted debt, insofar as claiming the reliefs in the nature of the defenses to a claim of a Bank/Financial Institution is concerned, the borrower, i.e., the respondent herein is entitled to approach the DRT alone, and cannot approach any other Court/Forum in terms of the said defenses, which is not maintainable in terms of the provisions laid down under RDB Act and SARFAESI. It is further submitted that filing of such suit by the respondent has infringed the statutory rights of the petitioner.

40. It is submitted that the respondent company has challenged the classification of its account as an NPA being illegal, wherein, the respondent has attempted to override the bar imposed under SARFAESI. Such declaratory suit against the status of loan account as an NPA is illegal and amounts to direct interference of Civil Court which is barred by Section 9 of the CPC.



41. It is submitted that the in light of the above submissions, it is evident that the learned Court below erred in appreciating the settled law and hence, there is illegality in the impugned order making it liable to be set aside.

42. It is submitted that the reasoning given in the impugned order is perverse, arbitrary, irrational, and has no basis whatsoever in law, equity or justice.

43. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs may be granted as prayed for.

(submissions on behalf of the respondent)

44. *Per Contra*, learned counsel Mr. Sanjeev Bhandari, appearing on behalf of the respondent vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merit.

45. It is submitted that the present revision petition is liable to be dismissed on the grounds that the petitioner has failed to bring up any substantial question of law or any wrong exercise of the provisions of law by the learned Court below.

46. It is submitted that the learned Trial Court has taken into consideration the entire facts and circumstances and only after such due consideration, it reached to the conclusion, whereby, it dismissed the petitioner's application under Order VII Rule 11 of the CPC.



47. It is submitted that the petitioner's contentions are baseless due to the reason that the learned Court below has exercised its jurisdiction in accordance to the settled legal propositions and there is no infirmity in the impugned order passed by it.

48. It is submitted that the learned Trial Court has the jurisdiction to try and entertain the suit filed by the respondent and the same is not barred by the provisions of the SARFAESI and RDB Act as the reliefs claimed in the above said suit are outside the scope and jurisdiction of the DRT.

49. It is submitted that there exists sufficient cause of actions in favour of the respondent for filing the above said suit. It is further submitted that the petitioner has initiated action under SARFAESI with *mala fide* intentions as the application before DRT, New Delhi was filed after the summons of the suit were served on the petitioner. Even otherwise, the initiation of action under SARFAESI does not affect the maintainability of the suit filed by the respondent for the reason that the reliefs claimed by the respondent cannot be granted by DRT.

50. It is submitted that the judgment passed by the High Court of Bombay in ***Gopal Shriram Panda (Supra)*** deals with the scope of DRT under SARFAESI as well as the extent of Section 34 of the said Act as applicable to the Civil Courts.

51. It is submitted that petitioner has failed to specify as to how the act of the petitioner in declaring the account of the respondent as NPA during the operation of the interim orders passed by the Hon'ble Supreme Court in ***Gajendra Sharma (Supra)*** was in accordance with the law.



52. It is submitted that the DRT has no jurisdiction to pass a declaratory decree. The DRT also does not have jurisdiction to decide whether an account has been declared as NPA rightly or not. The DRT also does not have power to decide whether the petitioner has committed breach of the interim orders passed by the Hon'ble Supreme Court, whereby, no account was directed to be declared as NPA till further orders. Under these circumstances, when the entire reliefs as prayed by the respondent are outside the purview of the DRT, the suit of the respondent is thus, maintainable and the impugned order is in accordance with the law.

53. It is submitted that the respondent has paid adequate and appropriate court fee and has correctly valued the suit in accordance with the law. The learned Trial Court has rightly adjudicated upon this issue, after taking into consideration the entire facts and circumstances.

54. Therefore, in view of the submissions made above, it is submitted that instant petition being devoid of any merits may be dismissed.

SCHEME OF THE ACT

(Section 115 of the CPC – Revisional Powers of this Court)

55. At this stage, before delving into the technical paraphernalia of the facts of the instant matter, it is pertinent for this Court to set out the scope of Section 115 of the CPC, under which the petitioner has challenged the impugned order before this Court. The said Section has been reproduced for reference hereunder:



“115. Revision.— [(1)] *The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—*

- (a) to have exercised a jurisdiction not vested in it by law, or*
(b) to have failed to exercise a jurisdiction so vested, or
(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

Explanation.— In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]”

56. Section 115 of the CPC invests all High Courts with revisional jurisdiction. It declares that the High Court may call for the record of any



case which has been decided by any Court subordinate to such High Court wherein no appeal lies, to satisfy itself on three aspects; (i) that the order passed by the subordinate Court is within its jurisdiction; (ii) that the case is one in which the Court has power to exercise its jurisdiction; and (iii) that in exercising jurisdiction, the Court has not acted illegally, or in breach of some provision of law, or with material irregularity by committing some error of procedure in the course of trial which is material in a way that may have affected the ultimate decision.

57. In the landmark case of ***Major S.S. Khanna v. Brig. F.J. Dillon***⁵, the Hon'ble Supreme Court stated that the said Section consists of two parts, *first* prescribes the condition in which jurisdiction of the High Court arises, i.e., there is a case decided by the subordinate Court in which no appeal lies to the Court of higher jurisdiction, *second* sets out the circumstances in which the jurisdiction may be exercised by the High Court. If there is no question of jurisdiction, the concerned decision cannot be corrected by the High Court in the exercise of revisional powers. The relevant paragraphs of ***Major S.S. Khanna (Supra)*** have been reproduced herein:

“6. The jurisdiction of the High Court to set aside the order in exercise of the power under Section 115 of the Code of Civil Procedure is challenged by Khanna on three grounds:

(i) that the order did not amount to “a case which has been decided” within the meaning of Section 115 of the Code of Civil Procedure;

⁵ (1964) 4 SCR 409



(ii) that the decree which may be passed in the suit being subject to appeal to the High Court; the power of the High Court was by the express terms of Section 115 excluded; and

(iii) that the order did not fall within any of the three clauses (a), (b) and (c) of Section 115.

The validity of the argument turns upon the true meaning of Section 115 of the Code of Civil Procedure, which provides:

“The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.”

The section consists of two parts, the first prescribes the conditions in which jurisdiction of the High Court arises i.e. there is a case decided by a subordinate Court in which no appeal lies to the High Court, the second sets out the circumstances in which the jurisdiction maybe exercised. But the power of the High Court is exercisable in respect of “any case which has been decided”. The expression “case” is not defined in, the Code, nor in the General Clauses Act. It is undoubtedly not restricted to a litigation in the nature of a suit in a civil court : Balakrishna Udayar v. Vasudeva Aiyar [LR 44 IA 261] ; it includes a proceeding in a civil court in which the jurisdiction of the Court is invoked for the determination of some claim or right legally enforceable. On the question whether an order of a Court which does not finally dispose of the suit or proceeding amounts to a “case which has been



decided”, there has arisen a serious conflict of opinion in the High Courts in India and the question has not been directly considered by this Court. One view which is accepted by a majority of the High Courts is that the expression “case” includes an interlocutory proceeding relating to the rights and obligations of the parties, and the expression record of any case includes so much of the proceeding as relates to the order disposing of the interlocutory proceeding. The High Court has therefore power to rectify an order of a Subordinate Court at any stage of a suit or proceeding even if there be another remedy open to the party aggrieved i.e. by reserving his right to file an appeal against the ultimate decision, and making the illegality in the order a ground of that appeal. The other view is that the expression “case” does not include an issue or a part of a suit or proceeding and therefore the order on an issue or a part of a suit or proceeding is not a “case which has been decided”, and the High Court has no power in exercise of its revisional jurisdiction to correct an error in an interlocutory order.”

58. The provision thus takes within its limited jurisdiction, the irregular exercise or non-exercise of it, or the illegal assumption of it. It is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. In other words, it is only in cases where the subordinate Court has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the jurisdiction of the High Court may be properly invoked.

59. It is a settled principle of law that the lower Courts have jurisdiction to decide the case, and in context of the provision of revision, even if the



Court below decides the case wrongly, they do not exercise their jurisdiction illegally or with material irregularity.

60. Section 115 of the CPC deals with the High Court's power of revision. Briefly stated, in a case which is not subject to appeal, the High Court is empowered to call for the records of the case decided by the Court below, and if the Court below has exercised a jurisdiction vested in it by law, or failed to exercise jurisdiction vested by law or acted with material irregularity, etc. in the exercise of its jurisdiction, the High Court may interfere.

61. The CPC, however, enables the High Court to correct, when necessary, the errors of jurisdiction committed by subordinate Courts and provides the means to an aggrieved party to obtain rectification in a non-appealable order. In other words, for the effective exercise of its superintending powers, revisional jurisdiction is conferred upon the High Court. The said principle has been reaffirmed by the Hon'ble Supreme Court in the judgment of ***Manick Chandra Nandy v. Debdas Nandy***⁶. The Hon'ble Court in the said judgment had observed as follows:

“5. We are constrained to observe that the approach adopted by the High Court in dealing with the two revisional applications was one not warranted by law. The High Court treated these two applications as if they were first appeals and not applications invoking its jurisdiction under Section 115 of the Code of Civil Procedure. The nature, quality and extent of appellate jurisdiction being exercised in first appeal and of revisional jurisdiction are very different. The limits of

⁶ (1986) 1 SCC 512



revisional jurisdiction are prescribed and its boundaries defined by Section 115 of the Code of Civil Procedure. Under that section revisional jurisdiction is to be exercised by the High Court in a case in which no appeal lies to it from the decision of a subordinate court if it appears to it that the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law or has acted in the exercise of its jurisdiction illegally or with material irregularity. The exercise of revisional jurisdiction is thus confined to questions of jurisdiction. While in a first appeal the court is free to decide all questions of law and fact which arise in the case, in the exercise of its revisional jurisdiction the High Court is not entitled to reexamine or reassess the evidence on record and substitute its own findings on facts for those of the subordinate court. In the instant case, the respondents had raised a plea that the appellant's application under Rule 13 of Order IX was barred by limitation. Now, a plea of limitation concerns the jurisdiction of the court which tries a proceeding, for a finding on this plea in favour of the party raising it would oust the jurisdiction of the court. In determining the correctness of the decision reached by the subordinate court on such a plea, the High Court may at times have to go into a jurisdictional question of law or fact, that is, it may have to decide collateral questions upon the ascertainment of which the decision as to jurisdiction depends. For the purpose of ascertaining whether the subordinate court has decided such a collateral question rightly, the High Court cannot, however, function as a court of first appeal so far as the assessment of evidence is concerned and substitute its own findings for those arrived at by the subordinate court unless any such finding is not in any way borne out by the evidence on the record or is manifestly contrary to evidence or so palpably wrong that if allowed to stand, would result in grave injustice to a party.”



(Order VII Rule 11 – Rejection of plaint)

62. In the instant case, the dispute revolves around the petitioner's application filed under Order VII Rule 11 of the CPC which was dismissed by the learned Trial Court vide the impugned order. The petitioner had sought for rejection of the respondent's plaint on various grounds which have been discussed in the below mentioned paragraphs. The said provision is reproduced herein for reference:

***“ORDER VII
Plaint***

...11. Rejection of plaint.— *The plaint shall be rejected in the following cases:—*

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- [(e) where it is not filed in duplicate;]*
- [(f) where the plaintiff fails to comply with the provisions of rule 9:]*

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be



recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]..”

63. On a bare perusal of the abovementioned provision for rejection of a plaint, it can be inferred that insofar as the application under Order VII Rule 11 of the CPC is concerned, the relevant facts which need to be looked into for deciding an application thereunder are the averments made in the plaint and the said averments are germane. The Trial Court can exercise the power under Order VII Rule 11 of the CPC at any stage of the suit – before registering the plaint or after issuing of summons to the defendant, at any time before the conclusion of the trial.

64. The provision under Order VII Rule 11 of the CPC provides for rejection of a plaint. The scope of judicial inquiry in an application under Order VII Rule 11 of the CPC is very limited to examining the statement in the plaint.

65. Under Order VII Rule 11 of the CPC, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within the time as fixed by the Court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the Court, and where the suit appears from the statement in the plaint to be barred by any law. Rejection of the plaint in exercise of the powers under Order VII Rule 11 of



the CPC has to be on consideration of the principles laid down under the said provision and by way of a catena of judgments.

66. The power with the Courts under Order VII Rule 11 of the CPC, is conferred in order to terminate any civil action at the threshold, provided it falls under the categories prescribed within the provision. The conditions precedent to such exercise of the power are stringent and especially when rejection of a plaint is sought on the ground of limitation. Therefore, when the plaintiff claims that he gained the knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order VII Rule 11 of the CPC.

67. The Hon'ble Supreme Court in one of its earlier judgments namely *T. Arivandandam v. T.V. Satyapal*⁷, set out the parameters that has to be kept in mind whilst adjudicating an application seeking rejection of a plaint and held as under:

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground

⁷ (1977) 4 SCC 467



mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

“It is dangerous to be too good...”

68. In ***Kamala v. K.T. Eshwara Sa***⁸, the Hon’ble Supreme Court while reaffirming to its earlier decision made in ***T. Arivandandam (Supra)*** held as under:

“..21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

⁸ (2008) 12 SCC 661



40. Order 7 Rule 11(d) of the Code serves a broad purpose as has been noted in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I* [(2004) 9 SCC 512] in the following terms : (SCC p. 560, para 133)

*“133. The idea underlying Order 7 Rule 11(a) is that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the courts would interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation which in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a litigant. (See *Azhar Hussain v. Rajiv Gandhi* [1986 Supp SCC 315] , SCC at pp. 324-35.)”*

But therein itself, it was held : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

41. In *C. Natrajan v. Ashim Bai* [(2007) 14 SCC 183 : (2007) 12 Scale 163] this Court held : (SCC pp. 188-89, para 8)

“8. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon



the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence. (See Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510])”..”

69. Upon perusal of the above, it is inferred that the Rule 11 of Order VII of the CPC lays down an independent remedy which is available to a defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word ‘shall’ is used clearly implying thereby that it casts a duty on the Courts to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11.

70. Therefore, it is clear that with reference to Order VII Rule 11 of the CPC, the relevant facts which need to be looked into for deciding an application thereunder are the averments made in the plaint and it is an obligation upon the Court dealing with such application that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under the said provision. Furthermore, if clever drafting has created the illusion of a false cause of action, it has to be nipped in the bud by examining the contents of the plaint itself. The same has also been



followed by the Hon'ble Supreme Court in *Surjit Kaur Gill v. Adarsh Kaur Gill*⁹.

(Section 34 of SARFAESI – Civil Court not to have jurisdiction)

71. In order to understand the scope and principle of the Section 34 of SARFAESI, the same has been reproduced for reference herein:

“34. Civil court not to have jurisdiction

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).”

72. A bare reading of the aforesaid provision enunciates that the jurisdiction of a Civil Court is barred in respect of the matters which a DRT or its appellate authority is empowered to determine in respect of any action taken or to be taken in pursuance of any power conferred under SARFAESI. It also provides that no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the SARFAESI or under the RDB Act. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which may be taken to the DRT. Therefore, the Civil Court shall have no jurisdiction to entertain any proceedings in respect of any matter where an action may be taken even later on,. The bar of Civil Court thus applies to all

⁹ (2014) 16 SCC 125



such matters which may be taken cognizance of by the DRT, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.

73. Adverting to the issue at hand, it has been contended by the petitioner that the Civil Court in the instant matter does not have the jurisdiction to entertain disputes pertaining to the action taken against the respondent borrower which is classification of its loan account as an NPA.

74. In regard to the above, referral to the judgment of Hon'ble Supreme Court in *Mardia Chemicals Ltd. v. Union of India*¹⁰ becomes important. The relevant portion of same is reproduced as under:

“40. Now coming to Section 17, it provides for filing of an appeal to the Debts Recovery Tribunal within 45 days of any action taken against the borrower under sub-section (4) of Section 13 of the Act. It reads as under:

“17. Right to appeal.—(1) Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorized officer under this chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken.

(2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy-five per cent of the amount claimed in the notice referred to in sub-section (2) of Section 13:

¹⁰ (2004) 4 SCC 311



Provided that the Debts Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

(3) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.”

It is thus clear that an appeal under sub-section (1) of Section 17 would lie only after some measure has been taken under sub-section (4) of Section 13 and not before the stage of taking of any such measure. According to sub-section (2), the borrower has to deposit 75% of the amount claimed by the secured creditor before his appeal can be entertained.

41. So far as jurisdiction of civil court is concerned, we find that there is a bar to it as provided under Section 34 of the Act quoted below:

“34. Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).”

44. As a matter of fact, the Narasimham Committee also advocates for a legal framework which may clearly define the rights and liabilities of the parties to the contract and provisions for speedy resolution of disputes, which is a sine qua non for efficient trade and commerce, especially for financial



intermediation. Even the guidelines of Reserve Bank of India in relation to classifying NPAs, while stressing the need of expeditious steps in taking a decision for classifying and identification of NPAs says, a system be evolved which should ensure that the doubts in asset classification are settled through specified internal channels within the time specified in the guidelines. It is thus clear that while recommending speedier steps for recovery of the debts it is envisaged by all concerned that within the legal framework, such provisions may be contained which may curtail the delays. Nonetheless, dues or disputes regarding classification of NPAs should be considered and resolved by some internal mechanism. In our view, the above position suggests the safeguards for a borrower, before a secured asset is classified as NPA. If there is any difficulty or any objection pointed out by the borrower by means of some appropriate internal mechanism it must be expeditiously resolved.

45. In the background we have indicated above, we may consider as to what forums or remedies are available to the borrower to ventilate his grievance. The purpose of serving a notice upon the borrower under sub-section (2) of Section 13 of the Act is, that a reply may be submitted by the borrower explaining the reasons as to why measures may or may not be taken under sub-section (4) of Section 13 in case of non-compliance with notice within 60 days. The creditor must apply its mind to the objections raised in reply to such notice and an internal mechanism must be particularly evolved to consider such objections raised in the reply to the notice. There may be some meaningful consideration of the objections raised rather than to ritually reject them and proceed to take drastic measures under sub-section (4) of Section 13 of the Act. Once such a duty is envisaged on the part of the creditor it would only be conducive to the principles of fairness on the part of the banks and financial institutions in dealing with their borrowers



to apprise them of the reason for not accepting the objections or points raised in reply to the notice served upon them before proceeding to take measures under sub-section (4) of Section 13. Such reasons, overruling the objections of the borrower, must also be communicated to the borrower by the secured creditor. It will only be in fulfilment of a requirement of reasonableness and fairness in the dealings of institutional financing which is so important from the point of view of the economy of the country and would serve the purpose in the growth of a healthy economy. It would certainly provide guidance to the secured debtors in general in conducting the affairs in a manner that they may not be found defaulting and being made liable for the unsavoury steps contained under sub-section (4) of Section 13. At the same time, more importantly, we must make it clear unequivocally that communication of the reasons for not accepting the objections taken by the secured borrower may not be taken to give occasion to resort to such proceedings which are not permissible under the provisions of the Act. But communication of reasons not to accept the objections of the borrower, would certainly be for the purpose of his knowledge which would be a step forward towards his right to know as to why his objections have not been accepted by the secured creditor who intends to resort to harsh steps of taking over the management/business of viz. secured assets without intervention of the court. Such a person in respect of whom steps under Section 13(4) of the Act are likely to be taken cannot be denied the right to know the reason of non-acceptance and of his objections. It is true, as per the provisions under the Act, he may not be entitled to challenge the reasons communicated or the likely action of the secured creditor at that point of time unless his right to approach the Debts Recovery Tribunal as provided under Section 17 of the Act matures on any measure having been taken under sub-section (4) of Section 13 of the Act.



50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken “or to be taken in pursuance of any power conferred under this Act”. That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.

51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is



permissible to bring an action in the civil court in the cases of English mortgages. We find such a scope having been recognized in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely, V. Narasimhachariar [AIR 1955 Mad 135] , AIR at pp. 141 and 144, a judgment of the learned Single Judge where it is observed as follows in para 22: (AIR p. 143)

“22. The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the court before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee must clearly disclose a fraud or irregularity on the basis of which relief is sought: Adams v. Scott [(1859) 7 WR 213, 249] . I need not point out that this restraint on the exercise of the power of sale will be exercised by courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely. (See Ghose, Rashbehary: Law of Mortgages, Vol. II, 4th Edn., p. 784.)”

59. We may like to observe that proceedings under Section 17 of the Act, in fact, are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought before a forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in



civil court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case. We may refer to a decision of this Court in Ganga Bai v. Vijay Kumar [(1974) 2 SCC 393] where in respect of original and appellate proceedings a distinction has been drawn as follows: (SCC p. 397, para 15)

“There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute.”

68. *The main thrust of the petitioners as indicated in the earlier part of this judgment to challenge the validity of the impugned enactment is that no adjudicatory mechanism is available to the borrower to ventilate his grievance through an independent adjudicatory authority. Access to justice, it is submitted, is the hallmark of our system. Section 34 of the Act bars the jurisdiction of the civil courts to entertain a suit in matters of recovery of loans. The remedy of appeal available under the Act as contained in Section 17 can be availed only after measures have already been taken by the secured creditor under sub-section (4) of Section 13 of the Act which includes sale of the secured assets, taking over its management and all transferable rights thereto. Virtually it is no remedy at all also*



*in view of the onerous condition of deposit of 75% of the claim of the secured creditor. Before filing an appeal under Section 17 of the Act, decision is to be taken in respect of all matters by the bank or financial institution itself which can hardly be said to be an independent agency; rather they are a party to the transaction having unilateral power to initiate action under sub-section (4) of Section 13 of the Act. So far as remedy under Article 226 of the Constitution of India is concerned, the submission is that it may not always be available since the dispute may be only between two private parties, the banking companies, cooperative banks or financial institutions, foreign banks, some of them may not be authorities within the meaning of Article 12 of the Constitution of India against whom a writ petition could be maintainable. Thus the position that emerges is that a borrower is virtually left with no remedy. Where access to the court is prohibited and no proper adjudicatory mechanism is provided such a law is unconstitutional and cannot survive. In support of the aforesaid contentions besides others, reliance has particularly been placed upon the case *L. Chandra Kumar v. Union of India* [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and *Surya Dev Rai v. Ram Chander Rai* [(2003) 6 SCC 675]. A reference has also been made to the decision of *Kihoto Hollohan* [1992 Supp (2) SCC 651]. In the case of *L. Chandra Kumar* [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] it is held, some adjudicatory process through an independent agency is essential for determining the rights of the parties, more particularly when the consequences which flow from the offending Act defeat the civil rights of a party.*

81. *In view of the discussion held in the judgment and the findings and directions contained in the preceding paragraphs, we hold that the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debts Recovery Tribunal. The effect of some of the provisions*



may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of the economy of the country and welfare of the people in general which would subserve the public interest...”

75. The judgment in ***Mardia Chemicals (Supra)*** involved a challenge, wholesale, to the SARFAESI, with particular emphasis on Section 13. It was sought to be contended, before the Hon’ble Supreme Court, that Section 13 of the SARFAESI allowed a secured creditor to proceed against the property of the borrower merely on the borrower defaulting in payment within the stipulated period, consequent on notice under Section 13(2) being issued by the secured creditor. The grievance of the appellant therein was that the statute did not provide for any dispassionate adjudicatory mechanism, which would factor in the concerns and interests of the borrower, and the legitimate defences that the borrower may have against the claim of the creditor. The Hon’ble Supreme Court negated the challenge. For the purposes of the present dispute, it is not necessary to enter further into that aspect.

76. A bare perusal of the above said judgment infers that the Hon’ble Supreme Court when asked to determine whether the SARFAESI is valid and its provisions are unreasonable or not, held that SARFAESI provides the borrowers with a reasonably fair deal and opportunity to get their grievances adjudicated before the DRT. In this regard, the Hon’ble Court also observed



that SARFAESI allowed the borrowers to file appeals under Section 17 of the said act within the limitation as prescribed therein.

77. In the said judgment, it was further held that where the action of a secured creditor is alleged to be fraudulent, in such an event, the recourse to ordinary civil remedies cannot be denied to the plaintiffs, provided, fraud and collusion on the creditor's part must be pleaded by the plaintiffs. To the statutory proscription engrafted in Section 34 of the SARFAESI, the Hon'ble Supreme Court has, in the above extracted passage from ***Mardia Chemicals (Supra)*** carved out the exceptions, and held that civil remedies may be availed in a case where the action or the claim of the secured creditor is alleged to be fraudulent or absurd and untenable in the eyes of the law.

78. Therefore, to sum up, this Court has inferred that the Civil Court would have no jurisdiction to entertain such pleas/objections raised against the measures taken under Section 13 of the SARFAESI.

79. In ***Cynthia K. Thelepan v. Reserve Bank of India***¹¹, the Division Bench of High Court of Madras, observed that it is a matter of serious concern that the High Courts are exercising their discretion in similar financial matters by ignoring the statutory remedies available under the RDB Act and SARFAESI. The Division Bench remarkably held that under Section 17 of the SARFAESI, the DRT is empowered to decide all questions relating to the exercise of powers under Section 13 and such power is only available after declaration of the concerned account as NPA. Whilst dismissing the borrowers appeal therein, it held that the DRT is the only

¹¹ 2020 SCC OnLine Mad 2736



appropriate forum to decide whether the declaration of NPA is valid or not.

The relevant portions of the said judgment are as under:

“10. Similarly, in Indian Overseas Bank v. Ashok Saw Mill, (2009) 8 SCC 366, the object and scope of Section 17 of the SARFAESI Act was discussed and it was held as under:

35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.

37. The consequences of the authority vested in the DRT under sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the



borrower in appropriate cases. Resultantly, the submissions advanced by Mr. Gopalan and Mr. Altaf Ahmed that the DRT has no jurisdiction to deal with a post-Section 13(4) situation, cannot be accepted.

11. Thus, it is clear that the DRT is empowered under Section 17 of the SARFAESI Act to decide all questions relating to the exercise of power under Section 13, which power is founded on and available only after declaring the accounts as NPA. In these circumstances, we are of the view that the question as to whether the declaration of the Appellants' accounts as NPA is valid or not is a question that should be decided by the DRT in the pending proceedings.

12. We further note that these were decisions taken by a private bank with regard to the servicing of its loan account and a determination of these issues involves disputed questions of fact. In these facts and circumstances, we are of the view that the decision of the learned single Judge to decline to exercise jurisdiction cannot be faulted with."

80. This Court has also referred to the judgment of the Division Bench of the High Court of Bombay in ***Gaurav Lubricants (P) Ltd. v. T.N. Mercantile Bank Ltd.***¹², wherein, similar issue was involved and the Bench while following the observations made by the Hon'ble Supreme Court in ***Mardia Chemicals (Supra)*** held that the classification of accounts as NPA is not subject to judicial review and that the aggrieved borrower's appropriate remedy is to approach the DRT under Section 17 of SARFAESI. The relevant paragraphs of the same are as follows:

¹² 2022 SCC OnLine TS 2771



*“13. According to Section 2(o), Non Performing Asset (NPA) means an asset or account of borrower classified by bank/financial institution as substandard, doubtful or loss asset. Account of the borrower in the books of the bank/Financial Institution is classified as substandard, doubtful or a loss and the debt has become due (**Transcore** case).*

14. According to RBI Guidelines dated 30.8.2001 a credit facility becomes an NPA where interest and/or instalment of principal remain overdue for a period of more than 180 days in respect of term loan. It mandates the banks to establish appropriate internal systems to eliminate the tendency to delay or postpone the identification of NPA.

*15. In **Mardia Chemicals** (supra), Hon'ble Supreme Court considered the issue of classification of asset as NPA. It was contended that on the whims and fancies of the financial institutions, the assets are classified as NPAs. The Hon'ble Supreme Court negated said contention. It has looked into the policy notified by RBI known as “RBI's Prudential Norms On Income Recognition, Asset Classification and Provisioning- Pertaining To Advances” and rejected the contention that there are no guidelines for treating the debt as NPA.*

*17. From the discussion on relevant statutory provisions and opinion expressed by Hon'ble Supreme Court in **Mardia Chemicals**, and **Transcore**, it is clear as crystal that once a loan account becomes substandard, doubtful or loss asset, in the book of a bank/financial institution it is classified as NPA. The RBI Guidelines clearly specify when a loan account reaches that stage to be classified as NPA. The steps taken leading to classifying a loan account as NPA is an internal matter within the bank/financial institution. The Bank/financial institution notifies the same in Section 13 (2) of the Act, 2002 notice and calls upon the borrower to clear the loan within sixty days. At that stage, it is open to borrower to respond and*



place before the bank/financial institution his point of view. He can also oppose declaring his account as NPA. He can rely on RBI Guidelines on various aspects. The Bank/Financial institution is required to consider the objections objectively and to take a decision. It is also required to communicate the decision to the borrower.

18. As analyzed by Hon'ble Supreme Court in **Mardia Chemicals** and **Transcore**, there is a statutorily prescribed restraint in taking legal course by a borrower before Section 13 (4) of the Act, 2002 stage. Statute prescribed this course having regard to accumulation of debts to banks stifling the banking/financial sector. It is in public interest to fast track the recovery of dues by banks/financial institutions. Thus, in **Mardia Chemicals**, Hon'ble Supreme Court held that scheme of SARFAESI Act, 2002 does not envisage any remedy till Section 13(4) stage is reached. It has gone to the extent of saying that borrower has no right of hearing at the stage of Section 13(2) and he can only file objections under Section 13(3-A) of the Act, 2002. Therefore, upto Section 13(4) no remedy is provided to a borrower/guarantor. It is the statutory scheme that must be respected by all, more so when the scheme stood the test of judicial scrutiny.

19. After Section 13(4) notice, it is open to borrower to approach Debts Recovery Tribunal under Section 17 of the Act, 2002. The Debts Recovery Tribunal is competent to go into all aspects leading to bank/financial institution taking recourse under Section 13(4) of the Act, 2002. Perforce, when the Debts Recovery Tribunal examines the claim of borrower/guarantor/person aggrieved opposing measures taken under Section 13(4) of the Act, 2002 such as taking symbolic possession, notice of sale of secured asset, taking physical possession etc, the borrower/guarantor/person aggrieved can plead before the Debts Recovery Tribunal his



defence against such action including alleged violation of RBI Guidelines leading to illegally classifying his account as NPA.

20. Further, classifying loan account as NPA can be challenged before RBI alleging that its guidelines are violated. A complaint can be filed before the Ombudsman. In fact petitioners have filed complaints before the Ombudsman. Therefore, taking recourse to writ remedy before reaching Section 13(4) of the Act, 2002 stage defeats the statutory scheme and scuttles the very object in creating special dispensation to recover the debts by banks/financial institutions. The object and purpose of these two Acts have to be kept in mind while considering a writ petition filed against classifying an account as NPA. It is not for no reason the legal remedy is differed till Section 13(4) of the Act, 2002 stage is reached. Till this stage, as consistently held by Hon'ble Supreme Court, no cause of action arises to the borrower/guarantor to seek legal remedy. He has to wait till further steps are taken under Section 13(4) of the Act, 2002.

21. Time and again, the Constitutional Courts are repelling the resort to writ remedy against classifying a loan account as NPA and various measures taken by Banks/Financial Institutions under SARFAESI Act and relegating parties to avail remedy under Section 17 of the Act, 2002.

22. Few of the decisions, availing writ remedy against declaring loan account as NPA and scope of remedy under Section 17 of the Act, 2002 are noted hereunder:

23. In Dr. Yashwant Singh v. Indian Bank⁸, the Division Bench of Delhi High Court reviewed the decisions of other High Courts on the issue. The learned Division Bench held as under:

“(Y) We draw strength for the aforesaid proposition from Section 2(o) of the SARFAESI Act which vests the secured creditor with the power to classify an account as



an NPA. The authority of the secured creditor in this regard cannot be questioned. Such authority of the secured creditor to classify the account of a borrower as an NPA has been recognized in Mardia Chemicals Ltd. and in Transcore v. Union of India, (2008) 1 SCC 125. All that was observed in Mardia Chemicals Ltd. was that there must exist a specified internal channel which should settle the doubts in asset classification. The introduction of Section 13(3A) has fulfilled the said requirement also. We find a Single Judge of the Calcutta High Court in Core Ceramics Ltd. v. Union of India, AIR 2008 Cal 88 also to have taken a view that once the bank authorities have classified an account as NPA, the writ Court would have little or no role to play in deciding such an issue in view of the complete autonomy of the Banks and financial institutions in asset classification under the SARFAESI Act and upheld in Mardia Chemicals Ltd. and Transcore. Similarly, a Division Bench of Madras High Court in Gain-N-Nature Food Products v. Union of India has held that if a Bank or financial institution forms an opinion that an account of a borrower has become an NPA, such opinion is not justiciable in a Court exercising jurisdiction under Article 226 of the Constitution because Section 13(2) does not use the expression “and his account in respect of such debt has become a Non Performing Asset” but uses the expression “and his account in respect of such debt is classified by the secured creditor as Non Performing Asset”.

24. *In Devi Ispat Limited v. SBI⁹ on 18.1.2013 the bank informed **Devi Ispat** that the loan account was classified as NPA on 16.1.2013 and requested to regularize the account. This was contested by **Devi Ispat**. But bank proceeded to issue notice under Section 13(2) of the Act, 2002. **Devi Ispat** filed writ petition challenging the decision of the bank classifying its account as NPA and also the letters issued by the bank.*



*Holding that petitioner has alternative statutory remedy under Section 13(3A) learned single Judge dismissed the writ petition. Appeal preferred thereon also dismissed. **Devi Ispat** then filed SLP before the Hon'ble Supreme Court. Hon'ble Supreme Court held that since **Devi Ispat** had an alternative remedy to make representation to the bank under Section 13 (3A) there was no reason to by-pass the statutory mechanism.*

25. In N.A.K.G. Cotfibres Private Ltd. v. The Zonal Manager, UCO Bank, the petitioner was aggrieved by classifying his account as NPA and filed writ petition challenging Section 13(2) of Act 2002 notice dated 9.5.2011. It was contended that classification of their account as NPA was unreasonable in as much as Rs. 90 lakhs was paid on 31.3.2011 and such classification was not in accordance with guidelines issued by RBI. It was also contended that even though explanation was filed in response to Section 13(2) notice no reply was given. The learned Division Bench of madras High Court held:

“14. In the present case, admittedly, no notice under Section 13(4) of the Act was issued by the respondents bank. The only grievance of the petitioner is without giving a reply as required under Section 13(3)(A) of the Act, the bank cannot proceed further by issuing notices either under Section 13(4) of the Act or under Section 14 of the Act. Thus, it is clear that the petitioner, by preempting the action of the bank, had filed the present writ petition. Such a course is not open to the petitioner especially under the writ jurisdiction. Even assuming that there is a violation in respect of the procedures contemplated under Section 13(2), 13(3)(A) by the bank, the only remedy available to the petitioner is to approach the Debt Recovery Tribunal as contemplated under Section 17 of the Act. Therefore, we hold that this writ petition is not maintainable and the petitioner ought to



have approached the Debt Recovery Tribunal for relief instead of filing the present writ petition. As mentioned above, the petitioner has filed the present writ petition premature and therefore also the writ petition is not maintainable and it cannot be entertained by us.”

26. In Tandra Impax Pvt. Ltd. v. Punjab National Bank¹⁰, the petitioner prayed to declare the action of respondent bank declaring the petitioner account as NPA without following RBI guidelines and guidelines issued in Aatmanirbhar Bharat Scheme dated 13.5.2020 as arbitrary, illegal and against SARFAESI Act, 2002 and to set aside the classification of account as NPA on 31.3.2020 and the Demand Notice dated 31.7.2020. The learned Division Bench relied on earlier decision in W.P. Nos. 23643 of 2020 and 20046 of 2021, dated 9.2.2022 to hold that petitioner ought to avail remedy under Section 17 of the Act, 2002.

27. In common judgment in NECX Private Limited v. Union Bank of India (W.P. No. 23643 of 2020 and W.P. No. 20046 of 2021, dated 09.02.2022), learned Division Bench held as under:

“30. Thus, on a careful consideration of the statutory language employed in the proviso to Sub-Section (3A) of Section 13 of the SARFAESI Act read with the Explanation to Sub-Section (1) of Section 17 of the SARFAESI Act, it is crystal clear that a notice under Section 13 (2) of the SARFAESI Act or the rejection of the objection raised to it including the reasons in support thereof would not give rise to a cause of action for instituting an action in law. To that extent, we find sufficient force in the contention advanced by the respondents that the writ petition filed is premature. The statute does not contemplate any intervention at this preliminary stage. Only when the process ripens into a definitive action taken by the secured creditor under Sub Section (4) of Section 13 of the



SARFAESI Act, the aggrieved person can avail the statutory remedy under Section 17 of the SARFAESI Act by filing securitization application before the jurisdictional Debts Recovery Tribunal.

31. This aspect was highlighted by the Supreme Court in Punjab National Bank v. Imperial Gift House¹¹. In that case, the High Court had interfered with the notice issued under Section 13 (2) of the SARFAESI Act and quashed the proceedings initiated by the Bank. Setting aside the order of the High Court, Supreme Court held that the High Court was not justified in entertaining the writ petition before any further action could be taken by the Bank under Section 13 (4) of the SARFAESI Act.”

28. In Tandra Impex Pvt. Ltd., (supra), Division Bench of this Court further held:

“14. We have already noticed above that classification of loan account by the secured creditor is at a stage prior to issuance of the demand notice under Section 13(2) of the SARFAESI Act. If at the stage of issuance of demand notice, interference by the Court and Tribunal is not to be made, we fail to understand as to how such intervention can be made at a stage prior to issuance of demand notice under Section 13(2) of the SARFAESI Act.”

*29. The Madras High Court in Gain N-Nature Food Products v. Union of India¹² and the Madhya Pradesh High Court in Samarath Infrabuild (I) Pvt. Ltd. v. Bank of India¹³ have held that once an account is classified as NPA by the bank/financial institution such classification is not justiciable by the writ Court exercising jurisdiction under Article 226 of the Constitution of India. The Division Bench of Madras High Court in **Gain-N-Nature Food Products** held as under:*



“11. But as seen from the definition of the expression “Non Performing Asset”, extracted above, it includes within its fold, either an asset or an account of the borrower. If a Bank or financial institution, forms an opinion that a particular asset or account of a borrower has become a “Non Performing Asset”, such opinion may not be justiciable, especially in a Court exercising jurisdiction under Article 226 of the Constitution. It may not be open to this Court to conduct a roving enquiry to find out if an account or asset of a borrower could be classified as a “Non Performing Asset”, with reference to the guidelines issued by the Reserve Bank of India. Section 13(2) is carefully worded. It does not use the expression “and his account in respect of such debt has become a “Non Performing Asset”. Instead, the Section uses the expression “and his account in respect of such debt is classified by the secured creditor as “Non Performing Asset”. Section 13(2) reads as follows:

“Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under Sub-section (4).”

12. Therefore, the stress under Section 13(2) is basically on the classification of the account as a “Non Performing Asset” by the secured creditor and not on whether the account has actually become a “Non



Performing Asset” or not. In other words, the Section does not leave any scope for a court to adjudicate as to whether an account has become a “Non Performing Asset” or not, with reference to the guidelines issued by the Reserve Bank of India. Therefore, the first objection taken by the petitioners is not sustainable in law.”

(emphasis supplied)

30. In Samarath Infrabuild (I) Pvt. Ltd., (supra), the Madhya Pradesh High Court following the decision of Madras High Court referred to above and held as under:

*“14. On due consideration of the aforesaid, we are of the view that law on the subject is well settled by the Apex Court in the case of Mardia Chemicals Ltd. v. Union of India (Supra), as well as by the Delhi High Court in the case of Dr. Yashwant Singh v. Indian Bank (Supra) and Madras High Court in the case of Gain-N-Nature Food Product v. Union of India (Supra). **The classification of NPA is not subject to judicial review. Once the Bank authorities have classified account as NPA, the writ court would have no role to play in deciding such any issue/suit. The proper course of the appellant is to challenge the action by filing a statutory appeal as directed under Section 17 of SARFAESI Act, 2002.***

15. For the above mentioned reasons, we hold that once the bank authorities have classified an account as NPA, the writ court would have little or no role to play in deciding such an issue in view of the complete autonomy of the Banks and financial institutions in asset classification under the SARFAESI Act and upheld in Mardia Chemicals Ltd. v. Union of India reported as (2004) 4 SCC 311. Similarly, a Division Bench of Delhi High Court and Madras High Court have held that if a Bank or financial institution forms an opinion that an



account of a borrower has become an NPA, such opinion is not justiciable in a Court exercising jurisdiction under Article 226 of the Constitution. Further the question whether the account has been correctly classified as a NPA or not is a factual dispute and appellant has an alternative efficacious remedy of appeal available under Section 17 of the SARFAESI Act, we do not find any merit in this appeal. W.A. No. 575/2015, has no merit and is, accordingly, dismissed”

(emphasis supplied)

31. In Union Bank of India v. Satyawati Tandon¹⁴, Hon'ble Supreme Court cautioned High Courts from entertaining writ petitions when statute prescribes detailed mechanism. It has also cautioned against passing interim orders. Hon'ble Supreme Court said as under:

“43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the



Constitution, a person must exhaust the remedies available under the relevant statute.

45. *It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.*

46. *It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad [AIR 1969 SC 556], Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107] and some other judgments, then the High Court*



may, after considering all the relevant parameters and public interest, pass an appropriate interim order.”

(emphasis supplied)

32. From the statutory scheme and precedent decisions noted above it is clear that this Court cannot go into the decision of respondent bank in classifying the petitioners' accounts as NPAs. If the respondent bank proceeds further and reaches Section 13(4) of the Act, 2002 stage, the aggrieved person can file application under Section 17 of the Act. The Debts Recovery Tribunal can go into the aspect of classifying the accounts as NPAs and also whether RBI guidelines are violated on any aspect leading to declaring the accounts as NPAs and taking recourse under the Act. On the contrary, as consistently opined by Constitutional courts, the aspect of classifying an account as NPA is not justiable in exercise of power of judicial review under Article 226 of the Constitution. We are therefore of the opinion that these writ petitions are not maintainable

33. One other aspect is maintainability of writ petition against private bank/financial institution on matters concerning the declaring a loan account as NPA and taking measures under the SARFAESI Act. This aspect was considered by the Hon'ble Supreme Court in Phoenix ARC (P) Ltd., (supra).

34. In Phoenix ARC (P) Ltd. (supra), the Hon'ble Supreme Court held as under:

“18. Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - the appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the Sarfaesi Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the Sarfaesi Act to recover the borrowed amount as a secured creditor. The ARC as such



cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the Sarfaesi Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the Sarfaesi Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in Praga Tools Corpn. [Praga Tools Corpn. v. C.A. Imanual, (1969) 1 SCC 585] and Ramesh Ahluwalia [Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 715] relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers....”

ANALYSIS AND FINDINGS

81. The matter was heard at length with arguments advanced by the learned counsel on both sides.

82. This Court has also perused the entire material on record and has duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties, and pleadings presented by the learned counsel of the parties.



2024:DHC:1364



83. The scope and extent of the revisional powers of this Court along with the principle *qua* the rejection of a plaint have been discussed in depth in the foregoing paragraphs.

84. The present revision petition has been filed seeking setting aside of the impugned order dated 22nd December, 2011. Vide the said impugned order, the learned Trial Court while dismissing the application filed by the petitioner under Order VII Rule 11 of the CPC has also passed the directions on the application under Order XXXIX Rule 1 & 2 of the CPC filed by the respondent. It is noted that at the outset the subject matter of the present proceedings is the dismissal of the application filed under Order VII Rule 11 of the CPC.

85. It is the contention of the petitioner that the suit filed by the respondent, whereby, it has sought declaratory reliefs against its loan account having been declared as NPA by the petitioner, is barred by Section 34 of the SARFEASI. Learned senior counsel for the petitioner has submitted that the learned Trial Court has no jurisdiction to determine the prayers sought by the respondent and the jurisdiction of the learned Trial Court is ousted.

86. In rival submissions, the learned counsel appearing on behalf of the respondent has vehemently opposed the instant petition and submitted that the respondent has challenged the declaration of its account as NPA before the learned Trial Court and such civil suit is maintainable as the DRT did not have jurisdiction to adjudicate on this point.



87. At this juncture, this Court deems it appropriate to adjudicate the instant petition while deciding the following issues:

- 1. Whether the respondent's suit is undervalued?***
- 2. Whether the learned Trial Court has the jurisdiction to decide the challenge against the status of NPA in light of Section 34 of SARFAESI?***

Issue no. 1 - Whether the respondent's suit is undervalued?

88. A short issue that has been raised by the petitioner in the present petition and in its application under Order VII Rule 11 of the CPC is that the respondent's suit is undervalued. With regard to the same, the relevant portion of the impugned order is as under:

“18..... It has been contended that outstanding dues (in accordance with the Recall Notice dated 08.07.2021) is Rs. 12,60,63,542/- and the plaintiff has arbitrarily valued the suit at Rs. 70,000/- on which a total fees of Rs. 7,882/- has only been affixed. Ld counsel for plaintiff has contended that only the valuation stated by the plaintiff in the plaint should be considered by this court for the purpose of Suits Valuation Act, 1887 and Court Fee Act, 1870.

19. Since the reliefs sought in the present suit are for declaration and mandatory injunctions, relevant provisions under the two Acts should be considered. In accordance with Section 7 (iv) (c) of the Court Fees Act, 1870, in a suit to obtain declaratory decree where consequential reliefs are claimed, the court fee computation is according to the amount at which relief sought is valued in the plaint. In such suits, the plaintiff is required to state the amount at which the relief sought is



valued. Further, Section 8 of the Suits Valuation Act provides that in suits other than those referred to in Section 7(v), (vi), (ix) and (x) (d), the value as determined for the computation of court fee and the value for the purpose of jurisdiction shall be the same. In accordance with the above, the valuation as stated by the plaintiff should be taken into account. Referring to the figure of Rs. 70,000/- (which has been provided as suit valuation by the plaintiff), the defendant has alleged that the figure is grossly undervalued and arbitrary.....

20. In light of the aforesaid judgment, the subject matter of the present suit is the action of defendant in classifying the loan account of the plaintiff as NPA. The underlying subject matter is not the outstanding loan amount or the mortgaged properties but a mere action which has been alleged to be undertaken in contravention of orders of Hon'ble Supreme Court of India and the applicable RBI guidelines. Accordingly, the valuation and court fee, as stated by the plaintiff are found to be admissible for the purpose of the two Acts i.e. the Suit Valuation Act and the Court Fee Act. Hence, these objections of the defendant with respect to valuation and court fee cannot be sustained.

21. For the purpose of Commercial Courts, Commercial Division And Commercial Appellate Division of High Courts Act, 2015 ('the Commercial Courts Act'), it has been argued that the present suit is a "commercial dispute" within the meaning of the Act and hence is not maintainable before this Court being of valuation more than Rs.3 lacs. Section 12 (1)(d) of the Act provides that the specified value of the commercial dispute in a suit involving intangible rights shall be determined on such market value of the said rights as estimated by the plaintiff. In light of the discussion and reasons provided above in paragraphs 19 and 20 of this order, the specified value for the purpose of the Commercial Courts Act shall be deemed to be based upon the value stated by the plaintiff in the plaint.



Accordingly, the objections with respect to non maintainability of the present suit under the Commercial Courts Act cannot be sustained....”

89. This Court has perused the relevant portion of the impugned order and is of the view that the petitioner’s contention herein that the suit is undervalued is wrong and misconceived. The same is stated because of the reason that the respondent in its suit has merely sought declaratory relief against the status of his loan account having been defined as NPA and since all the other reliefs are also similar in nature, and taking into consideration that no other relief is being sought which would increase the value of the suit, the petitioner’s arguments are baseless.

90. The learned Trial Court has rightly taken into account that the subject matter of the suit is limited to the action of the petitioner in classifying the respondent’s account as NPA. In any manner, the subject matter does not concern with the outstanding loan amount or the mortgaged assets. Accordingly, the valuation and court fee, as stated by the plaintiff in paragraph no. 74 and 75 of its plaint is right and there is no error in the findings of the learned Court below in this regard.

91. Therefore, with regard to the issue of undervaluation of the suit, this Court is of the view that there is no averment made in the plaint that would imply that the suit’s value could be any more than what has been pleaded therein.

92. Hence, the instant issue is decided against the petitioner and in favour of the respondent.



93. The issue no. 1 stands decided accordingly.

Issue no. 2 - Whether the learned Trial Court has the jurisdiction to decide the challenge against the status of NPA in light of Section 34 of SARFAESI?

94. The issue before this Court is limited to the aspect of whether the learned Trial Court applied the judicial mind whilst dismissing the application seeking rejection of the respondent's plaint.

95. There have been a lot of complex submissions made before this Court pertaining to the rightful or wrongful classification of respondent's loan account as NPA; initiation of various litigations before various forums such as DRT, New Delhi and DRT, Allahabad; IRAC norms and guidelines issued by the Hon'ble Supreme Court and RBI with respect to default, moratorium and NPA etc.

96. Considering the above, this Court deems it imperative to state that the subject matter for adjudication before this Court is to decide whether the respondent's suit is barred by law in light of Section 34 of SARFAESI. In the below paragraphs, this Court will analyze whether the learned Trial Court committed an error in deciding the application seeking rejection of the respondent's plaint. The law with respect to rejection of a plaint is settled as per which this Court is only obligated to look into the averments made in the plaint to decide whether the same is barred to be entertained by the learned Trial Court.

97. Now advertent to the instant issue.



98. In order to analyze the impugned order, relevant portions of the same have been reproduced as under:

“..10. It has been accordingly stated by the defendant that the present suit is hit by Section 34 of the SARFAESI Act which bars the jurisdiction of Civil Courts from entertaining any suit or proceeding in respect of which the Debt Recovery Tribunal (hereinafter referred to as 'DRT') or the Appellate Tribunal is empowered under Act or under the Recovery of Debts due to Banks & Financial Institutions Act, 1993 (“Recovery Act”). The defendant has relied upon the judgment in 'Shree Anandhakumar Mills Ltd Vs. Indian Overseas Bank & Ors' for this purpose. It is accordingly stated that the present suit is barred by law.

11. In the reply to the application, the plaintiff has denied the averments and grounds stated in the application and sought an outright dismissal. The plaintiff has further denied the allegations of the defendant pertaining to conditions attached with the NOCs. It is stated that the reliefs claimed under the suit are not barred under SARFAESI Act and such reliefs cannot be adjudicated by the DRT. It is submitted that DRT can be approached by the defendant for initiation of measures provided in the SARFAESI Act, and unless the defendant does so, the plaintiff has no occasion to approach the DRT. Plaintiff has stressed upon the point that scope and jurisdiction of DRT under the SARFAESI Act and the Recovery Act is distinct and separate. It is accordingly prayed that the application be dismissed as being absolutely wrong and untenable.

16. Ld. Counsel for defendant attempted to rely upon judgment of Hon'ble High Court of Bombay in 'Maharashtra Gramin Bank Vs. Anwar, CRA No. 43/2020', in support of his contention that judgment in Bank of Baroda (Supra) is bad in



law. However, upon perusal, it is noted that the judgment in Maharashtra Gramin Bank (Supra) nowhere overrules or overturns the judgment in Bank of Baroda (Supra). Rather, the said judgment is based on a different set of facts as opposed to the facts in consideration before this Court. In the present case, the plaintiff is seeking inter alia the reliefs of declaration that act of defendant in classifying loan account of plaintiff as a NPA is illegal, null and void being contrary to orders passed by Hon'ble Supreme Court in writ petition (civil) No. 825/2020 as well as being contrary to the guidelines issued by the RBI. The other reliefs are declarations and mandatory injunctions sought with respect to 'consequences' arising out of the said act of defendant in classifying the loan account as an NPA. Ld counsel for defendant has been unable to prove as to how the findings of Hon'ble High Court of Bombay in 'Bank of Baroda case' (supra) are bad in law, mere so when the same are in consonance with the observations in 'Nahar Industrial Enterprises Ltd' (supra). A bare perusal of the two judgments further makes it clear that jurisdiction of Civil Court cannot be said to be barred in all cases where rights of parties under Civil Law are sought to be agitated, including in cases where underlying security interest falls within the purview of Section 13 of the SARFAESI Act. In the present case, the defendant has already proceeded ahead with issuance of notice under Section 13 (2) of SARFAESI Act followed by taking "symbolic possession" of the mortgaged properties of plaintiff in accordance with Section 13 (4) of the Act. Vide affidavit dated 21.12.2021 filed by the defendant, it has been clarified that an Original Application has been filed by the defendant before the DRT under Section 19 r/w Section 2(g) of the Recovery Act for the purpose of recovery of outstanding loan amounts. All of the aforesaid actions have been undertaken by the defendant after the institution of the present suit.



17. It is trite to mention here that Section 9, CPC confers plenary powers on this Court to try all suits of a civil nature excepting suits which are expressly or impliedly barred. Such plenary jurisdiction must be shown to have been expressly or impliedly barred under the provision of an Act for ousting the jurisdiction of this Court which is otherwise wide and plenary. A plain reading of Section 17 of SARFAESI Act reveals that any person, including a borrower, who is aggrieved by any of the measures under Section 13 (4) of SARFAESI Act may make an application to the DRT for seeking redressal of his grievance. However, the scope available to such person / borrower is limited in extent. It may prima facie be observed at this stage that the nature of remedy / relief sought by the plaintiff in the present case emanates from the alleged act of the defendant which is prior in chronology to the initiation of action under Section 13 (2) of the SARFAESI Act. Further, Section 17 of the SARFAESI Act cannot be said to bar the wide jurisdiction of this Court, specifically in relation to the reliefs sought by the plaintiff in the plaint. In light of the observations made by various higher courts in authorities cited above, the objection of defendant with respect to the bar under SARFAESI Act cannot be sustained.

23. At the conclusion of arguments on the two applications, Ld counsel for plaintiff had vehemently stated that the cause of action very much rests with the plaintiff and the plaintiff is entitled to a temporary injunction from this Court. It is stated that owing to the said acts of the defendant i.e. declaration of NPA in contravention of the Supreme Court order and in violation of the RBI guidelines, the other financial institutions with whom the plaintiff has obtained various credit facilities have also threatened to withdraw their credit facilities. The plaintiff is apprehending a cascading effect on itself whereby



other financial institutions are likely to withdraw their respective facilities.

24. Since, the primary grievance of the plaintiff is with respect to the act of defendant in classifying the loan account of the plaintiff as an NPA w.e.f 30.09.2020 on account of it being illegal, null and void in light of alleged contravention of orders passed by Hon'ble Supreme Court of India and the ensuing RBI guidelines, it is prima facie evident that a series of consequential effects have emerged which cast a shadow on the credit worthiness and reputation of the plaintiff. It is noted that the defendant issued the notice under Section 13 (2) of SARFAESI Act much after the institution of the present suit. As noted above, the legality of actions of the defendant with respect to the loan account of the plaintiff may be determined conclusively only upon further trial and evidence in the matter. The 'cascading effect' of the alleged action of the defendant would be borne by the plaintiff not only in terms of adverse action on the underlying security / non availability of restructuring opportunity, but also in the form of loss of business / financial credit from various institutions. Taking into account the nature of business transactions involved, it is likely that irreparable losses shall be caused to the plaintiff if suitable remedy is not accorded. The balance of convenience lies in favour of the plaintiff. Hence, this Court is inclined to allow the application under Order 39 Rule 1 & 2 CPC to the extent that defendant is directed to maintain status quo ante with respect to loan account of the plaintiff as it existed on the date of filing of this suit i.e. as on 11.08.2021. The status quo be maintained till further orders of this Court. The application under Order 39 Rule 1 & 2 CPC is accordingly disposed of..."

99. Upon perusal of the above quoted extracts of the impugned order, it is made out that the learned Court below relying upon the judgment passed in



Gopal Shriram Panda (Supra), held that the respondent, i.e., the plaintiff therein, has approached the Civil Court in accordance with the law and considering that the status of NPA might have cascading effect upon the respondent, it deemed it appropriate to hold that the said classification of NPA is wrong and the same amounts to a dispute of civil nature, thereby, opining that it has the jurisdiction to entertain the above said suit.

100. The respondent has heavily relied upon ***Gopal Shriram Panda (Supra)***. In this regard, this Court is of the view that the paragraph 22.5 of said judgment passed by the High Court of Bombay states that the SARFAESI does not provide for any provision for the DRT to try the disputes pertaining to claim that the classification of an account as NPA is right or wrong.

101. This Court is of the view that the learned Trial Court and the respondent have failed to apply the said judgment in its totality. Upon reading of the concluding paragraphs of the same, it is inferred that only in the event it is found that civil right of a person is being infringed, it is only then the aggrieved may approach a Civil Court and not otherwise. Further, it is the law that the jurisdiction of the Civil Court is to decide all the matters of civil nature excluding those to be tried by the DRT under Section 13 and 17 of SARFAESI. The jurisdiction of the Civil Court can only be enforced when it is *prima facie* apparent from the face of the record that the relief so claimed, is incapable of being decided by the DRT under Section 17 of SARFAESI.



102. One of the issues which was discussed in *Mardia Chemicals (Supra)* and with which alone this Court is concerned in the present case is whether the respondent, i.e., the borrower could seek recourse to a Civil Court, once Section 13 (2) was invoked by the petitioner, i.e., the creditor vide notice dated 23rd August, 2021. The Hon'ble Supreme Court in the said judgment answered to the abovementioned issue in negative, holding that, once Section 13 stood invoked by a creditor, recourse to the Civil Court stood statutorily barred, even before the matter proceeded to the Section 13 (4) stage.

103. Furthermore, as per the judgment of Hon'ble Supreme Court in *Indian Overseas Bank v. Ashok Saw Mill*¹³, the law is that in order to prevent misuse of the wide powers conferred on creditors under SARFAESI and to prevent prejudice being caused to the borrowers on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 of SARFAESI which allow any person, including the borrower, aggrieved by any measures referred to in Section 13 (4) taken by a creditor, to make an application to the concerned DRT. The relevant extracts of the same is as under:

“36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action

¹³ (2009) 8 SCC 366



invalid and also to restore possession even though possession may have been made over to the transferee.

37. The consequences of the authority vested in the DRT under sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr Gopalan and Mr Altaf Ahmed that the DRT has no jurisdiction to deal with a post-Section 13(4) situation, cannot be accepted.

38. The dichotomy in the views expressed by the Bombay High Court and the Madras High Court has, in fact, been resolved to some extent in Mardia Chemicals Ltd. case [(2004) 4 SCC 311] itself and also by virtue of the amendments effected to Sections 13 and 17 of the principal Act. The liberty given by the learned Single Judge to the appellants to resist SA No. 104 of 2007 preferred by the respondents before the DRT on all aspects was duly upheld by the Division Bench of the High Court and there is no reason for this Court to interfere with the same.

39. We are unable to agree with or accept the submissions made on behalf of the appellants that the DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under Section 13(4) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT.”



104. The Division Bench in *Cynthia K. Thelepan (Supra)* had also observed that in order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction.

105. In *Gaurav Lubricants (Supra)*, the petitioners therein, argued that the respondent bank therein, wrongly classified their accounts as NPA, failing to extend the benefits of restructuring as required by the RBI guidelines for small enterprises. The petitioners contended that a writ petition under Article 226 of the Constitution of India is maintainable when seeking compliance of the RBI guidelines. The respondent bank argued that the issue of classification of accounts as NPA can be addressed under Section 17 of SARFAESI before the DRT. The Division Bench of the High Court of Hyderabad held that the petitioners have the remedy to invoke Section 17 of SARFAESI and that the petitioner should have approached the DRT before filing writ.

106. It is relevant to note that in paragraph no. 59 of the judgment in *Mardia Chemiclas (Supra)*, the Hon'ble Supreme Court held that proceedings under Section 17 of the SARFAESI are not appellate proceedings and that such a proceeding is in fact an initial action like filing of suit before the Civil Court. The Hon'ble Supreme Court further



specifically held that, as a matter of fact, the proceeding under Section 17 of the SARFAESI are in lieu of a civil suit, which remedy is ordinarily available, but for the bar under Section 34 of the SARFAESI.

107. At this stage, in order to determine whether the averments made in the plaint are of such a nature, thereby, making the said suit barred under Section 34 of SARFAESI, it is pertinent to peruse the relevant portion of the respondent's plaint. Accordingly, this Court has perused the plaint, specifically paragraph nos. '16, 35, 37, 39, 41, 42, 45, 47, 49, 54, 55, 59, 60 and 69'.

108. Upon perusal of the same, this Court is of the considered view that the respondent in its plaint had sought for relief of declaration of his loan account as NPA to be illegal and void stating that the same has been done in violation of various RBI guidelines and a judgment of Hon'ble Supreme Court. The said averments made in the plaint do not, in any manner and in explicit terms state as to how the petitioner has classified its loan account as NPA fraudulently. Further, the averments state that due to default on the respondent's part, the petitioner decided to declare the respondent's account as NPA.

109. The case of the respondent that the petitioner has classified its account as NPA with *mala fide* intentions is not made out. Moreover, it is observed that when the application seeking rejection was filed, the petitioner had already issued notice dated 23rd August, 2021 under Section 13 (2) of SARFAESI.



110. In the present case the petitioner has already proceeded ahead with issuance of notice under Section 13 (2) of SARFAESI followed by taking symbolic possession of the mortgaged properties of the respondent in accordance with Section 14 (4) of SARFAESI. Furthermore, an Original Application under Section 19 of the RDB Act has also been filed by the petitioner for the purpose of recovery of outstanding loan amounts.

111. Therefore, it is apparent that upon initiation of actions under the SARFAESI, the jurisdiction of the learned Trial Court is barred in view of Section 17 of SRFAESI which grants the respondent with a remedy to approach DRT and also in light of Section 34 of SARFAESI which ousts the jurisdiction of Civil Courts in the disputes pertaining to the RDB ACT and SARFAESI. Mere use of words *mala fide* or fraud cannot be permitted to foist the jurisdiction on the Civil Court when it is specifically barred under Section 34 of SARFAESI.

112. The judgments relied upon by this Court in preceding paragraphs state that the proper course of the respondent is to challenge the action of classification of its loan account as NPA is by filing a statutory application as directed under Section 17 of SARFAESI. Further, the question whether the account has been correctly classified as a NPA or not is a factual dispute and as already noted, the respondent has an alternative efficacious remedy available in this regard.

113. The respondent by way of clever drafting of his plaint has attempted to oust the jurisdiction by filing the declaratory suit. The Hon'ble Supreme Court and various High Courts have held that the question whether the



classification of the assets as NPA was correct or not based on RBI circulars can be determined by the DRT. This Court is of the view that in case the civil jurisdiction is accepted to settle such disputes, the object behind SARFAESI will be highly prejudiced.

114. Considering the above and upon finding infirmity in the impugned order, this Court is inclined to exercise its revisional powers. It is held that the learned Court below has failed to exercise its jurisdiction under Order VII Rule 11 of the CPC in accordance with the settled law.

CONCLUSION

115. The mere fact that a decision of the Trial Court is erroneous due to a question of fact or of law does not amount to any illegality or a material irregularity. Only those matters are to be allowed under the revisional jurisdiction of the High Court, wherein, there has been an irregular exercise, or non – exercise, or the illegal assumption of the jurisdiction by the Court below. It is a settled law that under Section 115 of the CPC, this Court has to look only into the issue of the jurisdiction of the Court below in deciding any application and shall not go into the merits of the case.

116. In regard to the facts of the instant case, it has been deliberated by way of the aforementioned judgments and discussions of facts that the impugned order passed by the learned Court below is unsustainable.

117. Therefore, it is held that the petitioner has made out its case for grant of relief of revision of the impugned order under Section 115 of the CPC. This Court is of the considered view that the learned Trial Court has not



2024:DHC:1364



exercised its jurisdiction in accordance with the law and hence, the arguments advanced by the petitioner against the impugned order are accepted and the contentions of the respondent are rejected.

118. In light of the above discussion of facts and law, impugned order dated 22nd December, 2021, passed by the learned Civil Judge – 01, South East District, Saket Courts, New Delhi in CS SCJ 901/2021 is set aside to the extent that the application filed by the present petitioner under Order VII Rule 11 of the CPC before the learned Trial Court stands allowed and the above said suit is dismissed.

119. In view of the aforesaid terms, the instant petition stands allowed.

120. Accordingly, the instant petition along-with pending applications, if any, stands disposed of.

121. The judgment be uploaded on the website forthwith

(CHANDRA DHARI SINGH)
JUDGE

FEBRUARY 22, 2024
gs/ryp/av