BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.12.2024
DELIVERED ON : 06.01.2025

CORAM:

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.3113 of 2024
and
C.M.P(MD)No.17855 of 2024

1.Anoob J.Singh

2.P.Jebhal Singh ... Petitioners

Vs.

1.The Authorized Officer,
Indian Bank,
Office at 254/260,
Avvai Shunmugam Salai,
Royapettah,
Chennai-600 014.

2.The Branch Manager,
Indian Bank,
Kaliyakkavilai Branch,
Kaliyakkavilai,
Vilavancode Taluk,
Kanyakumari District. ... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated

10.09.2024 passed in O.S(SR)No.2499 of 2024 (CNR No.TNKK01-004464-2024) on the file of the Principal District Court, Kanyakumari at Nagercoil and consequently direct the Principal District Court, Kanyakumari to number the O.S(SR)No.2499 of 2024 and dispose of the same on merits thereby allow the Civil Revision Petition.

For Petitioners : Mr.M.R.Srinivasan

For Respondents : Mr.C.Karthick
Standing Counsel

ORDER

The present Civil Revision Petition assails the fair and decreetal order, dated 10.09.2024 passed in O.S(SR)No.2499 of 2024 on the file of the Principal District Court, Kanyakumari at Nagercoil and consequently, for a direction to the learned Principal District Judge, Kanyakumari to number the O.S(SR)No.2499 of 2024 and dispose the same on merits.

2. The facts, in brief, giving rise to the present appeal are as under:

The above suit has been filed seeking declaration that the agreement relating to deposit of title deed, dated 29.04.2022 (document No.2080/2022 of Kollencode Sub Registry) as illegal and void, besides for a decree for mandatory injunction directing the defendants to return the documents mentioned in 'B' schedule to the plaintiffs and for permanent injunction restraining the defendants sale of 'A' schedule property by auction sale, besides from causing any disturbance to the enjoyment of the plaintiffs over the suit properties. The claim of the plaintiffs is that at the instance of the second defendant Bank, the plaintiffs took over M/s.J.J.Water Power Solutions run by a third party, who had obtained loan from the second defendant Bank and defaulted. At the time of such take over, the second defendant had assured to lend Rs.1 Crore 40 Lakhs for the purpose of maintaining and running the said firm, subject to the condition that the first plaintiff should mortgage his properties. Pursuant to the same, the second plaintiff, father of the first plaintiff, under compulsion of the first plaintiff had executed the agreement to deposit title deeds on 29.04.2022 with respect to 'A' schedule properties owned by the second plaintiff. But the second defendant did not give loan as promised. On the other hand, the second defendant wanted the first plaintiff not only to run the Company, but also to buy the Company's property and to write an agreement in the name of the Bank for Rs.70 Lakhs. On 31.05.2022, the plaintiff purchased the property of the Company from the legal heirs of its owner, who had died and executed an agreement in the name of the Bank in respect of the Company's property. The plaintiffs would contend that the defendants did not give loan as promised as per the agreement on 29.04.2022. Besides that on 24.06.2024, the first defendant, namely, the Authorized Officer, Indian Bank issued a demand notice to the plaintiffs threatening to auction the 'A' schedule properties and that the second defendant feigned ignorance when questioned about the same. Contending that the act of the defendants is fraudulent, the suit has been filed. It is further contended that the first defendant has abused the process of law by misusing the powers provided under SARFAESI Act.

3. The Trial Court rejected the plaint on the ground that Section 34 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act [Hereinafter referred to as "SARFAESI Act"] bars jurisdiction of the civil Court in respect of matters which 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 the Act. Assailing the same, the present revision petition is preferred.

4. The learned Counsel appearing for the revision petitioner would submit that the above suit is filed to declare the agreement relating to deposit of title deed as illegal and void and for mandatory injunction directing the defendants to return the documents and for permanent injunction restraining the defendants in selling the suit property by auction sale. The contention of the revision petitioner in the above suit is that the defendants failed to give loan as promised as per the agreement, dated 29.04.2022 and therefore, the act of defendants is fraudulent and hence, the revision petitioner / plaintiff was constrained to file the above suit contending that the first defendant has abused the process of law by misusing the powers provided under SARFAESI Act and therefore, the relief sought in the suit is only for unpaid loan and not against any action under Section 13 of SARFAESI Act which right is an independent right and the same can be decided only by civil Court. To support his contention, he has relied upon the judgment reported in ***2021 (1) MWN (Civil) 793 [T.A.S.Rathnakumar Vs. Karanam Madhu]*** in which it is held that "relief sought in suit only for unpaid sale consideration, not against any action under Section 13 of SARFAESI Act. It is independent right, which can be decided only by civil Court".

5. His further contention is that any provision which creates bar on jurisdiction of civil Court must be construed strictly and would apply only to proceedings, which are completely covered by bar. To support his contention he has relied upon the judgment reported in ***2019 (2) CTC 737 [The State Bank of India Vs. G.Moorthi and Another],*** in which it is held that " Any provision which creates bar on jurisdiction of civil Court must be construed strictly and would apply only to proceedings, which are completely covered by bar - Language of both provisions do not cover dispute between third parties relating to specific performance of sale agreement - Court while deciding question of specific performance may be compelled to decide validity of encumbrance created by agreement vendor - Such question not barred by provisions of two enactments."

6. The learned Counsel for the petitioner also relied on the following two judgments for the same proposition:

i) ***2021 (1) MWN (Civil) 793 [T.A.S.Rathnakumar Vs. Karanam Madhu]*** and

ii) ***2019 (2) CTC 737 [The State Bank of India Vs. G.Moorthi and***

Another].

7. The learned Counsel further contended that the Courts have greater responsibility to scan the pleadings and see if allegations of fraud and collusion made in plaint are true. Furthermore the learned Counsel for the petitioner submitted that at the stage of numbering of plaint, no mini trial can be conducted and that the Trial Court ought to have numbered the plaint and proceed to dispose the suit in accordance with law. To support his contention, he has relied upon the judgment reported in ***2021 (4) CTC 539 [Selvaraj and Others Vs. Koodankulam Nuclear Power Plaint India Limited and Others]***.

8. On the other hand, the learned Standing Counsel appearing for the respondents would submit that the account of the revision petitioner was declared NPA on 13.10.2023 itself and demand notice was issued on 17.10.2023, for which no objection was raised on the side of the revision petitioner. Thereafter, notice for recovery of possession was issued on 23.10.2023 and the same was also not challenged by the revision petitioner. His further submission is that two sale notice was issued and since no successful bidders were there, sale was not conducted. He would further submit that in order to escape the action taken under Section 34 of SARFAESI Act, the present suit is filed and therefore, the Trial Court has rightly rejected the plaint which calls for no interference by this Court.

9. Heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondents and perused the materials available on record.

10. Undisputedly, the property in question in respect of which the suit is filed, has been mortgaged with the respondent Bank. As observed by the Trial Court, the present plaint appears to be a perfect example of clever drafting with an intend to escape a rigorous of Section 34 of the SARFAESI Act. The Trial Court has specifically referred to Section 34 of SARFAESI Act while rejecting the plaint. No doubt the issue with regard to exclusion of jurisdiction of a civil Court is no more *res integra*. The provisions of Section 34 of the SARFAESI Act has been considered by the Hon'ble Supreme Court in the case of ***Mardia Chemicals Limited and Others Vs. Union of India and Others reported in 2004 (4) SCC 311***. It will be relevant to refer to the following observation of the Hon'ble Supreme Court in the said case:

> *"50. It has also been submitted that an appeal is entertainable before the Debt 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 Debt 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 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 Debt Recovery Tribunal or 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 (supra) p.135 at p.141 and 144, a judgment of the learned Single Judge where it is observed as follows in para 22:

> *"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. 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."*

Thus be seen that the Hon'ble Supreme Court has held that the jurisdiction of the civil Court is barred in respect of matters which a DRT or an Appellate Tribunal is empowered to determine in respect of any action.

11. The Hon'ble Supreme Court in a judgment reported in ***CDJ 2023 SC 559 [Punjab and Sind Bank Vs. Frontline Corporation Limited]*** further held that "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."

12. 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:

> *"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."

13. It could thus be seen that the Hon'ble Supreme Court has held that the jurisdiction of the civil court is barred in respect of matters which a DRT 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". The Hon'ble Supreme Court has held that the prohibition covers even matters which may be taken cognizance of by the DRT though no measure in that direction has so far been taken under sub- section (4) of Section 13 of the SARFAESI Act. It has been held that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. It has categorically been held that 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 Court held that the bar of civil court thus applies to all 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 of the SARFAESI Act.

14. The Hon'ble Supreme Court has further held that, 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.

15. In the present case, it cannot be said that the action of the secured creditor, i.e. the appellant is either fraudulent or that its claim is so absurd or untenable which may not require any probe whatsoever. It is further to be noted that the SARFAESI Act itself provides remedies to an aggrieved party in view of the provisions of Sections 17 and 18.

Therefore, the judgments referred on the side of the revision petitioner is not applicable to the present facts and circumstances of the present case.

16. Therefore, the relief claimed by the revision petitioner / plaintiff was rightly rejected by the Trial Court in view of the provisions of Section 34 of the SARFAESI Act. The learned Trial Judge had passed the said order on the basis of a statutory bar. As observed earlier, the scope in which a civil suit is maintainable as determined by this Court in the case of ***Mardia Chemicals Limited (supra)*** is very limited. The case of the revision petitioner / plaintiff would not come within the said limited scope. As such, I am of the considered view that the trial Court has rightly rejected the plaint filed by the revision petitioner / plaintiff.

17. For the aforesaid reason and having regard to the principles and parameters laid down in the referred judgments, this Court is of the considered view, the order under revision thus neither suffers from any fundamental infirmity nor any jurisdictional error which warrants interference of the Court under Article 227 of the Constitution of India.

18. Accordingly, this Civil Revision Petition stands dismissed confirming the order passed by the learned Principal District Judge, Kanyakumari. As a sequel, the Civil Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

06.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Principal District Court,
Kanyakumari at Nagercoil.

K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
C.R.P(MD)No.3113 of 2024

06.01.2025