IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4614 of 2024 &
CMP.No.25816 of 2024

1.N.Ashok
2.N.Balaji .. Petitioners

Versus

1.M/s.State Bank of India,
Stressed Asset Management Bank,
Rep. by its Deputy General Manager,
No.112, Raja Plaza,
Avinashi Road, Coimbatore – 37.

2.M/s.State Bank of India,
Stressed Asset Management Bank,
Rep. by its Authorised Officer,
No.112, Raja Plaza,
Avinashi Road, Coimbatore – 37.

3.P.Pandian

4.The Sub Registrar,
Vadavalli, Mardhamalai,
Near Velkottam,
Coimbatore – 641 046.

5.The Directorate of Town and Country Planning,
807- Anna Salai, (Opposite to LIC),

Chengalvarayan Building, Fourth Floor,
Chennai – 600 002.

6.The Member Secretary,
Local Planning Authority,
Tatabad, Coimbatore – 12 .. Respondents

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and final order dated 03.02.2024 passed in I.A.No.602 of 2017 in O.S.No.762 of 2015 on the file of the II Additional District Munsif Magistrate (FAC), Coimbatore (V Additional District Munsif Magistrate (FAC), Coimbatore.

For Petitioner : Mr.K.S.Jeyaganeshan

For Respondents : Mr.M.L.Ganesh

ORDER

This civil revision petition arises against the order passed by the learned II Additional District Munsif, Coimbatore in I.A.No.602 of 2017 in O.S.No.762 of 2015 dated 03.02.2024.

2. The relief sought for in the suit is as follows:

"(a) Declaring that the valuation and the method adopted by the defendants' bank and published in sale

notice dated 11.02.2019 in Dhinamani and Indian Express as misrepresentation, illegal and with malafide intent and vitiated by fraud, collusion, etc., and not binding on the plaintiff;

b. Consequently the impugned auction conducted by the defendants' bank on 14.03.2014 as malafide, illegal, void ab-initio and vitiated by fraud, misrepresentation and collusion and is not binding on the plaintiffs"

3. The claim of the plaintiffs is that the loan had been taken by them with M/s.Bank of Baroda in the year 2009. Subsequently, in 2010, the said loan was assigned to M/s.Indian Overseas Bank. Finally, it was assigned to the State Bank of India, Commercial Branch at Coimbatore. According to the plaintiffs, when the property is worth about several crores, the bank by misrepresentation with *malafide* intention had undervalued the property and attempted to bring it for sale. The plaint tacitly concedes, the bank had exercised the powers under the SARFAESI Act. Hence, they sought for the aforesaid reliefs in the suit.

4. The bank filed a detailed written statement defending its position. It also pointed out that the property had been sold in public auction and the bank had recovered a sum of Rs.6,55,00,000/- as early as on 14.03.2015. It defended its action initiated under the SARFAESI Act. It also pointed out that it had approached the Debt Recovery Tribunal at Coimbatore for recovery of Rs.6,00,00,000/- invoking the Recovery Of Debts Due To Banks And Financial Institutions Act, 1993. It pointed out that the suit, in any event, is barred under Section 34 of the SARFAESI Act.

5. Pending the suit, an application was filed in I.A.No.602 of 2017. In this application, the plaintiffs sought to implead the auction purchaser in the SARFAESI proceedings and the State respondents 4 to 6 in this revision.

6. The plea is that the proposed party along with others conspired and caused a loss to the plaintiffs. The bank filed a counter to the said application pleading that the suit is not maintainable by virtue of Section 34 of the SARFAESI Act. It also pleaded that the bank had sold the property on 14.03.2015 and had issued the sale certificate and original title deeds to the auction purchaser and pleaded that the implead application is untenable.

7. The learned Trial Judge agreed with the defendants and dismissed the amendment application. Hence, this revision.

8. I heard Mr.K.S.Jeyaganeshan for the civil revision petitioners and Mr.M.L.Ganesh for the respondents 1 and 2.

9. The learned counsels reiterated their contentions that they made before the court below.

10. Mr.M.L.Ganesh added that the bank has been cheated on account of the activities of the plaintiffs and that, the liability runs to several crores.

11. I have carefully considered the submissions of both counsels and have gone through the records.

12. A reading of the plaint shows that the plaintiffs had approached the civil court for the purpose of declaring that the action taken by the bank under the SARFAESI Act is illegal. Under Section 34 of the SARFAESI

Act, the jurisdiction of a civil court is barred with respect to any of the matters which Debt Recovery Tribunal or Debt Recovery Appellate Tribunal are empowered to determine. Whether the action initiated by the bank under Section 13(4) of the SARFAESI Act read with Rule 8(5) of the SARFAESI Rules is valid or not can be tested only by the jurisdictional Debt Recovery Tribunal on an application filed under Section 17. Hence, as rightly pointed out by M.L.Ganesh, the suit is barred by virtue of Section 34. When the suit itself is barred, the question of impleading the auction purchaser and the State respondent in the suit is equally untenable.

13. A suit is liable to be rejected at any stage of the proceedings by virtue of Order VII Rule 11 of the Code of Civil Procedure. Since the suit is barred by virtue of a law enacted by the Parliament, exercising the power under Article 227, I am constrained to interfere.

14. I notice that the action, that has been challenged in the present case, is the publication dated 11.02.2015. The period of limitation for challenging the action taken by the bank is 45 days. Within the said period, the suit had been presented before the II Additional District Munsif at

Coimbatore. Hence, the plaint that has been presented shall be forthwith returned by the learned II Additional District Munsif, after recording this order. 15 days time is granted to the plaintiffs to represent the plaint as an application before the jurisdictional Debt Recovery Tribunal. In case, the plaint is not presented within 15 days as granted by this Court, the plaintiffs will not be entitled to get the benefit of this order.

15. With the above observation, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

30.01.2025

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

To

The II Additional District Munsif Magistrate (FAC), Coimbatore

(V Additional District Munsif Magistrate (FAC), Coimbatore.)

V.LAKSHMINARAYANAN, J.

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C.R.P.No.4614 of 2024

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