



2025:DHC:6888



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 21.07.2025***

+ **C.R.P. 164/2024 & CM APPL. 31370/2024**

SREI EQUIPMENT FINANCE LIMITEDPetitioner

Through: Mr. Anirban Bhattacharya, Advocate.

versus

M S DSC INFRASTRUCTURE PVT LTDRespondent

Through: Ms. Nishtha Wadhwa, Advocate.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed on behalf of the Petitioner under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] against the order dated 13.03.2024 passed by learned ACJ/CCJ/ARC, South, Saket Court, New Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application under Order VII Rule 11 of the CPC filed by the Petitioner has been dismissed by the learned Trial Court.

2. Learned Counsel for the Petitioner submits that the challenge to the plaint before the learned Trial Court was that the petition is barred by provisions of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as the "SARFAESI Act"], whereas the findings of the learned Trial Court are that the predecessor Bench of the learned Trial Court by order dated 15.12.2022 was *prima facie* satisfied that the suit was



2025:DHC:6888



maintainable in terms of the judgment of the Bombay High Court in ***Bank of Baroda Thr. its Branch Manager v. Gopal Shri Ram Panda & Anr***¹.

2.1 Learned Counsel for the Petitioner further submits that this issue has been dealt with by a judgment of the Coordinate Bench in ***IFCI Venture Capital Funds Ltd. v. SRGP Corporation Ltd.***², wherein, the Court has held that Section 34 of the SARFAESI Act, ousts the jurisdiction of civil courts once a secured creditor initiates proceedings under Section 13 of the Act. In such cases, the borrower's recourse is limited to approaching the Debt Recovery Tribunal [hereinafter referred to as the “DRT”] under Section 17 of the Act, rather than filing a civil suit.

3. Learned Counsel for the Respondent submits that the Impugned Order does not suffer from any infirmity and is in accordance with law.

4. A perusal of the Application under Order VII Rule 11 of the CPC shows that the Application has been filed seeking rejection of the plaint on four grounds. Firstly, that the suit is barred by Section 34 of the SARFAESI Act. Secondly, that the plaintiff has already pursued its remedy under Section 17 of the SARFAESI Act. Thirdly, that the suit is barred in terms of the moratorium that has been imposed on the Respondent by the National Company Law Tribunal, Calcutta in a petition filed against the Respondent. Lastly, that the Demand Notice issued under Section 13(2) of the SARFAESI Act has been recalled vide a letter dated 11.05.2022 sent by the Petitioner. It is apposite to extract the relevant paragraph of the Application under Order VII Rule 11 of the CPC below:

“3. That the present Application has been filed by the Defendant under

¹ 2021 SCC OnLine Bom 466

² 2024 SCC OnLine Del 1148



Order 7 Rule 11 of the Code of Civil Procedure, 1908, seeking the rejection of the present Plaintiff on the following grounds :

- a. The **present Suit is barred by Section 34** of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the “SARFAESI Act”);
- b. The **Plaintiff has already pursued its remedy under Section 17 of the SARFAESI Act** ;
- c. The present Suit is barred as per the Order dated 08.10.2021, passed by the Hon’ble **NCLT, Kolkata, in C.P. (IB) No. 294/KB/2021, a moratorium has been imposed on the Defendant in accordance with Section 14 of the Insolvency and Bankruptcy Code, 2016.**
- d. The **Demand Notice** issued under Section 13(2) of the SARFAESI Act, 2002, has been **recalled, therefore, no cause of action arises insofar Prayer (a) is concerned.**”

[Emphasis Supplied]

5. The Impugned Order reflects that other than stating that the plaint is maintainable before this Court, no other finding has been given by the learned Trial Court. It further shows that the learned Trial Court has failed to examine any of the objections as raised by the Petitioner in his Application under Order VII Rule 11 of the CPC. The only finding in the Impugned Order is a finding placing reliance qua the jurisdiction of the Bombay High Court that the suit was maintainable and not barred under Section 34 of SARFAESI Act.

6. The Supreme Court in ***Kranti Associates (P) Ltd. & Anr. v. Masood Ahmed Khan & Ors.***³, summarised the principles of recording reasons in judicial orders. The Court held that recording of reasons is necessary as justice must not only be done, it must also appear to be done as well. Moreover, the Court held that reasons in an order are necessary for superior

³ (2010) 9 SCC 496



courts in order to facilitate the process of judicial review. The relevant extract of *Kranti Associates (P) Ltd.* case is set out herein below:

“47. Summarising the above discussion, this Court holds:

(a) *In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*

(b) *A quasi-judicial authority must record reasons in support of its conclusions.*

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) *Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*

(i) *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.*

(m) *It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)*



(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

[Emphasis supplied]

6.1 In *Maya Devi (D) Through Lrs vs Raj Kumari Batra (D) Through Lrs. & Ors⁴*, the Supreme Court recognised the importance of recording of reasons in cases where an order is subject to further appeal. The Court held that where an order is subject to further appeal, it is necessary to set out reasons as the appellate court or authority in their appellate jurisdiction ought to have the advantage of examining the reasons that prevailed with the court or the authority passing such order impugned in the appeal. The relevant extract of *Maya Devi (D) Through Lrs.* case is set out herein below:

“30. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate court or the authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own. An appellate court or authority may in a given case decline to undertake any such exercise and remit the matter back to the lower court or authority for a fresh and reasoned order. That, however, is not an inflexible rule, for an appellate court may notwithstanding the absence of reasons in support of the order under appeal before it examine the matter on merits and finally decide the same at the appellate

⁴ (2010) 9 SCC 486



stage. Whether or not the appellate court should remit the matter is discretionary with the appellate court and would largely depend upon the nature of the dispute, the nature and the extent of evidence that may have to be appreciated, the complexity of the issues that arise for determination and whether remand is going to result in avoidable prolongation of the litigation between the parties. Remands are usually avoided if the appellate court is of the view that it will prolong the litigation.”

[Emphasis supplied]

7. As stated above, the Impugned Order dismissing the application of Order VII Rule 11 of CPC is bereft of any findings. The learned Trial Court has held that an examination of the **Bank of Baroda** case reflects that the relief is maintainable before the Civil Court. The relevant extract of the Impugned Order is below:

*“Application u/o 7 rule 11 CPC is pending consideration wherein the defendant side has challenged maintainability of the present suit as barred by section 34 of SARFAESI Act. It is further argued that since the demand notice were recalled by the defendant, no cause of action survives in favour of the plaintiff. The plaintiff side has countered the said application and relied on the order dated 15.12.2022 wherein on similar grounds, the Ld. Predecessor was prima facie satisfied that present suit was maintainable in view of the judgment of **“Bank of Baroda Vs. Gopal Shri Ram Panda & Anr”**, 2021 SCC online Bom 466. Having considered the arguments and the law laid down in Bank of Baroda (Supra), the relief sought seeking declaration that the plaintiff account being declared as NPA with effect from 15.07.2020 being illegal, null, void, and malafide is maintainable before this court. The defendant having relied on their documents for recall of demand notice, cannot be considered at this stage and even otherwise, the defendant side admits that the NPA status of the plaintiff’s account has not been removed.*

As regards the maintainability of prayers as claimed for shall be subject matter of trial which is to be proved by the plaintiff, however the same cannot be decided at this stage..”

[Emphasis Supplied]

7.1 Concededly, the objections and contentions as have been raised by the Petitioner have not been considered by the learned Trial Court. The



2025:DHC:6888



Petitioner has in addition to contending that the suit is barred under the provisions of Section 34 of the SARFESI Act. It has also been contended by the Petitioner therein that the Respondent/Plaintiff has already exercised his remedy and filed proceedings under Section 17 of the SARFESI Act. In addition, it is stated in the Application that the Petitioner is undergoing the Corporate Insolvency Resolution Process [CIRP] and that a moratorium was imposed by the NCLT, Kolkata in (IB) No. 294/KB/2021.

8. The Impugned Order however does not deal with any of these contentions nor given any reasons for its findings.

9. For the reasons as stated above, the Impugned Order is set aside, with directions that the Application filed by the Petitioner be adjudicated *de novo* in accordance with law by the learned Trial Court. Both parties are at liberty to agitate their contentions before the learned Trial Court.

10. It is however clarified that the Court has not expressed any opinion on the merits of the controversy. The rights and contentions of all parties are left open.

11. The Petition is accordingly allowed. The pending Application stands closed.

12. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 21, 2025/ ha