
(2023) 03 GAU CK 0012
In the Gauhati High Court
Case No : Review Petition No. 58 Of 2022

Bhaben Chandra Baishya

APPELLANT

Vs

Punjab National Bank And 4 Ors.

RESPONDENT

Date of Decision : 13-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Civil Procedure, 1908 — Section 9, 113, 114, 151, Order 47 Rule 1, Order 7 Rule 11(a), Order 7 Rule 11(D)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(4), 17, 19(7), 19(22), 34, 35
Transfer of Property Act, 1882 — Section 58
Recovery of Debts and Bankruptcy Act, 1993 — Section 22

Citation : (2023) 03 GAU CK 0012

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : S Goswami, D Gogoi

Final Decision : Dismissed

Judgement

1. Heard Mrs. S. Goswami, learned counsel for the review petitioner. Also heard Mr. A. Parvez, learned counsel for respondent No.1; Mr. R. Sharma, learned counsel for respondent No.4 and Ms. A. Begum, learned counsel for respondent No.3.

2. This application, under Order XLVII Rule 1 of the Code of Civil Procedure (CPC), read with Sections 114 and 151 of the CPC, is preferred by the petitioner, Dr. Bhaben Chandra Baishya for reviewing the judgment and order, dated 02.03.2022, passed by this court in CRP(I/O) 393/2019.

3. The factual backgrounds leading to filing of the present petition is adumbrated herein below:-

"The review petitioner, namely, Dr. Bhaben Ch. Baishya, being the plaintiff, instituted a Title Suit No.323/2014, before the learned Civil Judge, No.1, Kamrup

(M), Guwahati for declaration of his right, title and interest over the suit property, and for a declaration that there is no valid and genuine mortgage of the suit property created by respondent No.2, Shri Partha Pratim Das. Be it noted here that respondent No.2, Shri Partha Pratim Das (defendant No.2 in the Title Suit No.323/2014) has availed a term loan of Rs. 14,90,000/ from the respondent No.1-Bank (defendant No.1 in Title Suit No.323/2014), which was sanctioned after verification of his title in respect of a suit land and property. Subsequently, respondent No.2 had defaulted in payment of the loan to the respondent No.1-Bank, and the said loan became a Non-Performing Asset (NPA). Thereafter, the respondent No.1-Bank has initiated its proceeding under SARFAESI Act, by publication of notice through Newspapers, but, respondent No.2 had never filed any representation against such notice. Thereafter, the review petitioner - Dr. Bhaben Chandra Baishya (plaintiff in the Title Suit) had served a legal notice to the respondent No.1-Bank that he had purchased the suit property from the respondent No.2, vide registered sale deed No.5644/2012. The respondent No.1-Bank then submitted its reply that review petitioner had purchased the suit property on 18.06.2012, and that his right over the suit property is subject to earlier mortgage created in favour of the respondent No.1-Bank, by the respondent No.2. The respondent No.1-Bank also stated that it has taken symbolic possession of the suit property on 26.08.2014, and also published a possession notice on 31.08.2014, and as such, the suit comes under the ambit of the SARFAESI Act and in view of the provision of Section 34 of the said Act and under Order VII Rule 11 (D) of the CPC. Thereafter, the respondent No.1-Bank had filed a petition (No. 805/2018) before the learned Civil Judge, No.1, Kamrup(M), Guwahati for rejection of the suit. The review petitioner had filed written objection to the said petition and stated that the respondent No.1-Bank and respondent No.2 have committed fraud and respondent No.2 suppressed material fact regarding the loan and the mortgage because the respondent No.2 had availed a loan and mortgaged the suit property to respondent No.3 - UCO Bank, and the said loan account of respondent No.2 was closed on 21.11.2011, on payment of entire amount paid by the review petitioner (plaintiff) and by showing the land to be free from all encumbrances and that he was shocked when the respondent No.1-Bank has served notice, and on enquiry he came to know that respondent No.2 has mortgaged the suit property and availed loan from the respondent No.1-Bank on 25.05.2011. The review petitioner also claimed that the respondent No.1-Bank had sanctioned the loan fraudulently without receiving the copy of the title deed and that after purchasing of the land by the review petitioner, the respondent No.1-Bank hurriedly took away the sale deed from the office of the Sub-Registrar by swearing a false affidavit and that there was conspiracy hatched between the respondent No.2 and the respondent No.1-Bank to deprive him from getting the suit land, which he had purchased genuinely. The review petitioner (plaintiff) also brought it to the notice of the Court that while sanctioning the loan by the respondent No.1-Bank to the respondent No.2, the RBI norms have not been followed and, therefore, it was contended to dismiss the petition.

But, the learned Court below, after hearing learned Advocates for both sides, had rejected the petition on the ground that transaction between the respondent No.1-Bank and respondent No.2 was fraudulent and the same has been pleaded in the Title Suit and as relief claimed by the review petitioner (plaintiff) involved question relating to declaration of title as well as fraud committed by respondent No.2 and the respondent No.1-Bank in between themselves, the remedy of the review petitioner is apparently within the domain of the Civil Court.

Being highly aggrieved the respondent No.1-Bank, had approached this Court challenging the legality and validity of the impugned order and contended to set aside the same. Thereafter, hearing the both sides, this Court, vide judgment and order, dated 02.03.2022 (in CRP (I/O) 393/2019) allowed the revision petition by setting aside the impugned order, dated 26.08.2019, passed by the learned Civil Judge No.1, Kamrup (M), Guwahati, in Title Suit No.323/2014, by holding that the Suit is barred under Section 34 of the Act and the plaint is liable to be rejected and the plaintiff is directed to approach the Debts Recovery Tribunal for any other relief.

4. Then being aggrieved, the review petitioner approached this court by filing present review petition, on the following grounds:-

(i) That, there is error apparent on the face of the record as the name of the Advocate of the review petitioner, Mrs. S. Goswami, has not been reflected and that in some part of the judgment under review, she has been shown as Advocate of respondent No.5, and that only the respondent No.1- bank was heard and that some of the respondent have never turned up and that there is no indication that the case was proceeded ex-parte;

(ii) That, the pro-forma respondent is shown as respondent No. 2, in the Cause Title of the Judgment;

(iii) That, the respondent No.2/defendant No.2 was made only a pro-forma respondent by the petitioner bank in the CRP (I/O) 393/2019, which indicates friendly relationship between them;

(iv) That, the prayer in the Title Suit No. 323/2014, was wrongly typed in the judgment, dated 02.03.2022, and that there was no valid mortgage between respondents/defendant No.1 and 2 in regard to the suit property and that there was a valid mortgage created between defendant No. 1 and pro-forma defendant No. 3 and that the mortgage between respondent No.1 -Bank and the respondent/defendant No.2 was invalid for want of documents;

(v) That, the present petitioner has never admitted that defendant/respondent No. 2 had mortgaged the suit property to the respondentNo.1-Bank and that no security interest was ever created by respondent/defendant No.2 in favour of the petitioner Bank as there was no valid mortgage, and only after trial it could be ascertained whether the mortgage was a valid or not;

(vi) That, there is distortion of facts regarding existence of any special power of

attorney as mentioned in the judgment;

5. Mrs. Goswami, learned counsel for the review petitioner reiterated the points mentioned in the petition. Besides, Mrs. Goswami also submits that the name of the counsel for the petitioner has not been reflected and the averments made by learned counsel for the petitioner have not been reflected and that there was no valid and genuine mortgage of the suit property created by the respondent No.2 in favour of the respondent No.1- Bank, and the mortgage was a pseudo mortgage and it was not an equitable mortgage and the SARFAESI Act is not attracted and as no equitable mortgage was created and the sale deed was created on 18.06.2012, and attachment was done in the year 2013, and therefore, Mrs. Goswami contended to allow the petition. Mrs. Goswami has also referred following case laws in support of her submission:-

(i) Mardia Chemicals Ltd. vs. Union of India reported in (2004) 4 SCC 311;

(ii) Bhopal Thapa vs. Girish Tiwari

(iii) Sushila Steels vs. Union Bank of India reported in (2014) SCC

(iv) Vannarakki Kallaiathi Sreedhan vs. Chandra Math Balakrishna reported in (1990) 3 SCC 291.

(v) United Bank of India Ltd. vs. Lekharam Sonaram And Co. and Others reported in AIR 1965 SC 1591;

(vi) S. Madhusudhan Reddy vs. V. Narayan Reddy, Civil Appeals No. 5503-04 of 2022 arising out of Petition for Special leave to Appeal (Civil) No. 9602-03 of 2022;

(vii) K.J. Nathan vs. S.V. Maruthi Rao & Other, reported in AIR 1965 SC 430;

(viii) Syndicate Bank vs. Estate Officer & Manager (recoveries), Andhra Pradesh Industrial Infrastructure Corporation Limited & Others, reported in (2021) 3 SCC 736;

(ix) M/S N.C.M.L. Industries Ltd. Thru vs. Debts Recovery Tribunal, Lucknow, Misc. Bench No. 288806 of 2017.

6. Per contra, Mr. Parvez, learned counsel for respondent No.1-Bank, submits that this review petition is not at all maintainable as the petitioner has failed to show any error apparent on the face of the record. Mr. Parvez, further, submits that what have been pointed out by the petitioner are at best clerical mistakes, and the same cannot be corrected in this review petition. Referring to a decision of Hon'ble Supreme Court in Kamlesh Verma Vs. Mayawati and Others, reported in 2013 AIR SCW 4944, Mr. Parvez submits that review can be entertained on the following grounds:-

(i) Discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason;

6.1. Mr. Parvez further submits that review petition will not be maintainable when:-

(i) Repetition of old and overruled argument is not enough to reopen concluded adjudications;

(ii) Minor mistakes of inconsequential import;

(iii) Review proceedings cannot be equated with the original hearing of the case;

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice;

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error;

(vi) Mere possibility of two views on the subject cannot be a ground for review;

(vii) The error apparent on the face of the record should not be an error, which has to be fished out and searched;

(viii) The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition and

(ix) Review is not maintainable when the same relief is sought at the time of arguing the main matter had been negative.

6.2. Mr. Parvez further submits that though the petitioner has raised a contention that there is no indication that the case proceeded ex-parte against the respondent No.2(defendant No.2 in Title Suit), yet, respondent/defendant No.2 remained unrepresented in the Title Suit and he also did not contest the petition No. 805/15, in the Title Suit No. 323/2014, which was impugned in the CRP(I/O) No. 393/2019, and that main dispute is in between the review petitioner and the respondent/defendant No.1-Bank, and such a contention was never raised during hearing of the CRP(I/O), and having consented and argued the case, even in absence of the respondent/defendant No.2, the petitioner, now, cannot be allowed to raise the same at this stage. Mr. Parvez further submits that the DRT is being seized of the matter and it has approved the mortgage and that the Bank's right is established in the DRT. Therefore, Mr. Parvez, contended to dismiss the petition.

7. On the other hand, Mr. R. Sharma and Ms. A. Begum, learned counsel for respondent Nos.3 and 4 have not advanced any argument.

8. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record. I have also perused the judgment, dated 02.03.2022, passed by this court, in CRP (I/O)

393/2019, and also gone through the case laws, referred by Mr. Parvez, learned counsel for the respondent No.1-Bank and also by Mrs. Goswami, learned counsel for the review petitioner.

9. The law relating to review is well-settled by the Hon'ble Supreme Court in catena of decisions. In *Aribam Tuleswar Sharma v. Aribam Pishak Sharma*, reported in AIR 1979 SC 1047, Hon'ble Supreme Court has held that – "there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p. 390, para 3) "It is true as observed by this Court in *Shivdeo Singh v. State of Punjab*, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

10. In *Parsion Devi v. Sumitri Devi*, reported in (1997) 8 SCC 715, relying upon the judgments in *Aribam* and *Meera Bhanja* it was observed as under:

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

11. In the case of *Lily Thomas vs. Union of India*, (2000) 6 SCC 224, it is observed and held that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed in the said decision that the words "any other sufficient reason" appearing in Order 47 Rule 1 CPC must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in *Chhajju Ram vs. Neki*, AIR 1922 PC 112 and approved by this Court in *Moran Mar Basselios Catholicos vs Most*

Rev. Mar Poulouse Athanasius, AIR 1954 SC 526.

12. In the case of *Inderchand Jain vs. Motilal*, (2009) 14 SCC 663, in paragraphs 7 to 11, it is observed and held as under:

7. Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a civil court and consequently by the appellate courts. The words "subject as aforesaid" occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under:

"17. The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under:

'1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the court which passed the decree or made the order."

13. An application for review would lie *inter alia* when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In *Rajendra Kumar v. Rambai* reported in AIR 2003 SC 2095, Hon'ble Supreme Court has held as under:

"6. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed."

14. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite

exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

15. Review is not appeal in disguise. In Lily Thomas (supra) Hon'ble Supreme Court has held as under:-

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake, but, not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise."

16. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered in the case of T.C. Basappa vs. T. Nagappa, reported in AIR 1954 SC 440, and it has been held that such an error is an error which is a patent error and not a mere wrong decision. In the case of Hari Vishnu Kamath vs. Ahmad Ishaque, AIR 1955 SC 233, it is observed as under:

"It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsels on either side were unable to suggest any clear cut rule by which the boundary between the two classes of errors could be demarcated."

17. In the case of Parsion Devi vs. Sumitri Devi, (Supra) in paragraph 7 to 9 it is observed and held as under:-

7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P., AIR 1964 SC 1372 this Court opined:-

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised

as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

8.2 In the case of *State of West Bengal and Others vs. Kamal Sengupta and Anr.*, (2008) 8 SCC 612, this Court had an occasion to consider what can be said to be "mistake or error apparent on the face of record". In para 22 to 35 it is observed and held as under:-

"22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

23. We may now notice some of the judicial precedents in which Section 114 read with Order 47 Rule 1 CPC and/or Section 22(3)(f) of the Act have been interpreted and limitations on the power of the civil court/tribunal to review its judgment/decision have been identified.

24. In *Rajah Kotagiri Venkata Subbamma Rao v. Rajah Vellanki Venkatrama Rao* (1899) 1900) 27 IA 197 the Privy Council interpreted Sections 206 and 623 of the Civil Procedure Code and observed: (IA p.205) "... Section 623 enables any of the parties to apply for a review of any decree on the discovery of new and important matter and evidence, which was not within his knowledge, or could not be produced by him at the time the decree was passed, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. It is not necessary to decide in this case whether the latter words should be confined to reasons strictly ejusdem generic with those enumerated, as was held in *Roy Meghraj v. Beejoy Gobind Bural*, ILR (1875) 1 Cal 197. In the opinion of their Lordships, the ground of amendment must at any rate be something which existed at the date of the decree, and the section does not authorize the review of a decree which was right when it was made on the ground of the happening of some subsequent event." (emphasis added)

18. Thus, having gone through the different decisions occupying the field, it can be concluded that the Court can review its decision on either of the grounds enumerated in Order XLVII Rule 1 of the CPC and not otherwise. The expression "any other sufficient reason", appearing in Order XLVII Rule 1, has to be interpreted in the light of other specified grounds and an error, which is not self-evident and cannot be discovered by long process of reasoning, cannot be

treated as an error apparent on the face of the record justifying review of its decision. The power of review can be exercised to correct an erroneous judgment/order. While dealing with an application for review, the Courts have to confine its adjudication with reference to the material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial judgment as vitiated by an error apparent on the face of the record. Mere discovery of new or important matter or evidence is also not sufficient ground for review. The parties seeking review has to be satisfy the requirement prescribed under Order XLVII Rule 1 CPC. It is imperative for a party to establish that such matter or evidence was not within its knowledge and even if exercise of due diligence, the same could not be produced before the Court earlier.

19. In the case in hand, admittedly, there is no discovery of new and important matter or evidence, which after due diligence was not within the knowledge of the petitioner or could not be produced by him. From a bare perusal of the review petition and the grounds taken therein, reveals that the judgment of this Court, dated 02.03.2022, passed in CRP (I/O) 393/2019, is sought to be reviewed mainly on the ground of error apparent on the face of the record. But, from the submissions, so advanced by the learned counsel for the petitioner, and the documents placed on record, it appears that the error/mistake so pointed out by the learned counsel for the review petitioner, for review of the judgment, cannot be considered as an error apparent on the face of the record, in view of the dictum so laid down in the cases of discussed in the forgoing para, specially in Kamal Sengupta (supra), as there they are not self evident. And the same also does not fall within the category of the grounds enumerated in Order XLVII Rule 1. At best, such grounds can be termed as clerical mistake as submitted by Mr. Parvez, learned counsel for respondent No.1, and the ratio laid down in the case of Kamlesh Verma (supra) referred by him also strengthen his submission. There appears to be no other 'sufficient ground' which the petitioner could assign to review the judgment.

20. Though Mrs. Goswami tried to persuade this Court by contending that the mortgage between the respondent No.2 and the respondent No.1-Bank, was not an equitable mortgage as provided under Section 58 of Transfer of Property Act and fraud is committed by the respondent-Bank, yet, the said averment has already been dealt with by this court in the judgment under review, in para No. 12, 13, 14, 15, 16 and 17. As the issue raised has already been dealt with in the judgment under review, the same cannot be re-opened again as held in the case of Kamlesh Verma (supra) discussed herein above where it has been held that - "Repetition of old and overruled argument is not enough to reopen concluded adjudications." Be it noted here that in the judgment under review it has been held that equitable mortgage was created over the plot of land on 25.05.2011, by the respondent No.2 in favour of the respondent No.1, i.e. Punjab National Bank, having been sanctioned a loan of Rs. 14,90,000/ to the respondent No.2, much before the alleged purchase of the plot of land by the review petitioner on

18.06.2012. The review petitioner has not disputed creation of equitable mortgage in favour of the Punjab National Bank, as is apparent from the averment made in paragraph No.9 of the plaint of the Title Suit No.323/2014. However, it has denied validity of the said mortgage and alleged that fraud was committed.

21. It is to be noted here that a Court is obliged to see if the allegations of fraud and collusion made in the Plaint, are themselves a product of "fraud and collusion" between the family members of the borrowers, so as to escape liability and save the secured assets, somehow or the other, in view of the dictum of Hon'ble Supreme Court in I.T.C. Ltd. v. Debts Recovery Appellate Tribunal, 1998 (2) SCC 70, where it has been held that clever drafting, creating illusions of cause of action are not permitted in law. The ritual of repeating a word or creation of an illusion in the Plaint can certainly be unravelled and exposed by the Court while dealing with an Application under Order 7, Rule 11(a). It is further held that it is not very difficult for a seasoned litigant or an intelligent lawyer to draft the Plaint in such a manner as to make a secured asset, come within anyone of the above 4 categories, by a clever drafting of the Plaint, thereby creating an illusion of fraud, collusion, misrepresentation and the like. Today, with the advancement of technology, the creation of an illusion and the creation of a virtual world are both possible. The moment the Civil Suit is taken on file, the proceedings before the Debts Recovery Tribunal or under the SARFAESI Act, 2002 gets slowed down. This result in two consequences viz., (i) out of frustration, the Banks agree for one time settlements, or (ii) third party rights get created by taking advantage of the situation. Therefore, the Courts have a greater responsibility to scan the pleadings and see if the allegations of fraud and collusion made in the Plaint are actually a product of fraud and collusion between the borrowers and those making such claims."

22. Therefore, this court, while passing the judgment under review, has gone through the record of the learned court below and perused the plaint and the written statement, but, found the material evidence absent to satisfy the fraud test. Therefore, this court is left unimpressed by the submissions of Mrs. Goswami, the learned counsel for the review petitioner.

23. It appears from the record of the learned court below that the loan account of the respondent No.2 became NPA on 03.09.2013, and thereafter, on 07.10.2013, the respondent No.1, the Bank has served notice under section 13(2) of the SARFAESI Act and thereafter, published notice under section 13(2) of the SARFAESI Act in News Papers on 05.02.2014. It also appears that the respondent No.1 had taken symbolic possession of the mortgaged property on 26.08.2014. As submitted by Mr. Parvez, learned counsel for the respondent No.1-Bank, the DRT is already seized of the matter and it has approved the mortgage and that the Bank's right is established in the DRT. It also appears from the record that the DRT has also issued one Recovery Certificate on 23.01.2018, to the respondent No.1-Bank, under Sub-section 7 and 22 of

Section 19 of the SARFAESI Act, for a sum of Rs. 21,10,340.37 only from the respondent No.2 - Shri Partha Pratim Das and his wife Krishna Hazarika.

24. Further, it appears that the present review petitioner, as plaintiff, had instituted the Title Suit No. 323/2014, on 03.09.2014. Thus, the bar of jurisdiction of Civil Court, under section 34 of the SARFAESI Act comes into play much prior to institution of the Title Suit on 03.09.2014, by the present review petitioner. In holding so this court derived authority from a decision of Hon'ble Supreme Court in Jagdish Singh vs. Heeralal and Ors., MANU/SC/1126/2013, where, in paragraph 22 it has been held as under:-

"22. Statutory interest is being created in favour of the creditor proposes to proceed against the secured assets, Sub- section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the "measures" referred to in Sub-section (4) of Section 13 has got a statutory right of appeal to the DRT Under Section 17. The opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under Sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under Sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under Sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 Code of Civil Procedure as well."

25. Again in the case of Industrial Credit and Investment Corporation of India Ltd. vs. Grapco Industries Ltd. & Ors. reported in (1994) 4 SCC 710, it has been held by Hon'ble Supreme Court that sufficient power has been vested on the DRT under section 22 of Recovery of Debts and Bankruptcy Act, 1993 and the matters which fall under the jurisdiction of the DRT cannot be entertained by the Civil Court. It is also held that the DRT can travel beyond the Code of Civil Procedure and decide all issues, so raised before it.

26. It is a fact that respondent/defendant No.2 remained unrepresented in the Title Suit No. 323/2014, and he also did not contest the petition No. 805/15, in the said Suit, which was impugned in the CRP(I/OO 393/2019. But, on account of the same, it cannot be said that the case proceeded ex-parte, since the main dispute is in between the review petitioner and the respondent No. 1-Bank, and

both were duly represented. Further, such contention was never raised during hearing of the CRP (I/O), and having consented and argued the case, even in absence of the respondent/defendant No.2, the petitioner, now, cannot be allowed to raise the same at this stage. Mr. Parvez, the learned counsel for the respondent No.1, has rightly pointed this out at the time of hearing. In terms of 'rule of estoppel', a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Reference in this context can be made to following decisions of Hon'ble Supreme Court in Prashant Ramachandra Deshpande vs. Maruti Balaram Haibatti, reported in 1995 Supp (2) SCC 539] and in P. R. Deshpande vs. Maruti Balaram Haibatti reported in [(1998) 6 SCC 507].

27. I have carefully gone through the case laws, so referred by Mrs. Goswami, and I afraid the ratio laid down in the case of Mardia Chemicals (supra) would come into the aid of the review petitioner and the same has already been discussed and taken note of while passing the judgment under review. And rest of the decisions have to be treated to be restricted to its own facts, and would not come into the aid of the petitioner and the citations in some of the decisions referred by Mrs. Goswami are incomplete also and therefore, detail discussion of the same are skipped for the sake of brevity.

28. In the result, the grounds, so assigned by the review petitioner, are found to be not just ground to satisfy the requirement of any of the grounds for review, as provided under Order XLVII Rule 1 of the CPC. Accordingly, the petition stands dismissed. However, liberty will remain with the petitioner to approach this court by filing appropriate petition for correction of the clerical error so pointed out at the time of hearing. The parties have to bear their own cost.