IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.07.2025

Pronounced on : 20.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

A.No. 2527 of 2024
IN
C.S.No.690 of 2016

J.D.A. Consultancy Services Pvt. Ltd.,
1st Floor, Casa Blanks Complex
Casa Major Road, Egmore,
Chennai 600 008.

Rep. by its Director Mr.A.Balakrishnan ... Applicant/3rd Defendant

Vs

1. ICICI Home Finance Company Ltd.,
ICICI Bank Tower, No.B-4, Bandra – Kurla Complex
Mumbai – 640 051.

and having its branch office at
No.2nd Floor, AB-106, Old No. 134,
4th Avenue, Shanthi Colony, Anna Nagar,
Chennai -600 040.
Rep. by its Territory Business Manager
Mr.S.Manikandan
... 1st Respondent/Plaintiff

2. S.Sundaramurthy Santhanam
S/o. V.Sundaramoorthy
G-4, Daffadil, B-Block
Ram Nagar, 3rd Street,
Velachery – 600 042.

Also at
Block 104, River Vale Walk
02 + 138, Singapore 540 104
Through his Power of Attorny S.Ramachandran

3. S.Ramachandran
S/o. Mr.V.Sundaramoorthi
G-4 Daffadil, B-Block
Ram Nagar, 3rd Street,
Velachery – 600 042.

PRAYER: Application filed under Order VII Rule 11(d) and Section 151 of CPC read with Order XIV Rule 8 of OS Rules seeking to reject the plaint in C.S.No. 690 of 2016 under Order VII Rule 11(d) read with Section 151 of the Code of Civil Procedure, 1908 award exemplary cost to the applicant.

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For Applicant : Ms. Shubharanjani Ananth

For Respondent : Mr. S.Suresh

ORDER

This Application has been filed under Order 7 Rule VII(d) read with Section 151 of the CPC, 1908 by the third defendant in the suit, J.D.A. Consultancy Services Pvt. Ltd., to reject the plaint in C.S.No. 690 of 2016 and grant exemplary costs to the applicant.

2. C.S.No. 690 of 2016 has been filed by ICICI Home Finance Company Ltd., seeking the following reliefs:-

> *"(a). declaring that the auction sale conducted at the instance of the fourth defendant Indian Bank on 29.11.2006 under Orders of the DRT-III, Chennai, thereby bringing the suit property also to sale, is illegal, invalid and not binding on the plaintiff;*
>
> *(b) declaring that the third defendant who is the auction purchaser does not derive any right title or interest in the suit property;*

(c) directing the defendants 1 and 2 to pay to the plaintiff a sum of 1,08,49,033/- being the principal and interest put together within such time that this Hon'ble Court may stipulate and if the defendants 1 and 2 fail to pay or deposit the amount mentioned in supra within the time stipulated by this Honourable Court then to pass a final decree directing the sale of the property more particularly set out in the schedule herein; and the sale proceeds therefrom may be appropriated towards the amount referred to above.

(d) if the sale proceeds from the sale of the suit property is found to be insufficient to satisfy the amount referred to above, then t pass personal decree against the defendants 1 and 2 in respect of the amount which remains due after appropriation of the sale proceeds towards the amount mentioned supra.

(d) directing the defendants 1 and 2 to pay to the plaintiff costs of this action."

3. In the plaint, it had been stated that the property described in the schedule namely, undivided ½ share in land contained in Plot No. 29, Rajjiv Garden, OkkiumThuraipakkam Village, Tambaram Taluk, Kanchipuram comprised in S.No. 428/1A measuring 2160 sq.ft., together with superstructure forms part of a larger extent of land measuring 2.86 acres in S.No. 428/A, OkkiumThuraipakkam Village, Tambaram Taluk, Kancheepuram District had purchased by the first defendant Sundaramurthy Santhanam for adequate consideration from S.Vijayalakshmi, represented by her power of attorney agent by a registered Sale Deed dated 02.07.2008 and registered as Document No. 2732 of 2008 in the office of the Sub Registrar, Neelankarai. The first defendant had represented to the plaintiff that he was the absolute owner of the suit property and was in possession of the same.

4. The plaintiff, ICICI Home Finance Company Ltd., is a Housing Finance Company and notified as a Financial Institution for the purpose of securitation. It had been further stated that it is also to be treated as a Financial Institution for the purpose of Section 2(i)(m)(iv) of the SARFAESI Act. It has the power to invoke the provision of SARFAESI

Act. It had been further stated that however there has been no specific notification under the Recovery of Debts due to Banking and Financial Institutions Act 1993 notifying the plaintiff as a Financial Institution. It had thus been stated that though the plaintiff can invoke the provisions of the SARFAESI Act, it cannot approach the Debt Recovery Tribunal seeking any relief. It had therefore been stated that the suit had been filed before this Court and not before the Debt Recovery Tribunal. It had also been stated that even though the jurisdiction of the Civil Court is barred under Section 34 of the SARFAESI Act, in view of the complex issues in this suit, the bar would not apply.

5. It had been further stated that the first defendant had filed a suit in C.S.No. 715 of 2011 before this Court against his vendor Mrs. Vijayalakshmi and others in which the plaintiff was arrayed as the sixth defendant. The suit was filed seeking a Judgment and Decree against the first and third defendants therein for a sum of Rs.57,80,000/- towards damages and for costs.

6. The plaintiff herein had filed his written statement in the said suit.

7. It had been further stated that the first defendant had obtained home loan from the plaintiff and took possession of the property on the date of sale. The schedule mentioned property along with other properties had been given as collateral security for a loan obtained by M/s. Media Communication Services from Indian Bank, Egmore Branch. Since that loan liability was not discharged, Indian Bank initiated Recovery Proceedings in O.A.No. 187 of 2001 and a Recovery Certificate was issued on 11.12.2001. The property mentioned in the schedule was brought in auction and the third defendant was the successful bidder and Sale Certificate was also issued on 03.01.2007. It had been further stated that this auction had been suppressed and the property had been sold at the instance of Indian Bank for recovery of its dues from Media Communication Services and others. It had been contended that no document was produced to show that Media Consultancy Services and others had title to the suit property. It was further contended that the third defendant herein did not therefore derive title over the suit property.

8. It had been contended that this sale of the property by the Debt Recovery Tribunal had created a cloud on the right of the plaintiff to exercise its rights under the SARFAESI Act. It was under those circumstances that the suit had been filed seeking a declaration that the auction sale held on 29.11.2006 with respect to the suit property is illegal and without jurisdiction and not binding on the plaintiff.

9. It had been further stated that the second defendant is the brother of the first defendant. It had been further stated that the first defendant through the second defendant had sought home loan from the plaintiff and a sum of Rs.44,71,870/- had been advanced as loan repayable in 120 months with EMI of Rs.60,969/-. It had been further stated that the first and second defendants defaulted in making repayment of the loan and since notices did not evoke any response, the plaintiff had called upon the first and second defendants to pay a sum of Rs.50,34,982/- as on 15.07.2010. The plaintiff therefore sought enforcement of that mortgage and had also claimed as further reliefs, a direction against the first and second defendants to pay a sum of

Rs.1,08,49,033/- towards principal and interest outstanding to the plaintiff and to bring the property on sale to satisfy that amount.

10. In the affidavit filed in support of the application No.2527 of 2024, the third defendant, who had purchased the suit property in the auction conducted by the Indian Bank / fourth defendant, contended that with respect to matters covered under Section 17 of the Recovery of Debts Due to Banking and Bankruptcy Act 1993, the suit is barred under Section 18 of the said Act. It had been pointed out that the plaintiff had sought recovery of dues and enforcement of mortgage and the suit had been valued on the basis of the mortgage amount and it had therefore been stated that the suit is for enforcement of mortgage and recovery of dues by a Financial Institution. It had been stated that this relief is under Section 17 of the RDDBFI Act 19993 and therefore it is barred under Section 18 of the said Act.

11. It had been further contended that the plaintiff has also sought to set aside the sale certificate issued by the Recovery Officer. It had been further contended that the said relief would not lie before the Civil

Court. It had been contended that Section 25 of the RDDBFI Act confers powers on the Recovery Officer to recover the amount of debt as specified in the certificate issued under Section 19(7) by the modes specified therein which include attachment and sale of immovable property. It had been further provided that this aspect cannot also be examined by a Civil Court. It had been further stated that under Section 30 of the RDDBFI Act, an appeal could be preferred to the Tribunal against an order of the Recovery Officer. It had therefore been stated that against the order of sale passed by the Recovery Officer, the plaintiffs should have approached the Debt Recovery Tribunal and therefore, the suit is barred and a challenge to the order of sale made by the Recovery Officer of Debt Recovery Tribunal after several years is also barred by law of limitation.

12. It had been further stated that only vague allegations had been raised about fraud, and at the same time, the plaintiff had also sought to enforce the mortgage against the first and second defendants. It had been further stated that since the plaintiff had issued notice under Section 13(2) of the SARFAESI Act, it must have proceeded further and taken

possession of the suit schedule property after issuing notice under Section 13(4) and without exhausting that remedy and abandoning those proceedings, the filing of the suit is not permissible and that the suit stands barred under law.

13. It had been further stated that the Recovery Officer had also not been made a party to the suit. It had been further stated that the suit is barred by law of limitation. The first and second defendants had filed their suit in the year 2011. The auction was conduced on 29.11.2006. It is therefore been stated that the suit filed in the year 2016 is barred by limitation. It had thus been stated that the plaint will have to be rejected under Order VII Rule 11(d) CPC.

14. A counter affidavit had been filed by the first respondent/plaintiff wherein it had been stated with respect to the contention of bar of the Civil Court under Section 18 of the RDDBFI Act that it would apply only to banks or Financial Institutions which are notified by the Central Government or by the Reserve Bank of India under Section 451 of the RBI Act, 1934. The plaintiff had not been

notified as a Financial Institution under the Recovery of Debts due to Banking and Financial Institutions Act 1993. It had therefore been stated that the plaintiff cannot approach the Debt Recovery Tribunal but can only approach the Civil Court for remedy.

15. With respect to Section 34 of the SARFAESI Act, it had been stated that the facts in the present case will have to be determined only by a Civil Court. With respect to the contention that the challenge to a sale certificate would not lie before the Civil Court, it had been stated that the first defendant herein had filed C.S.No. 715 of 2011 wherein the plaintiff herein was the sixth defendant and the first defendant herein had admitted obtaining home loan from the plaintiff herein and that the suit schedule property had been brought to sale by the fourth defendant / Indian Bank and a sale certificate had been issued on 03.01.2007 to the auction purchaser / third defendant. It had been stated that the auction purchaser cannot derive a better right than the borrower who did not have any title. It had been stated that this sale had created a cloud over the right of the plaintiff and therefore the suit had been filed before this Court. It had been further contended that the first and second defendants

had obtained housing loan from the plaintiff and since they had failed to repay the same, the plaintiff had also instituted the suit seeking enforcement of the mortgage. It had been further stated that the suit is not barred by limitation since the limitation starts from the date of declaration of Non Performing Asset of the loan account and that the loan is still repayable by the first and second defendants. It had been contended that the application should be dismissed.

16. Heard arguments advanced by Ms. Shubharanjani Ananth learned counsel for the applicant/third defendant and Mr.S.Suresh, learned counsel for the first respondent/plaintiff.

17. For the sake of convenience, the parties will be referred as plaintiff and the defendants.

18. The plaintiff had instituted the suit before this Court on the ground that though they were notified as a Financial Institution under the SARFAESI Act, they were not so notified under the Recovery of Debts due to Banking and Financial Institution Act 1993. It had therefore been

contended that they could not approach the Debt Recovery Tribunal seeking enforcement of their rights.

19. The plaintiff is a Financial Institution and had advanced housing loan to the first and second defendants to a sum of Rs.44,71,870/- on 30.06.2008 repayable with interest at 14.75% and monthly EMI of Rs.60969/-. The suit property had been mortgaged as security for the repayment of the loan.

20. It had been stated that the first defendant had purchased the property from one Mrs.Vijayalakshmi by sale deed dated 02.07.2008 registered as document No. 2732 of 2008 in the office of the Sub Registrar, Neelankarai for sale consideration of Rs.58,00,000/-. The original documents had been deposited with the plaintiff bank and a mortgage by deposit of title deeds had been executed. It had however been stated that the first defendant herein had filed C.S.No. 715 of 2011 before this Court against his vendor Mrs. Vijayalakshmi and others seeking damages for a sum of Rs.57,80,000/-. The first defendant had contended that the suit schedule property along with other properties had

been given as collateral security for a loan obtained by Media Communication Services Ltd., from Indian Bank/the fourth defendant. Since the loan had not been repaid by Media Communication Services Ltd., the properties had been brought on auction sale by Indian Bank consequent to filing of O.A.No. 187 of 2001 before the Debt Recovery Tribunal. A Recovery Certificate had been issued on 11.12.2001. The suit schedule property was brought for sale and the third defendant had purchased the property by sale deed dated 29.11.2006 and Sale Certificate dated 03.01.2007 had been issued.

21. It is the contention of the plaintiff that the said sale certificate dated 03.01.2007 should be set aside. Simultaneously the suit had also been filed seeking enforcement of mortgage against the first and second defendants.

22. However, it had been brought to the notice of this Court that the plaintiff herein, who claimed that they had filed the suit only because they were not notified as a Financial Institution under the Recovery of Debts due to Banking and Financial Institutions Act 1993 had actually

invoked the jurisdiction of the Debt Recovery Tribunal -I at Mumbai wherein they had filed transfer Original Application No.1125 of 2017 against Mahesh Kumar Manu Bhai Gadhia and Jyoti Maheshkumar Gadhia, seeking recovery of a sum of Rs.47,94,892.83/- as on 10.12.2011 together with further interest at 15.75% p.a., from 11.12.2011 till its realisation.

23. The said Original Application had actually been filed before the Debt Recovery Tribunal at Mumbai on 23.01.2012 and had been transferred to the Debt Recovery Tribunal -I on 06.12.2016. The defendants had applied for loan against the property in 2003 and a loan of Rs.26,29,814 had been sanctioned by letter dated 12.05.2003. The original title deeds of the property had also been deposited by the defendants.

24. Notice had been issued and since there was default, Original Application had been filed in the year 2012 by the plaintiff herein before the Debt Recovery Tribunal at Mumbai. This particular fact that the plaintiff had filed the application before the Debt Recovery Tribunal at

Mumbai had not been denied or disputed by the plaintiff. The plaintiff had therefore approached this Court knowing well that they should have approached the Debt Recovery Tribunal seeking recovery of money of loan advanced by them. They cannot exercise their right to approach the Debt Recovery Tribunal at Mumbai and claim that they do not have a right to approach the Debt Recovery Tribunal at Chennai. On this one ground itself, I hold that Section 18 of the RDDB Act would directly apply and there is a specific bar to file the suit or mortgage the property before this Court. It is however contended on behalf of the plaintiff that the suit does not only include enforcement of mortgage but also to set aside the sale certificate as illegal and in valid.

25. It had been contented that the suit schedule property had been sold by public auction consequent to a decree obtained by the fourth defendant/Indian Bank in O.A.No. 187 of 2001 wherein recovery certificate had been issued on 11.12.2001. The third defendant had purchased the property in the auction held on 29.11.2006 and the sale certificate had been issued on 03.01.2007. The plaintiff had not alleged fraud but only claims that there has been collusion and primarily that the

suit had been filed before this Court only because the plaintiff cannot approach the Debt Recovery Tribunal.

26. The Debt Recovery Tribunal provides an in built system to file an appeal against the order passed by the Recovery Officer. The Appellate provision comes under Section 30 of the RDDB Act. The reason advanced by the plaintiff therefore does not withstand the scrutiny of the Court. Even though the applicant had raised the issue of limitation, since it is held that the remedy of the plaintiff is only before the Debt Recovery Tribunal and that the Civil Court is barred by exercising the relief sought, I will not examine the issue on limitation.

27. The learned counsel for the plaintiff had placed reliance on the Judgment of the Hon'ble Supreme Court reported in ***2025 INSC 95 [Central Bank of India and another Vs. Smt. Prabha Jain and Ors.]***, wherein the Hon'ble Supreme Court had held that the relief to set aside the sale deed cannot be granted by the Debt Recovery Tribunal and can be examined only by the Civil Court. The facts in that particular case are that the first respondent Smt. Prabha Jain and others had instituted Civil

Suit No 25A/11 seeking a declaration that the sale deed and the mortgage deed are a nullity and that the fourth and fifth defendants had no right to sell the disputed plot to the third defendant.

28. It was claimed that the possession had already been taken by the second defendant is against law and seeking grant of loan by the first defendant on the security of the plot is against law and that the possession may be granted to the plaintiff after demolishing the construction and for damages at Rs.7,200/- for the period from December 2009 to December 2010 and at the rate of Rs.600/- per month for future damages.

29. It is the case of the plaintiff that the suit land had been purchased by her father-in-law by sale deed dated 19.06.1967 and on his death, it was inherited in equal shares by her late husband and his brother and her mother-in-law. After the death of her husband, she became entitled to 1/3rd undivided share in the property. It had been contended by her that without dividing the property into metes and bounds, the elder brother of her late husband had sold the property by dividing it into

various plots. One of the plot was sold to the third defendant by sale deed dated 03.07.2008. The third defendant approached the Central Bank of India to obtain loan. The third defendant defaulted in the loan and Central Bank proceeded further in accordance with SARFAESI Act. The plaintiff therefore filed a suit to set aside the sale deed and also the mortgage deed and for recovery of possession.

30. The Central Bank then filed an application under Order VII Rule 11 (d) CPC to reject the plaint. The Hon'ble Supreme Court held that the Debt Recovery Tribunal will not have the authority to set aside the sale deed and therefore, had dismissed the appeal filed before it and had stated that the civil suit should proceed further expeditiously in accordance with law.

31. The facts in the instant case are certainly distinguishable. The plaintiff in the instant case had admittedly not approached the Debt Recovery Tribunal only because they claimed that they were not notified as a Financial Institution under the RDDBFI Act 1993. On the other hand, the plaintiff had approached the Debt Recovery Tribunal had

Mumbai even in the year 2011.

32. In this case, the plaintiff had not sought to set aside the sale deed but rather have sought to declare that the auction sale conducted under the orders of the Debt Recovery Tribunal – III, Chennai as illegal, invalid and not binding. This auction had been conducted by the Recovery Officer acting under Section 25 of the RDDB Act. The said action by the Recovery Officer is subject to the jurisdiction of the Debt Recovery Tribunal alone.

33. The plaint also does not confirm to the requirements of Order 6 Rule 4 CPC. Order 6 Rule 4 CPC is as follows:-

> *“**4. Particulars to be given where necessary.***
> *In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”*

34. It is thus required that specific details of fraud or misrepresentation or undue influence must be stated in the pleadings.

35. Additionally, the suit had also been laid on the basis of a mortgage. This jurisdiction is vested only with the Debt Recovery Tribunal and the jurisdiction of the Civil Court is ousted. The learned counsel for the applicant, placed reliance on the Judgment of the Hon'ble Supreme Court reported in ***(2017) 16 SCC 137 [International Asset Reconstruction Company of India Ltd., Vs. Official Liquidator]***, and placed specific reference to the submissions made with respect to the recovery of Debts bankruptcy Act 1993 as reduced in paragraph No. 5 of the Judgment which is as follows:-

> *"**5.** Shri Arvind P. Datar, learned Senior Counsel for the respondents, contended that the RDB Act was a complete code by itself with regard to recovery of dues to banks and financial institutions. Section 24 of the RDB Act applied only to an application made under Section 19 by a bank or financial institution, to the Tribunal for*

recovery of a debt. Section 20(3) expressly applied to proceedings before the Appellate Tribunal only. The scheme of the Act manifests that the legislature expressly intended to exclude any extension of the prescribed period of 30 days under Section 30(1), which is further manifest from the amendment to the same in the year 2000 denuding the deemed status of the Recovery Officer as a Tribunal, for the purposes of the provision. "

36. The discussion of the Hon'ble Supreme Court had been given in paragraph No. 8 which is as follows:-

*"**8.** We have considered the submissions. The RDB Act was enacted to facilitate and expedite recovery of debts due to banks and financial institutions by summary proceedings before a statutory Tribunal. Section 18 bars the jurisdiction of any court or other authority in such matters (except the Supreme Court/High Court under Articles 226 and 227 of the Constitution). Section 31 provides for transfer of pending cases from a court to the Tribunal. The Act provides a complete procedure for institution*

of recovery proceedings, the method of its enforcement including the right to appeal. The RDB Act is undoubtedly a special law and a complete code by itself with regard to expeditious recovery of dues to banks and financial institutions. "

37. It is thus seen that the RDDB Act is a complete code and the jurisdiction of the Civil Court is ousted.

38. The plaintiff had suppressed that even before the institution of this suit, they had filed an Original Application before the Debt Recovery Tribunal-I at Mumbai, seeking enforcement of a mortgage. There is no reason why could not approached the Debt Recovery Tribunal at Chennai. The allegations of fraud have been introduced as clever drafting to bring the suit within the jurisdiction of this Court. The RDDB Act is a complete code in itself and the remedy of the plaintiff lies in pursuing further under the provisions of the said Act before the Tribunal.

39. In view of the above reasons, I hold that the Jurisdiction of this Court is ousted.

40. The plaint stand rejected and this Application stands allowed with costs of the third defendant.

Vsg 20.08.2025

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Index: Yes/No
Web: Yes/No
Speaking / Non speaking order

C.V.KARTHIKEYAN, J.

vsg

Pre-Delivery Order made in

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(½)