26th February, 2025
(AK)
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F.M.A.T 407 of 2024
IA No: CAN 1 of 2024

Diwansons Jewellers Private Limited
Vs.
SRC Waterways & Land Development Company Private Limited and others

Mr. Aniruddha Chatterjee
Mr. Satadeep Bhattacharyya
Mr. Uttam Sharma
Mr. Abir Lal Chakraborty
Ms. Vrinda Kedia
...for the appellant.

Mr. Shiv Mangal Singh
...for the respondent-Bank.

1. In view of the short conspectus of the appeal, the same is taken up for hearing at the admission stage.

2. Since questions of both fact and law are involved, the appeal is admitted and will be heard on the questions taken in the Memorandum of Appeal.

3. We take up the appeal along with the application for hearing, accordingly, on consent of parties.

4. The present challenge has been preferred against the refusal of a prayer of the plaintiff/appellant for temporary injunction filed in connection with a suit, *inter alia*, seeking a declaration that a purported mortgage by the lessor of the plaintiff in

favour of the defendant no.2-Bank is void, that the same be delivered up and cancelled as well as that the defendant no.2-Bank has no right, title or interest in respect of the suit property on the strength of such purported mortgage, and for consequential reliefs.

5. In connection with the said suit, the appellant sought temporary injunction to the effect that the respondent nos. 5 and 6 be restrained from interfering with the plaintiff's ownership, right, title, interest and possession over and in respect of the suit flat.

6. Learned senior counsel appearing for the appellant submits that the learned Trial Judge dismissed the injunction application primarily on the premise that the suit itself is not maintainable in view of the bar incorporated under Section 34 of the SARFAESI Act (hereinafter referred to as 'the said Act').

7. It is, however, argued that on a composite reading of Section 34 and Section 17 of the said Act, the suit is maintainable before the Civil Court, since the principal reliefs sought therein cannot be granted by the tribunal under the SARFAESI Act.

8. That apart, it is contended that when the plaintiff/appellant approached the tribunal for similar reliefs, the tribunal dismissed such

application on the ground that the same is not maintainable.

9. As such, it is the civil suit which is the appropriate remedy and as such, the same is very much maintainable.

10. Learned counsel appearing for the respondent-Bank raises a question as to the *locus standi* of the appellant to challenge the validity of the mortgage, since the appellant came into the picture much after the creation of the impugned mortgage in the year 2011 and claims on the strength of a purported lease deed created in his favour by the mortgagor post-mortgage.

11. It is further submitted that the allegations of fraud have not been substantiated.

12. However, at this juncture, we cannot go into the merits of the allegations and counter-allegations, which are required to be decided on a full-fledged trial.

13. Fact remains that the impugned order is primarily premised on a bar to the civil suit on the ground of Section 34 of the SARFAESI Act.

14. However, the appellant is justified in contending that such bar is not applicable in the present case, since the reliefs sought in the suit in respect of the purported mortgage, which was the very genesis of

the measures taken by the respondent-Bank under Section 13(4) of the said Act, is alleged to be vitiated by fraud.

15. As such, the said relief could not be granted by the tribunal, since the jurisdiction of the tribunal under Section 17 is restricted to infirmities and illegalities committed with regard to the measures taken under Section 13(4) of the SARFAESI Act and is limited to the four corners of the said Act.

16. In such view of the matter, we are of the *prima facie* opinion that the suit is maintainable and as such the very premise of the rejection of the injunction application is bad.

17. Also otherwise, in view of the measures being taken under Section 13 (4) by the respondent-Bank, we are of the opinion that a sufficient case of urgency and balance of convenience as well as irreparable injury has been made out in favour of grant of injunction.

18. Accordingly, FMAT 407 of 2024 is allowed on contest, thereby setting aside the impugned order dated September 23, 2024 passed by the Second Court of Civil Judge, Senior Division at Barasat, District-North 24 Parganas in Title Suit No.202 of 2014 and granting injunction restraining the respondent nos.5 and 6 from disturbing the

possession and/or enjoyment of the plaintiff/appellant in respect of the suit property in any manner whatsoever till disposal of the suit.

19. It is made clear that in view of no relief having been sought against the other respondents, service of notice on the respondent nos.1 to 4 is dispensed with.

20. It is further clarified that this court has not gone into the merits of the respective contentions of the parties and the learned Trial Judge would be at liberty to independently decide the same without being influenced unnecessarily in any manner by any of the observations made herein.

21. The learned trial Judge shall dispose of the pending application of the respondent nos.5 and 6 under Order VII Rule 11 of the Code of Civil Procedure in connection with the suit as expeditiously as possible, positively within four weeks from the date of communication of this order to the trial court.

22. The appellant shall file its written objection to the application under Order VII Rule 11 of the Code of Civil Procedure before the trial court by March 4, 2025.

23. Thereafter, the learned trial Judge shall proceed to dispose of the suit, subject to the outcome of the

said application under Order VII Rule 11 of the Code of Civil Procedure.

24. CAN 1 of 2024 is disposed of in the light of the above observations.

25. Since no affidavits have been directed, it is deemed that none of the allegations made in the stay application filed in connection with the present appeal are admitted by any of the respondents.

26. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)