In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Uday Kumar

F.A.T. No.513 of 2019
+
IA No: CAN 2 of 2019
(Old No: CAN 8553 of 2019)
+
CAN 3 of 2022

Jai Prakash Jaiswal and Another
Vs.
The Official Liquidator and Others

For the appellants	:	Mr. Sakya Sen, Ld. Sr. Adv., Ms. Jayati Chowdhury, Mr. Shaswat nayak, Ms. Mayuri Ghosh, Ms. Mandobi Chowdhury, Ms. Priya Malakar
For the respondent no.1	:	Mr. Ranajit Chowdhury, Mr. Sudipto Chowdhury
For the respondent nos.2, 3 and 4	:	Mr. Soumya Roy, Mr. Piyas Choudhury, Mr. Santosh Singh
For the proforma respondent	:	Mr. Rishav Banerjee, Mr. Chandan Mohata, Mr. Moulinath Moitra
Heard on	:	10.07.2025 & 17.07.2025
Reserved on	:	17.07.2025
Judgment on	:	05.08.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred by the plaintiff in a suit for damages/compensation of Rs.60,00,00,000/-, interest *pendente lite*, declaration that the plaintiff nos.2 and 3 stand discharged of all guarantees to the defendant nos.2 to 4/Banks and the consequential relief of permanent injunction. By the impugned judgment and deemed decree dated April 9, 2019, the learned Trial Judge rejected the plaint primarily on the grounds that the suit was barred under Section 80 of the Code of Civil Procedure and Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act").

2. The premise of the suit was that the defendant/respondent no.1, the Official Liquidator (O/L), as well as the defendant nos.2 to 4/Banks (creditors), were negligent in preserving and maintaining a property of the Company, including plant, machinery, equipment and other assets, from damage and theft, seeking compensation for such damages. The suit was filed by the plaintiff nos.2 and 3, two of the Directors of the plaintiff no.1-Company, namely Shree Sanyeeji Steel and Power Limited, in the name of the plaintiff no. 1-Company as well as in the capacity of Guarantors in respect of a loan taken by the said Company from the respondent nos.2 to 4/Banks. It was pleaded in the plaint that since the plaintiff nos.2 and 3 were also liable to meet the debt which the plaintiff nos.1-Company failed to repay to the Banks, the liability of the plaintiff nos.2 and 3 in respect of the said loan as guarantors ought to be mitigated by the compensation payable by the defendants for their negligence in preserving the property. It was pleaded in the plaint that in the event the compensation to the tune of Rs.60,00,00,000/- was granted, the said amount would be much larger than the dues payable by the Company, for which the plaintiff nos.2 and 3 stood as guarantors.

3. In the said suit, the defendant/respondent no.1-O/L on the one hand and the defendants/respondent nos.2 and 4 (Banks) on the other, filed two separate applications under Order VII Rule 11 of the Code of Civil Procedure, seeking rejection of the plaint on different grounds. The O/L pleaded that in view of non-compliance of two months' prior notice as required under Section 80 of the Code of Civil Procedure, the suit was not maintainable. On the other hand, the respondent nos.2 to 4 argued primarily that in view of measures taken under Section 13 of the SARFAESI Act as well as the dispute raised in the suit being governed by the Companies Act, 1956 (hereinafter referred to as "the 1956 Act"), which was then in force, and subject to the jurisdiction of the Company Court, where a winding up petition was pending, the Civil Court had no jurisdiction and the plaint ought to be rejected.

4. The plaintiffs/appellants had, on the other hand, filed an application under Order XXIII Rule 1 of the Code, subsequent to the filing of the applications under Order VII Rule 11 of the Code, seeking withdrawal of the suit with liberty to sue afresh on the self-same cause of action, on the premise that the suit, if at all, could have been barred by Section 80 of the Code, which has a technical defect.

5. While discussing all the grounds taken in the applications for rejection of plaint, the Trial Court ultimately rejected the plaint on the grounds of bar under Section 80 of the Code of Civil Procedure and Section 34 of the SARFAESI Act and observed that in view of its observations on the said grounds, the other grounds for rejection of plaint need not be discussed.

6. The learned Trial Judge also rejected the application of the plaintiffs/appellants for withdrawal of the suit with liberty to sue afresh on the ground that the same was filed after the filing of the applications for rejection of plaint, that too at a belated stage of the suit.

7. Being aggrieved by the said order (deemed decree), the appellants have preferred the present appeal. On the other hand, the appellants also took out a revisional application, registered as CO No.2435 of 2019, against the portion of the impugned judgment whereby their application for withdrawal of the suit was dismissed with certain observations made thereon.

8. CO No.2435 of 2019 was disposed of by a learned Single Judge of this Court *vide* order dated December 12, 2023 upon observing that since the Trial Court proceeded for rejection of plaint, the plaintiffs' prayer for withdrawal of the suit had become redundant and did not call for enquiry on merit. Accordingly, CO No.2435 of 2019 was allowed in part, by holding that the observations in the impugned order, so far as those relate to the plaintiffs' application under Order XXIII Rule 1(3) of the Code, were set aside. Liberty was given to the parties to agitate all points in the appeal in respect of the disputes pertaining to the applications under Order VII Rule 11 of the Code.

9. During pendency of the appeal, it was pointed out by the parties that the plaintiff no.1-Company was undergoing a Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (for short, "the IBC"). A Resolution Professional (RP) had already been appointed by the National Company Law Tribunal (NCLT) and, as such, the interest of the Company could not be represented by its erstwhile Directors, the plaintiffs/appellant nos.2 and 3 any more.

10. Accordingly, upon hearing the parties to the appeal, the appellant no.1-Company was directed to be transposed to the category of a proforma respondent, since, upon an option being given, the RP chose not to proceed further with the appeal in its present form on behalf of the Company. By dint of the order dated June 16, 2025 passed by this Court, the appellant no.1 was accordingly transposed to the category of proforma respondent no.5 and the appellant nos. 2 and 3 respectively became the appellant nos.1 and 2 in the appeal.

11. Learned senior counsel for the appellants argues that the consideration in the applications for rejection of plaint had to be the averments made in the plaint. However, the learned Trial Judge took into account the statements made by the respondent nos. 2 to 4 in their application under Order VII Rule 11 of the Code, to the effect that a notice under Section 13(2) of the SARFAESI Act had already been served on the plaintiffs, and rejected the plaint on such ground as well. It is argued that the learned Trial Judge, thus, erred in law in looking beyond the plaint pleadings to decide the application for rejection of plaint.

12. Learned senior counsel appearing for the appellants next contends that the principal relief sought in the suit, that is, damages/compensation against the respondent no.1 (O/L) and the respondent nos.2 to 4 (Banks), could not be granted by the Debts Recovery Tribunal (DRT) within the contemplation of the SARFAESI Act. The said principal relief comes exclusively within the domain of the Civil Court. Since a plaint cannot be segregated for the purpose of rejection of plaint and the law does not recognize partial rejection of a plaint, the learned Trial Judge erred in law in rejecting the plaint on the premise of the consequential reliefs without looking at the principal relief in the suit, which ought to have been the sole determinant before the learned Trial Judge.

13. Learned senior counsel next argues that the present appellants, apart from being Directors of the borrower-Company, are also personal Guarantors in respect of the loan taken by the Company from the respondent nos.2 to 4/Banks. Insofar as the Guarantors are concerned, if the relief sought in the suit is granted, the amount recovered would much exceed the payable dues to the Banks. Thus, the liability of the present appellants as Guarantors would be reduced to nil, due to which a declaration was sought in the suit to the effect that the present appellants would stand discharged and absolved of all Guarantees to the respondent nos. 2 to 4/Banks including the guarantees given by the appellants.

14. It is argued further that the reliefs sought in the suit do not overlap with the CIRP. Although a Resolution Plan was submitted by the present appellants in the CIRP, the same was turned down by the Adjudicating Authority/Tribunal. Thus, the said Resolution Plan was never approved. If it was allowed, it might still have been argued that the appellants are bound by the said Plan; however, since the same was not approved, the proposals given therein do not have any binding effect on the appellants. In the said Plan, proposals were given by the present appellants to discharge them from their liabilities, *inter alia*, upon payment of an amount. Such proposal, *per se*, could not disentitle the appellants from proceeding with their suit for compensation.

15. Learned senior counsel next argues that the O/L is not a 'Public Officer' as contemplated under the Code of Civil Procedure. Thus, no prior notice under Section 80 of the Code was required to be issued. In any event, in the event the Trial Court was of the opinion that the suit was bad only on such ground, the application for withdrawal of the suit ought to have been allowed by granting liberty to the plaintiffs to sue afresh on the self-same cause of action, this time by complying with the provisions of Section 80 of the Code. Even if the plaint was rejected on such ground alone, Order VII Rule 13 of the Code would permit the appellants to prefer a fresh suit on the self-same cause of action. However, the adjudication on the other counts in the impugned order (deemed decree) precludes the appellants from doing so.

16. Insofar as the bar under Section 34 of the SARFAESI Act is concerned, the appellants contend that the DRT, under the said Act, does not have the power to grant the principal relief sought in the suit. Moreover, there is no averment in the plaint regarding measures having been taken by the respondent-Banks under Section 13(4) of the SARFAESI Act and, as such, no case for rejection of the plaint was made out on the face of the plaint pleadings.

17. Although there was an order of winding up of the plaintiff no.1-Company, it is argued by the appellants that the same was subsequently stayed and the stay order was still in force when the suit was instituted. Thus, the provisions of the 1956 Act did not debar the institution of the suit.

18. It is contended that unlike the Companies Act, 2013 (for short, "the 2013 Act"), its predecessor statute, the 1956 Act, did not contain any specific bar to the jurisdiction of the Civil Court. In any event, it is argued that the damages claimed in the suit are against the O/L in such capacity and not against the Company as such. Hence, the provisions of the 1956 Act were not sufficient to debar the Civil Court from granting the reliefs claimed in the suit, as framed.

19. Learned counsel appearing for the proforma respondent/Resolution Professional argues that Section 543 of the Companies Act, 1956 affords sufficient remedy to the present appellants, since the appellants come within the definition of 'contributories' of the Company (in liquidation). Hence, the appropriate remedy before the plaintiffs would be to file an application under Section 543, in which the Company

Court could very well have granted compensation for any deterioration or loss in respect of the property of the Company (in liquidation).

20. It is further argued that in the Resolution Plan, the present appellants categorically admitted their liability and sought to mitigate the same by payment. Hence, the relief sought in the plaint on the self-same score, seeking a mitigation of such liability, is self-contradictory, rendering the suit vexatious.

21. Learned counsel appearing for respondent nos.2 to 4/Banks argues that it is the Company Court which has exclusive jurisdiction, since the winding up proceeding is still pending. Although this Court, by an order dated July 9, 2015, had granted liberty to the appellants to institute an appropriate proceeding, upon holding that a previous suit for self-same relief as the present one, filed in this Court, was not maintainable due to lack of territorial jurisdiction, since the subject-matter of the suit lay beyond the jurisdiction of this Court, by the expression "appropriate proceeding", an application before the Company Court was meant, as opposed to a Civil Suit.

22. Learned counsel for the Banks also places reliance on Section 543 of the 1956 Act in support of the arguments of the RP. It is further contended that appropriate proceedings could be taken against the O/L for his alleged professional misconduct under Section 448(6)(c) of the 1956 Act. Section 460(6) of the said Act also grants power to the Company Court to confirm, reverse or modify any act of the O/L.

23. Accordingly, the respondent nos.1 to 4-banks as well as the proforma respondent no.5- RP seek the dismissal of the present appeal.

24. Before entering into the merits of the matter, it has to be kept in mind that the Revisional Court, by its order date December 12, 2023, has set aside the observations in the impugned order regarding the application under Order XXIII Rule 1(3) of the Code. Thus, the limited consideration of this Court is the legality of the deemed decree rejecting the plaint.

25. Several issues have been raised in the present appeal, which are dealt with as follows:

(i) ***Whether the suit was barred under Section 80 of the Code of Civil Procedure***

26. Section 448 of the 1956 Act provides that the O/L is appointed, approved or selected from a panel by the Central Government. Section 463 of the said Act confers on the Central Government pervasive control over the functioning of the O/L.

27. The entire scheme of the 1956 Act indicates that it is the Central Government which has direct control over the functioning and appointment of the O/L.

28. Section 2(17) of the Code of Civil Procedure defines "Public Officer". Clause (g) thereof takes within the fold of the said definition officers whose duty is to take, receive, keep or expend any property on behalf of the Government. Clause (h) speaks about an officer in service or in the pay of the Government or remunerated by fees/commission for performance of a public duty.

29. As discussed above, the scheme of the 1956 Act clearly points to an O/L coming within the purview of Section 2(17), Clauses (g) and (h) of the Code and, thus, is a "Public Officer" within the meaning of the said definition.

30. Section 80 mandates two months' prior notice to a Public Officer in the event a suit is filed against such an officer. The Section is couched in negative language, debarring any suit from being filed without such compliance, unless leave to file without such notice is granted specifically under Section 80(2) of the Code of Civil Procedure. It is nobody's case that leave under Section 80(2) was taken by the plaintiffs prior to filing the suit, nor has it been pleaded in the plaint that a prior notice was issued under Section 80 of the Code. Thus, the suit was definitely barred by Section 80 of the Code of Civil Procedure and was not maintainable in law for non-compliance of the said provision.

31. In *V. Rajendran and another v. Annasamy Pandian (dead) through Legal Representatives Karthyayani Natchiar*, reported at *(2017) 5 SCC 63*, the Supreme Court observed that 'formal defects' or 'sufficient grounds' under Order XXIII Rule 1 of the Code of Civil Procedure include want of notice under Section 80 of the Code. Thus, the plaintiffs were entitled to seek withdrawal of the suit with liberty to sue afresh within the contemplation of Order XXIII Rules 1 and 3 of the Code in view of want of notice under Section 80 being a 'formal defect' within the contemplation of the said provision.

32. In any event, Order VII Rule 13 of the Code of Civil Procedure provides that a fresh suit on the same cause of action is not barred *per se* due to rejection of the plaint, which applies all the more in case of a formal defect.

33. Thus, although the suit was not maintainable due to non-compliance of Section 80 of the Code of Civil Procedure, such bar does not, by itself, prevent the appellants from preferring a fresh suit on the same cause of action.

(ii) ***Bar under Section 34 of the SARFAESI Act***

34. Nowhere in the plaint has it been stated that any measure under Section 13(4) of the SARFAESI Act was taken by the respondent nos.2 to 4/Banks. Thus, since it is well established that the consideration in a proceeding under Order VII Rule 11 of the Code is restricted to the averments in the plaint and the documents relied on therein, the learned Trial Court acted *de hors* its jurisdiction in taking into account the pleadings in the Banks' application under Order VII Rule 11 of the Code to come to the finding that the suit was barred due to such measures being taken. In any event, when the suit was filed, only a notice under Section 13(2) of the SARFAESI Act was issued. Section 17 of the SARFAESI Act, however, entitles any aggrieved party to prefer an application under the said provision, only if a measure under Section 13(4) of the Act has been taken. Hence, at the time of institution of the suit, the same was not barred under the SARFAESI Act.

35. Secondly, the bar under Section 34 of the SARFAESI Act precludes the Civil Court from adjudicating on any matter which is within the powers of the Tribunal to deal with. Thus, the said bar borrows its hue from the powers of the Tribunal itself, which is found in Section 17 of the SARFAESI Act. Section 17 clearly enumerates that the scope of an application under Section 17 is for the aggrieved party to establish any illegality in the measures taken under Section 13(4) of the said Act. Section 17(1) empowers an aggrieved person to make an application before the Debts Recovery Tribunal if it is aggrieved by any of the measures referred to in sub-section (4) in Section 13. On the other hand, sub-section (2) of Section 17 of the SARFAESI Act stipulates that the Tribunal shall consider whether any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor for enforcement of security, is in accordance with the provisions of the SARFAESI Act and the Rules made thereunder. Hence, the entire scope of consideration in a Section 17 application is circumscribed by the rider that the grievance has to relate to whether the measures taken under Section 13(4) of the said Act are in accordance with the provisions of the SARFAESI Act and its Rules.

36. The principal relief sought in the suit, however, is entirely unrelated to any such measure. The damages/compensation claimed from the O/L and the Banks is based on alleged negligence on the part of the defendants in preserving the Company's property and has nothing to do with the measures taken or to be taken by the Banks under Section 13 of the SARFAESI Act *per se*.

37. The jurisdiction of the Tribunal under the SARFAESI Act is of a limited nature, to consider only whether the measures under Section 13 (4) are in consonance with the provisions of the said Act. The bar under Section 34 relates to suits which seek to usurp such limited jurisdiction of the Tribunal. However, the powers of a Civil Court to adjudicate a claim for damages/compensation for loss/deterioration of property are much wider than such restricted jurisdiction of the Tribunal.

38. Hence, the suit, as framed, could not be said to have been barred by Section 34 of the SARFAESI Act.

39. While considering the other limb of Section 34, we find that the same also debars the Civil Court from granting any injunction in respect of any action taken or “to be taken” in pursuance of any power conferred by the SARFAESI Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

40. The relief sought in the plaint of the present suit do not seek a restraint order on the Banks/creditors from enforcing the debt by taking measures under Section 13(4) of the SARFAESI Act. The permanent injunctions sought in Relief (d) of the plaint are only consequential to the principal relief claimed in the suit and not the principal or standalone reliefs but are entirely dependent on, in aid of, and consequential to the principal relief of damages/compensation which would, if granted, offset the liability of the plaintiffs in respect of the debt due to the defendant/banks.

41. It is trite law that in applications under Order VII Rule 11 of the Code, the principal relief is the determinant of whether a suit is barred by any law. Permanent injunction, being a consequential relief, could not be held to be an indicator of the maintainability of the suit, since it was not a stand-alone or principal relief but only an ancillary remedy.

42. Being premised on the principal relief as enumerated in Prayers (a) and (c) of the plaint, Prayer (d) itself could not render the suit non-maintainable.

43. It is well-settled that a plaint cannot be segregated for the purpose of considering a prayer for rejection of plaint and there cannot be any partial rejection of plaint.

44. At the worst, the Civil Court, at the time of finally deciding the suit, might have held that the relief of permanent injunction could not be granted, since it overlaps with the jurisdiction of the Tribunal, but still grant the other reliefs sought in the suit.

45. Hence, the suit was not barred under Section 34 of the SARFAESI Act.

(iii) Whether the pendency of the winding up proceeding operates as a bar to the suit

46. Although the appellants seek to argue that the winding up proceeding had been stayed/suspended at the juncture when the suit was instituted, we find from the orders passed therein that the Company Court had, *inter alia*, observed that upon payment of a particular monthly sum in a recurring manner by the Company, the O/L would unlock the property and hand over the same to the Company (in Liquidation). However, such order, by itself, did not suspend or drop and/or terminate the winding up proceeding. Under the contemplation of the 1956 Act, the moment an order is passed in a winding up proceeding, the Company Court assumes jurisdiction in respect of the assets of the Company (in Liquidation), to be exercised through the O/L appointed for such purpose.

47. Thus, we have to proceed on the premise that the winding up proceeding was pending and consider whether such pendency could oust the Civil Court's jurisdiction. In such context, we necessarily have to look into the provisions of the 1956 Act itself.

48. The respondent nos.2 to 4/Banks have relied in particular on Sections 448(6)(c) and 460(6) of the 1956 Act.

49. Section 448(6)(c), however, contemplates proceedings against the O/L for professional misconduct and does not, within its scope, envisage the adjudication of any claim for damages.

50. On the other hand, Section 460 of the 1956 Act provides for the exercise and control of the liquidator's powers and deals primarily with such exercise in the administration of the assets of the Company and the distribution thereof among its creditors, having regard to any directions which may be given by resolution of the creditors or contributories at any general meeting by the committee of inspection, as stipulated in sub-section (1) thereof.

51. Sub-section (3) of Section 460 sets forth the nature of such functions of the liquidator, including summoning general meetings. Sub-section (4) provides that the liquidator may apply to the Tribunal/Company Court for directions in relation to any particular matter arising in the winding up and sub-section (5) provides for the liquidator to use his own discretion in the administration of the assets of the Company and in the distribution thereof among the creditors.

52. Thus, the entire context of Section 460 revolves around the "administration of assets of the Company and distribution thereof among creditors" by the liquidator.

53. Sub-section (6) of Section 460 cannot be divorced from the context of the rest of the said provision. Seen from such perspective, it is provided in sub-section (6) that any person aggrieved by any act or decision of the liquidator may apply to the Tribunal/Company Court, which may "confirm, reverse or modify" the act or decision complained of and make such further order as it thinks just in the circumstances. Hence, the charter of the Company Court under the said provision is primarily to confirm, reverse or modify any acts or decision of the liquidator in the context of administration and distribution of the assets of the Company among creditors. The expression "further order as it thinks just" has to be read by application of the principle of *ejusdem generis* and the said expression should be deemed to derive its scope from the rest of Section 460.

54. Thus, the principal relief claim in the present suit, that is, for damages/compensation against the O/L or the Banks for negligence in preserving and protecting the property of the Company, does not strictly come within the purview of acts done in the administration of the assets and distribution thereof. Even if it be so, the Company Court's jurisdiction is limited to confirmation, reversal or modification of such acts and not assessing and granting damages or compensation independently.

55. Thus, the above two provisions, that is, Sections 448(6)(c) and 460(6) of the 1956 Act, do not exclude the jurisdiction of the Civil Court at all.

56. Section 543 of the 1956 Act is the closest provision which could arguably bring a conflict between the powers of the Company Court and the Civil Court. The said provision takes into account situations where the liquidator has misapplied any property of the Company or has been guilty of any misfeasance or breach of trust in relation to the company, in which case the Tribunal/Company Court may, *inter alia* on the application of a contributory, compel the liquidator to repay or restore the property with interest or to contribute such sum to the assets of the Company by way of compensation in respect of the misapplication, as the Tribunal/Company Court thinks just.

57. There cannot be any manner of doubt that the plaintiffs, either in their capacity as Directors or as guarantors, come within the broad purview of the expression "contributories" who, in Company Jurisprudence, are persons liable to contribute to the assets of the Company when it is being wound up.

58. However, the Section, while bestowing such powers on the Tribunal/Company Court, uses the expression "may". Thus, the Company Court "may", on the application of a contributory, pass necessary directions including payment of compensation. The expression "may" takes out any mandatory element from such power and indicates that the power is in addition to any power which may be exercised by the Civil Court otherwise. Nothing in the said provision confers exclusive power on the Company Court and ousts the jurisdiction of the Civil Court even in such regard.

59. On a more basic premise, while considering whether the Civil Court's jurisdiction is barred due to pendency of a winding up proceeding, we are required to undertake a limited comparative examination of the respective relevant provisions of the 1956 Act and the 2013 Act, in order to properly appreciate the exclusive, or otherwise, nature of the jurisdiction of the Company Court.

60. Section 279 of the 2013 Act roughly corresponds to Section 446 of the 1956 Act. Section 279 provides that no suit shall be commenced "by" or against a company during a winding up proceeding, without the leave of the Tribunal. As opposed thereto, sub-section (1) of Section 446 of the 1956 conspicuously omits any reference to suits "by" the company and enumerates an equivalent bar only with regard to suits filed "against" the company.

61. A careful reading of Section 446 clearly shows the delineation of the scheme of sub-sections (1) and (2) thereof. Whereas sub-section (1) uses a negative language and, thus, is of a more mandatory character, barring any suit or other legal proceeding "against" the company when a winding up order has been made, sub-section (2) provides that notwithstanding anything contained in any other law for the time being in force, the Tribunal/Company Court shall have jurisdiction to entertain or dispose of any suit or proceeding by or against the company or any claim made by or against the company, whether such suit or proceeding has been instituted or is instituted.

62. It is to be noted that sub-section (2), unlike sub-section (1), is not couched in a negative language debarring any such suit from being filed, by or against the company, without the leave of the Tribunal.

63. The context of the *non obstante* clause in sub-section (2) of Section 446 of the 1956 is very relevant in the present context. The power conferred on the Tribunal/Company Court under the said sub-section is not exclusionary, debarring Civil Courts from taking up similar suits. Rather, the use of language in sub-section (2) of Section 446 indicates that the power of the Tribunal to decide suits or proceedings by or against the Company, notwithstanding anything contained in any other law, is in addition to powers to other competent forums under other laws. Hence, Section 446 does not, in any manner, debar the Civil Court from taking up a suit by a company. Hence, the present suit, instituted also in the name of the company as plaintiff no.1, is not barred as such.

64. If seen in contrast with the 1956 Act, it is found that Section 280(d) of the 2013 Act confers jurisdiction on the Tribunal to entertain or dispose of "any question whatsoever, whether of law or fact, including those *relating to assets*, business, etc., of the company or any matter arising out or relating to the winding up proceeding" (Italics supplied).

65. As opposed thereto, the corresponding provision in Section 446(2)(d) of the 1956 Act omits the words "relating to assets".

66. The plaintiffs' claim for damages/compensation against the O/L for alleged negligence in protecting and preserving one of the assets of the company might relate to assets under Section 280(d) of the 2013 Act, but does not come within the purview of any questions of priorities or other questions relating to or arising in the course of the winding up of the company. Strictly speaking, the claim of damages/compensation does not "arise in course of" or "relate to" the winding up proceedings directly but is an independent claim.

67. The most important provision in the present discussion is Section 430 of the 2013 Act, which categorically provides a bar to the jurisdiction of Civil Courts in matters which the Tribunal is empowered to handle.

68. As opposed thereto, there is no corresponding provision at all in the 1956 Act which excludes the jurisdiction of the Civil Court in such matters.

69. Thus, by necessary implication, the introduction of Section 430 in the 2013 Act highlights by contrast that such a total bar of jurisdiction of Civil Courts in respect of matters which can be dealt with by the Company Court was absent in the 1956 Act. Hence, the powers of the Company Court/Tribunal under the 1956 Act were parallel to that of the Civil Court and did not exclude the powers of the Civil Court. Even if there was an overlap between the jurisdictions of the two, the powers of the Company Court were over and above and in addition to those of the Civil court in their respective spheres.

70. Thus, the argument that the Civil Court was denuded of jurisdiction to entertain or try the present suit due to pendency of the winding up proceeding under the 1956 Act before the Company Court and as the latter was in seisin of the matter, is not tenable in the eye of law and is hereby turned down.

(iv) ***<u>Whether the suit was maintainable at the instance of one Sandeep Khandelwal, the alleged authorised representative of the plaintiffs, who affirmed the verification and affidavit of the plaint</u>***

71. One Sandeep Khandelwal, the alleged authorised representative of the plaintiff no.1-Company and the plaintiff nos.2 and 3, the present appellants, presented the plaint.

72. The respondents have made out a strong case as to the suit not being maintainable at the instance of the said Sandeep Khandelwal since, during pendency of a winding up proceeding, only the O/L could represent the Company (in liquidation).

73. However, it is well-settled that there cannot be a partial rejection of plaint and/or the reliefs claimed in the suit cannot be segregated for the purpose of rejection of plaint. A plaint has to be rejected either as a whole or not at all. Even if the suit was not maintainable vis-a-vis the Company at the behest of Sandeep Khandelwal, since he did not have the authority at the relevant time (that is, April, 2016) to represent the plaintiff no.1-Company since the winding up proceeding had already commenced, it would at best be open to the Trial Court, at the time of final adjudication of the suit, to refuse the reliefs to the plaintiff no.1-

Company on such ground, by holding that the reliefs claimed in the suit were not maintainable at the behest of the Company. However, at the same time, the Civil Court was duty-bound to decide the issues raised by the plaintiff nos.2 and 3/present appellants, in their capacity as guarantors for the loan taken by the plaintiff no.1-Company, since the liability of the guarantors are co-extensive with the borrower and the plaintiff nos.2 and 3 had no impediment in authorising the said Sandeep Khandelwal to represent them in the suit.

74. Thus, for the purpose of rejection of plaint, the incompetence of the signatory to the plaint to represent the plaintiff no.1-Company pales into insignificant, since the signatory could very well represent the other two plaintiffs/present appellants. In any event, the court could, at the final hearing of the suit, always refuse the reliefs to the plaintiff no.1 on such ground and/or transpose the plaintiff no.1 to the category of defendants/proforma defendants. However, the plaint could not be partially rejected at least insofar as the plaintiff nos.2 and 3 are concerned, on such ground.

(v) Effect of the CIRP and Resolution Plan on the maintainability of the suit before the Civil Court

75. Section 14 of the IBC imposes a moratorium on suits *against* the corporate debtor. Thus, suits filed *by* the corporate debtors claiming a monetary amount by way of compensation or damages from a third party are not debarred in terms in the said provision.

76. Section 17 of the IBC, however, vests the RP with the management of the affairs of the corporate debtor. Be that as it may, nothing in the IBC debars a suit filed by guarantors of a loan taken by the corporate debtor, for damages/compensation against third parties, being the O/L and the Banks in the present case. The suit filed by the plaintiff nos. 2 and 3/present appellants in the capacity of guarantors to protect their interest, and neutralize their liability as such guarantors in respect of the loan taken by the borrower-company, operates on a parallel footing with the CIRP and does not adversely affect the interests of the corporate debtor-Company and/or any proposed Resolution Plan in respect thereof. The interests of the company can very well be segregated from the interest of the plaintiff nos.2 and 3 in their capacity as guarantors.

77. Thus, the mere pendency of a CIRP in respect of the company/corporate debtor does not automatically operate as a bar to a suit of the present nature filed by the guarantors seeking damages/compensation against the O/L for having failed to preserve the assets of the corporate debtor. If anything, such suit operates in favour of the corporate debtor and not against its interests and does not adversely affect the Corporate Insolvency Resolution Process.

78. The RP has vehemently argued that the present appellants, in their proposed Resolution Plan, had admitted their liability to repay the loan taken by the corporate debtor-company and cannot take a contradictory view by seeking mitigation of such liability in the suit.

79. However, there are two fallacies in the said argument.

80. First, even if the liability of the appellants as guarantors was admitted, there is no conflict in such admission with the premise of the suit from which the present appeal arises. The appellants, even in the plaint of the suit, admit their liability as guarantors of the corporate debtor-company but seek to mitigate the same and be relieved of such liability by virtue of their claim of compensation against the O/L for damages which, if granted, would be much in excess of the dues payable by the company and, by co-extensive liability, by the appellants/guarantors. Hence, there is no contradiction between the stand taken by the appellants in the suit and the Resolution Plan submitted by them in the CIRP.

81. The second fallacy in the argument is that the Resolution Plan was never approved by the Adjudicating Authority. A Resolution Plan becomes binding on all concerned, including the contributories, under Section 31 of the IBC only upon being approved by the Adjudicating Authority post-approval by the Committee of Creditors (CoC). In the present case, since the Resolution Plan proposed by the appellants was never approved but got rejected, the said plan does not have any binding effect on anybody at all.

82. Hence, by no stretch of imagination can it be said that the pendency of the CIRP or the presentation of a Resolution Plan by the appellants, which was never approved, debars the jurisdiction of the Civil Court to decide the issues involved in the suit.

83. Section 180 of the IBC creates a bar only in respect of matters where the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal have jurisdiction under the IBC, in their respective capacities as the Adjudicating Authority and the Appellate Authority. The present suit, however, had nothing to do with such jurisdictional aspect. Neither the Adjudicating Authority nor the Appellate Authority under the IBC have the jurisdiction to decide on trial a claim of compensation/damages against the O/L in respect of a particular property, even if the said property is an asset of the corporate debtor/company, more so, since the claim of the appellants is in their capacity as guarantors, independent of the interests of the company, in a bid to mitigate their liability.

84. Hence, Section 180 of the IBC does not operate as a bar to a civil suit of the present nature at all, since it does not directly clash with the jurisdiction of the two Tribunals mentioned above within the contemplation of the IBC itself.

85. Accordingly, the present suit is neither barred by the ongoing CIRP in respect of the borrower-Company nor by dint of submission of a Resolution Plan therein by the present appellants.

86. In any event, the above question cannot be gone into by this Court for the first time within the limited scope of the present appeal. In a regular first appeal against a decree deciding the suit on merits, the First Appellate Court has somewhat co-extensive powers with the Trial

Court under Section 107, read with Order XLI Rule 33, of the Code of Civil Procedure.

87. However, the scope of an appeal against the rejection of a plaint is limited only to the plaint pleadings and whether such pleadings reveal any bar of law or are otherwise tainted by non-disclosure of cause of action or vitiated by any of the other clauses of Order VII Rule 11. The consideration is confined to the parameters of Order VII Rule 11 of the Code and the Appellate Court cannot delve into questions beyond those taken in the Trial Court for the purpose of rejection of the plaint. Not only did the Trial Court reject the plaint in the present case only on the grounds of Section 80 of the Code and Section 34 of the SARFAESI Act and did not adjudicate specifically on the other grounds taken, it is also to be noted that the bar under the IBC was never pleaded, argued or mentioned in the applications for rejection of plaint by any of the parties to the suit before the Trial Court.

88. Thus, the Appellate Court cannot, for the first time, permit a new ground of rejection of plaint to be taken, which was not taken before the Court of first instance. Although a Trial Court can even *suo moto* reject a plaint if it so feels, the Appellate Court cannot arrogate to itself the powers of a Trial Court, thus, usurping the jurisdiction of the Court of first instance, inasmuch as the scope of hearing of an application under Order VII Rule 11 of the Code is concerned. Hence, the CIRP ground now sought to be taken by the RP cannot even be gone into within the limited scope of this appeal.

CONCLUSION

89. In view of the above, it is an inevitable conclusion that the suit is not barred by any law other than Section 80 of the Code of Civil Procedure.

90. Although the learned Trial Judge, in the impugned deemed decree, had rejected the appellants' application for withdrawal of the suit with leave to file afresh, the said findings and observations were set aside by the Revisional Court in CO No.2435 of 2019, thus keeping it open for the Trial Court to pass appropriate orders in connection with the said application afresh.

91. Hence, there are two options open to the Trial Court in view of our above observations – to reject the plaint only on the ground of Section 80 of the Code or to permit withdrawal of the suit with leave to sue afresh to cure the technical defect under Section 80 of the Code.

92. We are, however, aware of our constraints as an appellate court, sitting in judgment over a deemed decree and not being in seisin of the application under Order XXIII Rules 1 and 2 of the Code of Civil Procedure.

93. Order VII Rule 13 of the Code, in any event, permits a fresh suit to be filed on the self-same cause of action and does not debar the same merely due to rejection of the plaint on a technical ground.

94. Thus, the effect would be similar whether the application of the plaintiffs under Order XXIII Rule 1 of the Code was allowed or the plaint is rejected only on the ground of Section 80 of the Code.

95. Accordingly, F.A.T. No.513 of 2019 is allowed in part, thereby setting aside the findings of the learned Trial Judge and modifying the impugned judgment and deemed decree dated April 9, 2019 passed by the learned Civil Judge (Senior Division), Additional Court at Bankura, in M.S. Case No.49 of 2017, thereby rejecting the plaint of the said suit under Order VII Rule 11 of the Code of Civil Procedure only on the ground of non-compliance of Section 80 of the said Code. It is made clear that all the other grounds on which the plaint was sought to be rejected are hereby turned down and set aside. Nothing in this judgment shall preclude the present appellants to sue afresh on the self-same cause of action upon due compliance of Section 80 of the Code of Civil Procedure.

96. Consequentially, the appellants' application under Order XXIII Rule 1 of the Code of Civil Procedure filed in M.S. Case No. 49 of 2017 stands disposed of as infructuous.

97. There will be no order as to costs.

98. The applications pending in connection with the appeal, bearing CAN 2 of 2019 (Old No: CAN 8553 of 2019) and CAN 3 of 2022, stand disposed of accordingly.

99. Interim orders, if any, stand vacated.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)