(2006) 09 MAD CK 0177

In the Madras High Court

Case No : C.R.P. (PD) . No''s. 390 and 391 of 2006 and C.M.P. No''s. 3428 and 3429 of 2006

Bank of India APPELLANT

Vs

Manickam @ Sellakumarasamy and Rayappan RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 34

Citation : (2007) 4 BC 149 : (2007) 1 CompLJ 292 : (2007) 2 LW 424 : (2006) 4 MLJ 914

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : F.B. Benjamin George, for the Appellant; V. Barathidasan, for the Respondent

Judgement

A.C. Arumugaperumal Adityan, J.—I.A. No. 1194/2005 in O.S.349/2005 and I.A. No. 1195/2005 in O.S. No. 350/2005 have been filed

under Order VII Rule 11 of CPC with a prayer to reject the plaint on the ground that u/s 34 of the Securitisation and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), (herein after be mentioned as SRFAESI Act), the Civil Court has no

jurisdiction to entertain the suit. Both IAs have been dismissed by the learned District Munsif of Pollachi. Hence, the revisions have been filed by

the Defendant in both the suit.

2. The substantial question of law to be decided in both the CRPs is whether the plaints in O.S. 349/05 and O.S. 350/05 are liable to be rejected

under Order VII Rule 11 of CPC for the reasons stated in the memorandum of revision in both the revision petitions.

3. The Point:

3(1) O.S. No. 350/2005 (relating to CRP.PD.391/2006) has been filed by the plaintiff for declaration that the notice dated 5.1.2005 of the

Defendant, viz. Bank of India, Kurichi Industrial Estate Branch, represented by his Senior Branch Manager, is void, illegal, ultravires of the

SRFAESI Act and also for permanent injunction to restrain the Defendant from alienating or encumbering or transferring or inducting any one into

the suit properties.

3(2) The plaintiff in O.S. 349/2005 (relating to CRP.PD.390/06) has filed the suit for declaration that the plaintiff is in actual possession of the suit

properties and the Defendant(Bank of India, Kurichi Industrial Estate Branch, represented by his Senior Branch Manager) had only symbolic

possession and also for permanent injunction restraining the Defendant from in anyway interfering with the plaintiff''s legal and physical possession

in any manner and also for declaration that the defendant''s right if at all only to symbolic possession and also to restrain the Defendant by means of

permanent injunction not to tamper with the building and its physical features including all the articles, things set out in B-Schedule property except

by due process of law.

3(3) The plaintiff in O.S. No. 350/2005, viz., Rayappan is the son-in-law of the plaintiff in O.S. No. 349/2005, viz. Manickam @

Sellakumarasamy. The Defendant in both the suits are one and the same viz. Bank of India, Kurichi Industrial Estate Branch, represented by his

Senior Branch Manager

3(4) The short facts in O.S. No. 350/2005 is that the plaintiff is the director of M/s. Match Winner Tax (P) Limited - a private limited company at

Tiruppur. The Plaintiff has borrowed a loan from the respondent-Bank under various heads to the tune of Rs. 2,95,00,000/-. Since the plaintiff-

Rayappan has committed default in paying the loan amount, the Defendant-Bank had issued notice u/s 13(2) of the SRFAESI Act. In respect of

the plaint schedule property, the plaintiff has created an equitable mortgage in favour of the Bank by depositing title deeds of the property. Since

the plaintiff/borrower has avoided the said notice, the Defendant/Bank had taken possession of the property as contemplated u/s 13(4) of the

SRFAESI Act on 21.6.2005. Under such circumstances, the plaintiff has filed O.S. No. 350/2005 for declaration that the notice issued by the

Bank u/s 13(2) of the SRFAESI Act is void, illegal and ultravires and also for permanent injunction. The Defendant/Bank has also filed I.A. No.

1195/2005 under Order VII Rule 11 of CPC to reject the plaint on the ground that u/s 34 of the SRFAESI Act, the Civil Court has no jurisdiction

to entertain the suit. I.A. No. 1195/2005 has been dismissed by the trial Court. Hence, the Defendant/Bank has preferred C.R.P.(PD). No.

391/2006.

3(5) The Defendant has filed I.A. No. 1194/2005 in O.S. No. 349/2005 under Order VII Rule 11 of CPC on the ground that the suit is bared u/s

34 of the SRFAESI Act. I.A. No. 1194/2005 in O.S. No. 349/2005 was also dismissed by the trial Court. Hence, the Defendant/Bank has

preferred C.R.P.(PD). No. 390/2006 before this Court.

3(6) Admittedly O.S. No. 349/2005 has been filed by Manickam @ Sellakumarasamy, who is the father-in-law of Rayappan, plaintiff in O.S. No.

350/2005. For a loan amount of Rs. 2,95,000/- the Bank viz., Bank of India, Kurichi Industrial Estate Branch, represented by his Senior Branch

Manager, had issued notice u/s 13(2) of the SRFAESI Act.

3(7) As per Section 2 of the SRFAESI Act, the plaint transaction in O.S. No. 350/2005 will squarely comes within the purview of the SRFAESI

Act. u/s 13(2) of SRFAESI Act, the borrower is under a liability to a secured creditor under a security agreement, makes any default in repayment

of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset,

then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days

from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under Sub-section (4).

3(8) Admittedly the Bank viz., Bank of India, Kurichi Industrial Estate Branch, represented by his Senior Branch Manager, has issued notice u/s

13(2) of the SRFAESI Act to the plaintiff in O.S. No. 350/2005. Since the plaintiff has committed default in payment of the loan amount, the

Defendant-Bank had resorted to the remedy provided u/s 13(4) of the SRFAESI Act, i.e., by taking possession of the secured assets of the borrower/plaintiff in O.S. No. 350/2005 including the right to transfer by way of lease, assignment or sale for realising the secured asset. To

escape from the said action contemplated u/s 13(4)(a) of the SRFAESI Act, the plaintiff has filed O.S. No. 350/2005, which is not at all

maintainable u/s 34 of the SRFAESI Act, because the Civil Court has no jurisdiction to entertain the said suit. The only forum which is entitled to

entertain the said suits under the SRFAESI Act is the Debts Recovery Tribunal.

3(9) It has been clarified by the Honourable Apex Court in a case reported in N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by

Proposed LRs. and Others, , wherein it has been held as follows:

This is a fit case not only for rejecting the plaint but imposing exemplary costs on the appellant on the observations of this Court in the case of T.

Arvindam v. T.V. Satyapal 1997 4 SCC 467:

The trail court must remember that if on a meaningful - no formal - reading of the plaint it is manifestly vexatious and meritless in the sense of not

disclosing a clear right to sue, it should exercise its power under Order 7, Rule 11, CPC, taking care to see that the ground mentioned therein

fulfilled. If clever drafting has created the illusion of a cause of action, the Court must nip it in the bud at the first hearing by examining the party

searchingly under Order 10, CPC. An activist judge is the answer to irresponsible law suits. The trail Courts would insist imperatively on examining

the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such

men (Ch. XI) and must be triggered against them.

In another dictum reported in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., , it has been held as follows:

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 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 Debt 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 mater 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 maters which may be taken cognizance of by the Debt Recovery Tribunal, apart

from those matters in which measures have already been taken under Sub-section (4) of Section 13.

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 their 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.

3(10) The learned Counsel appearing for the respondent/plaintiff in both the suits would contend that the jurisdiction of the civil Court can also be

invoked if it is proved that the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may

not require any probe. But in the case on hand(both cases particularly in O.S. No. 349/2005), the father-in-law of the plaintiff in O.S. No.

350/2005 has collusively filed O.S. No. 349/2005 for declaration of possession and consequential injunction. But the property scheduled to both

the plaints are one and the same, which is the property furnished as security for the loan obtained from the Defendant-Bank to the tune of Rs.

2,95,00,000/- by the plaintiff in O.S. No. 350/2005. Under such circumstances, I am of the considered view that the order passed by the learned

District Munsif, Pollachi, in I.A. No. 1194/2005 in O.S. 349/2005 and in I.A. No. 1195/2005 in O.S. No. 350/2005 are liable to be set aside and both suits viz. O.S. No. 349 and 350 of 2005 are liable to be dismissed under Order VII Rule 11 of CPC.

4. In the result, CRP.PD. No. 390 and 391 of 2006 are allowed. No costs. Connected CMP. No. 3428 & 3429 of 2006 are closed.

Consequently, O.S. No. 349 and 350 of 2005 on the file of District Munsif, Pollachi, are dismissed.