

(2013) 07 MAD CK 0407

In the Madras High Court

Case No : S.A. No. 302 of 2013 and M.P. No. 1 of 2013

Indian Bank Circle Office and Indian Bank Main Branch

APPELLANT

Vs

V.K. Balaji

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13, 13(13), 13(4), 17, 17(1)
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 28
Transfer of Property Act, 1882 — Section 65A

Citation : (2013) 4 LW 39 : (2013) 7 MLJ 435

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

**Advocate : T. Sundar Rajan, for the Appellant; J. Srinivasamohan, for the
Respondent**

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This Second appeal is focussed by the defendants animadverting upon the judgment and decree dated 08.02.2012 passed by the Subordinate Court of Chidambaram, in A.S. No. 42 of 2011, in reversing the judgment and decree dated 3.11.2011 passed by the Principal District Munsif Court, Chidambaram, in O.S. No. 35 of 2009, which was one for permanent injunction. The parties are referred to hereunder according to their litigative status and ranking before the trial Court.

2. Compendiously and concisely, the germane facts as stood uncurtained and unveiled, which are absolutely necessary for the disposal of this Second Appeal, would run thus:

(i) The respondent herein, as plaintiff filed the suit seeking the following relief:

to pass a decree for permanent injunction in favour of the plaintiff and thereby restrain the defendants and persons claiming under them from in any manner

interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

(extracted as such)

(b) The warp and woof of the averments as set out in the plaint would run thus:

(i) The immovable property, viz., the residential unit, described in the schedule of the plaint was taken on lease by the plaintiff on 14.12.2006 from one N. Ramanathan and a sum of Rs. 1,10,000/- was paid as advance by the former in favour of the latter.

(ii) The agreement which emerged between them was to the effect that the Government rate of interest that might accrue on the said sum of Rs. 1,10,000/- (rupees one lakh ten thousand) should be treated as monthly rent by the landlord. Under such arrangement, as a lessee, the plaintiff is in possession and enjoyment of the suit property.

(iii) The plaintiff sometime before the filing of this suit came to understand that the said Ramanathan mortgaged the suit property in favour of the defendant bank and availed loan. The bank, took steps to bring the suit property for sale and accordingly the sale also was effected on 25.3.2009. The bank officials visited the suit property and demanded the father of the plaintiff who was there, to vacate it immediately. Whereupon the suit was come to be filed seeking the aforesaid prayers.

(c) Per contra, in a bid to torpedo and pulverise the averments as found set out in the plaint, the second defendant filed the written statement; the gist and kernel of the same would run thus:

(i) The averments as found set out in the plaint are false and frivolous and fraught with falsity and mendacity. The said Ramanathan referred to in the plaint availed home loan on 27.10.1998 from D2 and created a mortgage by deposit of title deeds by way of securing the prompt repayment of the said loan amount of Rs. 7,65,000.00 (rupees seven lakhs sixty five thousand). Inasmuch as there was no discharge of the loan, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act" for short) the bank took steps and the suit property was taken possession on 19.9.2008 and steps were taken to sell the suit property, inviting sealed tenders from the public.

(ii) In a bid to stall such proceedings, the plaintiff and the said Ramanathan in collusion with each other created some documents between themselves and the former, accordingly filed the suit. As such, the suit filed was not maintainable. The defendants prayed for the dismissal of the suit.

(d) Whereupon issues were set down for trial by the trial Court, during which, the plaintiff examined himself as P.W.1 and marked Exs. A1 to A15. On the defendants' side one Sankar was examined as D.W.1 and Exs. B1 to B3 were

marked.

(e) Ultimately, the trial Court dismissed the suit, as against which, the appeal was filed. Whereupon the first appellate Court reversed the findings of the trial Court and decreed the suit, granting relief to the effect that the plaintiff should not be dispossessed otherwise than in accordance with law.

3. Challenging and impugning the judgment and decree of the first appellate Court, this second appeal has been focussed by the second defendant on various grounds and also suggesting the following substantial questions of law:

a) Whether the lower appellate Court was right in decreeing the suit when there is a specific bar for entertaining a civil suit u/s 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002?

b) Whether the lower appellate Court was right in decreeing the suit by ignoring the ratio decidendi reported by the Division Bench of this Hon'ble Court in Sree Lakshmi Products Vs. State Bank of India, ?

(extracted as such)

4. On hearing both sides, I did choose to formulate the following substantial questions of law.

(1) Whether the first appellate Court was justified in holding that the suit was maintainable, despite the embargo as contained u/s 34 of the SARFAESI Act and the dictum as found laid down in the judgment of this Court reported in Sree Lakshmi Products Vs. State Bank of India, ?

(2) Whether there is any perversity or illegality in the judgment and decree of the first appellate Court?

5. The learned counsel for the appellants/defendants, by inviting the attention of this Court to the judgment of the Division Bench of this Court in Sree Lakshmi Products Vs. State Bank of India, , would pyramid his arguments, which could succinctly and precisely be set out thus:

(i) The Division Bench of this Court unambiguously and unequivocally, pellucidly and palpably set down the law to the effect that in view of the embargo as contained in Section 34 of the SARFAESI Act, the civil Court has got no jurisdiction to grant injunction against the authorities under the said Act and that the proceedings thereunder also cannot be stalled. However, the first appellate Court, failing to wrap its brain around the dictum of this Court, simply granted injunction, whereby the authorities under the Act are incapacitated and prevented from implementing the Act and also proceed further as against the suit property in accordance with the SARFAESI Act.

(ii) Pendente lite, the property also was auctioned. In view of the obstruction caused by the plaintiff by filing the suit and obtaining the decree, the bank is not

in a position to take physical possession of the suit property.

(iii) Indubitably and indisputably, admittedly and incontrovertibly the plaintiff entered into the suit property only after the creation of the mortgage by the said Ramanathan in favour of the bank. In such a case, he cannot resist the taking of the physical possession of the suit property by the authority/person concerned.

(iv) Second 34 of the SARFAESI Act was considered and whereupon the Division Bench of this Court rendered its judgment. Surprisingly without adhering to the mandates of the said decision, straight away, the suit was filed and notwithstanding the dismissal of the suit, the first appellate Court decreed it in favour of the plaintiff.

(v) Section 65-A of the Transfer of Property Act would discountenance the creation of lease consideration of any premium or advance amount and wherefore, the plaintiff even as per his case cannot be treated as a tenant. Accordingly he would pray for setting aside the judgment and decree of the first appellate Court.

6. Per contra, in a bid to contradict and make mincemeat of the arguments as put forth and set forth on the side of the appellants/defendants, the learned counsel for the respondent/plaintiff would pyramid his arguments, which could succinctly and precisely be set out thus:

(i) The Division Bench of the Gujarat High Court in Rajkot Nagarik Sahakari Bank Limited Vs. Jignesh Jayantilal Ramanuj and Another, of which certain excerpts are as under:

9.1. So far as the second contention is concerned, it deserves to be noted that the said Act has been enacted with the object of speedy and effective recovery of the secured debt of banks and financial institutions and for that purpose vast and stringent authority is vested with the banks and the financial institutions. At the same time, as to ensure that there are sufficient checks and balances, the legislature has conferred on the DRT, power and jurisdiction to examine as to whether the measures taken by the secured creditor for enforcement of security have been taken in accordance with the provision of the Act or not, which is evident from plain reading of Sub-Section (3) of Section 17. The sub-section (3) reads thus:

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the

borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.

9.2. It can be seen from the aforesaid provision that it empowers the DRT to examine as to whether the measures taken by the secured creditor were, or were not, in accordance with the provision of the Act and the legislature has also conferred, authority of law and jurisdiction on the DRT to declare the measure (taken by the secured creditor) as invalid and direct the secured creditor to restore the possession of the secured assets to the borrower if the measures taken u/s 13(4) of the secured creditor are found to be not in accordance with the provisions of the Act.

9.3. Having regard to the scope and effect of the provision u/s 17(3) it becomes clear that it cannot be said that the DRT has no jurisdiction to interfere with the action taken by the secured creditor after stage contemplated u/s 13(4). Actually the law is otherwise and it postulates that the action taken by the secured creditor in exercise of power u/s 13(4), is open to scrutiny and not only it can be set aside by the DRT but even status entirior to the action taken by the secured creditor, can be restored.

14. A question, therefore, would arise as to whether the DRT, while deciding the application u/s 17(1) in exercise of its jurisdiction u/s 18(2) and (3) can decide the contested or disputed issues regarding tenancy, (e.g. whether any landlord and tenant relation has come into existence and whether such relation exists between the borrower and the objector, and/r whether there was/is landlord tenant relation between the borrower and the objector and/or whether the tenancy was existing prior to the date when the asset in question turned into secured asset etc.)

15.1. Thus, in view of Section 28 of the Rent Act only the Court under the Rent Act (i.e. the Court specified under Clause (a), (aa) and (b), Sub-section (1) of Section 28) will have jurisdiction to entertain and try any suit or proceedings between a "landlord" and a "tenant" relating to the recovery of rent or "possession" of any "premises" covered under part-II of the Rent Act. The Rent Act defines the terms "landlord", "premises", "Standard Rent" and "tenant". Consequently, any suit or proceedings which concern i.e. which are between a "landlord" and a "tenant" and pertain to the matter relating to "recovery of rent" or "possession" of any "premises" to which Part-II of the Rent Act applies can be tried only by the Court under the Rent Act.

would unambiguously and unequivocally highlight the point that the authority under the SARFAESI Act cannot decide on the question of tenancy and the special enactment governing tenancy contemplates special fora for that and only such fora can decide those matters. Accordingly if viewed it is crystal clear that the plaintiff being the tenant here had no remedy before the authorities under

the SARFAESI Act and having no other go, the plaintiff was constrained to approach the civil Court u/s 9 of C.P.C., which cannot be found fault with.

(ii) Section 34 of the SARFAESI Act cannot be taken as an embargo for filing the suit because the matter to be decided in this case is relating to tenancy, over which, the Tribunals under the SARFAESI Act have no jurisdiction. Hence, Section 34 of the Act cannot be taken as an embargo for the filing of the suit of this nature.

(iii) In fact, the Division Bench of this Court in Sree Lakshmi Products Vs. State Bank of India, had no occasion to decide the point as to whether the Tribunals under the SARFAESI Act had jurisdiction to decide on the tenancy issues. Simply because on technical reasons the lease of the plaintiff, is sought to be attacked as the one which falls foul of Section 65-A of the T.P. Act, that it does not mean that the plaintiff cannot be treated as a tenant/lessee under the Tamil Nadu Buildings (Lease and Rent Control) Act.

(iv) The first appellate Court taking into consideration the factual scenario and the evidence available on record decided the lis appropriately, warranting no interference in the second appeal.

(v) The trial Court itself gave a categorical finding to the effect that the plaintiff was a bona fide tenant in occupation of the premises. Once it is held by the Court that the plaintiff is a bona fide tenant, then automatically the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act would be attracted towards him and thereby the authorities under the SARFAESI Act would have no jurisdiction to evict him summarily. Except the filing of the suit for injunction by the plaintiff, there was no other effective remedy available to him.

Accordingly, the learned counsel would pray for the dismissal of the second appeal.

IN RE PRECEDENTS CITED BY BOTH SIDES AND THE LAW APPLICABLE TO APPLICATION OF PRECEDENTS:

7. I would like to, at the first instance, fumigate my mind with the decisions cited on both sides:

(a) The learned counsel for the plaintiff would cite the following decisions:

(i) M.O. Abdul Rahim Rowther and Others Vs. Swaminatha Odayar and Others,

(ii) Rajkot Nagarik Sahakari Bank Limited Vs. Jignesh Jayantilal Ramanuj and Another,

(iii) Manager, UCO Bank Vs. Samar Sarkar and Others,

(iv) Hutchison Essar South Ltd. Vs. Union Bank of India and Aditya Automation,

(v) Unreported judgment of the Karnataka High Court dated 13.10.2011 in W.A. No. 4752/2011;

(b) The learned counsel for the defendants would cite the following decisions:

(i) Judgment of this Court reported in Sree Lakshmi Products Vs. State Bank of India,

(ii) Judgment of this Court reported in Indian Bank Vs. Nippon Enterprises and Others,

(iii) Judgment of this Court reported in 2012(6) CTC 153 K.R. Radhahnan & N Trade. by managing Partner L. Kannan and Others

(iv) Unreported judgment of this Court dated 24.1.2013 in W.P. No. 4913 of 2012 (Ashakina Begum V. 1. T.M. Varatharajan and Others

8. As against the decision of the Gujarat High Court reported in Rajkot Nagarik Sahakari Bank Limited Vs. Jignesh Jayantilal Ramanuj and Another, I would like to observe that the dictum as found enunciated in the judgments of this Court would have binding effect on this Bench and accordingly if viewed, it is axiomatic and obvious that the decision of the Division Bench of this Court in Sree Lakshmi Products Vs. State Bank of India, is applicable to the facts and circumstances of this case. Their Lordships of this Court in paragraph No. 9 of the said precedent, which is extracted hereunder for ready reference:

9. On a plain reading of the observations made in Transcore case it is clear that the bank/FI is entitled to take actual possession of the secured assets from the borrower or from any other person in terms of section 13(4) of the SARFAESI Act. Any transfer of secured assets after taking possession of the same by the bank/FI shall vest in the transferee all rights in relation to the secured assets as if the transfer has been made by the owner of such secured assets. Any party aggrieved by such dispossession will have to take recourse to approaching the DRT u/s 17(4) of the SARFAESI Act. If the party is dispossessed, not in accordance with the provisions of the Act, then the DRT is entitled to put the clock back by restoring the status quo ante. By virtue of Section 17(4) read with Section 35 of the SARFAESI Act, if in a given case the measures undertaken by the secured creditor u/s 13(4) come in conflict with the provisions of any State law, then notwithstanding to such conflict, the provisions of Section 13(4) shall override the local law. Section 13(13) of the SARFAESI Act operates as an attachment/injunction restraining the borrower from disposing of the secured assets and therefore, any tenancy created after such notice would be null and void. Any tenancy created by the mortgager after the mortgage in contravention of Section 65-A would not be binding on the bank/FI, and in any event such tenancy rights shall stand determined once action u/s 13(4) has been taken by the bank/FI. When the petitioner is claiming a tenancy prior to the creation of mortgage and such tenancy is disputed by the bank the remedy of the petitioner is to approach DRT by way of an application u/s 17 of the SARFAESI Act to establish its rights.

would precisely and pithily highlight and spotlight the fact that any party

aggrieved by such dispossession will have to approach the DRT u/s 17(4) of the SARFAESI Act and if the DRT finds that the party concerned was dispossessed unjustifiably then it is empowered to put the clock back by ordering the status-quo ante. The Division Bench of this Court also proceeded to hold that the tenancy created by the mortgagor after the mortgagee in contravention of Section 65-A of the T.P. Act would not be binding on the mortgagee bank and in any event such tenancy right shall stand determined once action u/s 13(4) of the SARFAESI Act has been taken by the Bank.

9. All told, pulling no punches and without mincing words the Division Bench of this Court has held that the party like the plaintiff here in this case, has effective remedy by approaching the Tribunal concerned. But the plaintiff did choose to invoke Section 9 of C.P.C. and file the suit which is quite antithetical to the mandate as found embedded in the judgment of the Division Bench of this Court.

10. At this juncture I recollect the following maxim: "*Judicia posteriora sunt in lege fortiora*" The later decisions are stronger in law.

11. Accordingly if viewed the latest judgment of this Court would be the binding precedent on this Bench. Keeping that dictum in mind, I would proceed to consider the next Division Bench judgment of this Court in M.O. Abdul Rahim Rowther and Others V. Swaminatha Odayar and Others) cited by the learned counsel for the plaintiff. The said precedent is relating to Madras Estates Land (Third Amendment) Act, 1936. Certain excerpts from it would run thus:

19. Even if the lease for seven years was bad as contravening the provisions of Section 65-A of the Transfer of Property Act, in our view it would not materially affect the result in this case. The Supreme Court was only considering the question of the validity of a permanent lease executed by the mortgagor and they held that was bad because it offended the principle subsequently embodied in Section 65-A of the Act. But in this case even if the lease for seven years offended the provisions of Section 65-A of the Act, the lessees would be tenants from year to year for they were inducted into possession by Subramania Chetty, the then landholder, as his tenants and they continued to be in possession on the date when the Third Amendment Act came into force. As the plaintiffs held the lands as ryots under Subramaniam Chetty and continued to be in possession of the land at the commencement of the Act, they have acquired rights of occupancy under the statute. In *Pramatha Nath Bhattacharjya v. Sashi Bhooshan Banerji* ILR (1937) 2 Cal. 181, though a permanent lease created by the mortgagee was held to be invalid, the learned Judges held that the tenants acquired a right to cultivate the lands for the period during which the mortgage was subsisting and u/s 21 of the Bengal Tenancy Act, acquired a right of occupancy. In *Mt. Aziz Fatma Vs. Mukund Lal and Others*, , though it was held that the lease executed for twenty years pending a suit was not binding on the mortgagee, it was held that, as the mortgagor as the landholder at the time when he granted the lease to the defendant and it was his duty to arrange for the cultivation of the land, the defendant acquired tenancy right in the lands u/s

19 of the Agra Tenancy Act. These two decisions, therefore, proceed on the principle that, even though the particular lease was not binding on the mortgagee, the persons inducted by the landholder were tenants and therefore acquired rights of occupancy under the aforesaid two acts. So too, in this case the lease deed might have been bad and not binding on the mortgagee; but the plaintiffs were tenants and continued to be in occupation till the crucial date and therefore they acquired rights of occupancy.

12. I need not dilate further because the latest decision of the Division Bench of this Court is on the very issue involved before me and hence, I need not even consider the earlier Division Bench judgment of this Court rendered in connection with the Madras Estate Act.

13. Suffice to observe that the said decision precisely and pithily would point out that for the purpose of conferring benefit under the Madras Estate Land Act, the actual occupancy right of the tenant should be considered and accordingly de hors Section 65-A of the Act, their lordships considered the matter.

14. Not to put too fine a point on it, here on the very issue involved in this case, the Division Bench of this Court rendered its recent verdict and in such a case to the risk of repetition and pleonasm I would like to point out that a fortiori the said decision in Lakshmi Products case should be taken as the binding precedent on this Bench.

15. In view of the ratio cination adhered to by me in deciding the aforesaid point, the other decisions cited by the plaintiff's counsel, in my considered opinion are not germane.

16. However, one other Division Bench of this Court also rendered its decision in Indian Bank Vs. Nippon Enterprises and Others, wherein the factual matrix would connote and denote, bespeak and betoken that the Tribunals under the SARFAESI Act have got the power to order even restoration of THE premises to the tenant, who started occupying the premises before the mortgage and who was unjustifiably dispossessed under the SARFAESI Act.

17. But here, it is the admitted case of the plaintiff himself that only after the emergence of the mortgage created by the said Ramanathan in favour of the bank, the alleged tenancy commenced in his favour.

18. Section 65-A of the Transfer of Property Act is extracted hereunder for ready reference.

Sec. 65-A. Mortgagor's Power to lease (1) Subject to the provisions of subsection (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

(2)(a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance,

(c) No such lease shall contain a covenant for renewal,

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made,

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid with a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section.

19. Indubitably and indisputably in the very plaint itself the plaintiff would admit the fact that he parted with an advance of Rs. 1,10,000/- (rupees one lakh ten thousand) and that there was no agreement to pay the rent. In fact the alleged agreement was to the effect that whatever Government rate of interest that might accrue on that advance amount should be adjusted towards the monthly rent.

20. To put in single syllable words, I would like to point out the home truth that virtually according to the plaintiff, he entered into the possession of the suit property under Ramanathan after paying a sum of Rs. 1,10,000/- (rupees one lakh ten thousand) and that too without undertaking to pay monthly rent directly by him to the defendant. It is also his contention that he would continue in possession till the said sum of Rs. 1,10,000/- (rupees one lakh ten thousand) is repaid to him by Ramanathan.

21. Whether such a kind of lease is one contemplated u/s 65-A of the T.P. Act. The answer is at once obvious and axiomatic that such sort of leases are beyond the purview of Section 65-A of the Act. Hence, I am of the considered view that the first appellate Court without *au fait* with law and *au courant* with facts simply decided the case, warranting interference in second appeal.

22. The contention of the learned counsel for the plaintiff would be to the effect that *de hors* Section 65-A of the T.P. Act, the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act would be applicable in favour of his client as according to him, he happened to be a tenant under Ramanathan in respect of the suit property and that the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act are applicable.

23. Such an argument is neither here nor there and it belies logic and reason as it is in conflict with the maxims:

(i) "Sublato principali, tollitur adjunctum" When the principal has been taken away, the adjunct is also taken away.

(ii) "Ubi jus incertum, ibi jus nullum" Where the right is uncertain, there is no right.

24. Over and above that the maxim "Ex turpi contractu non oritur actio" No action arises from a wrongful contract and "Ex dolo malo non oritur actio" An action does not arise from a fraud, would also come into operation to discountenance such sophistry, casuistry and legerdemain put forth on the side of the plaintiff. Once the plaintiff's very entry into the suit property after the mortgage is not in accordance with Section 65-A of the Act, then, the mortgagee need not treat him as a lessee at all.

25. Over and above that, I am of the considered view that none of the decisions cited on the side of the plaintiff would enure to his benefit to buttress and fortify his plea that Section 9 of C.P.C. could be invoked for getting injunction as against the authority under the SARFAESI Act, so as to stall the proceedings.

26. The learned counsel for the plaintiff, inviting the attention of this Court to the finding of the appellate Court that the very factum of lease in favour of the plaintiff was admitted by the bank in view of Ex. A15-the demand letter sent by the bank to the plaintiff calling upon him to pay the rent to it, and it operated as against the bank to take any plea contrary to its admission of plaintiff's tenancy, would advance his argument that the defendant bank is virtually debarred from impugning and challenging the status of the plaintiff as the tenant in the premises.

27. To say the least, such a plea by the plaintiff, is not even worth the paper on which it is written. There could be no estoppel against law. The Bank having acquired legal right over the suit property, was justified in demanding the occupier to vacate the premises and in the meanwhile to pay the rent as he cannot squat in the property over which the bank acquired legal right to take physical possession under the SARFAESI Act. The bottom line and not a pococurante one to be considered here is as to whether in view of Section 65-A of the T.P. Act, the claim of tenancy in favour of the plaintiff is tenable legally, and my discussion supra in the wake of the precedents of the Division Bench of this Court cited above, would convey and point up that such a claim of the plaintiff is unsustainable. The first appellate Court failed to see the wood for trees in adjudging the lis. It puts me in mind the maxim "Judicis est judicare secundum allegata et probata"- It is the proper role of a judge to decide according to the allegations and proofs. However, shockingly and surprisingly the first appellate Court having scant regard for law of pleadings decided the lis and that too without realizing and understanding that in the plaint it was not even the case of the plaintiff that landlord and tenant relationship emerged between the

bank and the plaintiff; and that it was also not the case of the plaintiff that the defendant bank was precluded from challenging the legality of the tenancy of the plaintiff in view of Ex. A15-the demand letter.

IN RE THE POWER OF TRIBUNALS UNDER SARFAESI ACT TO DECIDE ON TENANCY:

28. The learned counsel for the plaintiff also would proceed to argue that the Tribunals under the Act are not civil Courts having inherent powers and they cannot go beyond the powers conferred by the special Act.

29. In respect of that argument, I would like to recollect and call up the following maxims:

(a) *Verba generalia genaraliter sunt intelligenda* General words are to be understood generally.

(b) *Verba ita sunt intelligenda, ut res magis valeat quam pereat*-Words are to be so understood that the matter may have effect rather than fail.

30. Those sister maxims would unambiguously and unequivocally indicate and mandate the fact that a statute has to be interpreted in such a manner so as to make it meaningful and the interpretation should not render any of the provisions otiose.

31. I would like to cite suo moto the decision of the Honourable Apex Court reported in *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*,

32. The Honourable Apex Court upheld the vires of the said SARFAESI Act and in fact the Courts repeatedly held that the provisions of the Act should be implemented in full force and there should not be any compromise with it. If it is taken that persons like the plaintiff who are virtually having the intention to cause obstruction, are not to be applicants before the Tribunals under the SARFAESI Act, then that would amount to rendering the salient provisions of the SARFAESI Act otiose.

33. The decision of the Honourable Apex Court reported in *Authorized Officer, Indian Overseas Bank and Another Vs. Ashok Saw Mill*, would also highlight that any person aggrieved could seek redressal before the Tribunals under the SARFAESI Act.

34. If the authorities, while they venture to implement the SARFAESI Act, come across any obstruction, certainly in the light of the maxims "*Jura naturae sunt immutabilia*" The laws of nature are unchangeable and "*Audi Alteram Partem*" should hear the obstructor and pass reasoned order.

35. If the argument of the learned counsel for the plaintiff has to be accepted, then the power of the authorities to implement the SARFAESI Act would get hampered. In the process of the authorities implementing the SARFAESI Act if obstructors are allowed to approach the civil Court and get injunction then the

very purpose of the Act would get frustrated. On the other hand if the provisions are interpreted in such a manner that the obstructors like the plaintiff are having the right to place their grievance before the authority concerned, and that the Tribunals are having the right to render their decision on such obstruction, then certainly that would be conducive for the implementation of the SARFAESI Act. In fact, the persons like the plaintiff also if they are having a good case of their own would get the benefit summarily. Wherefore, I am of the considered view that the plaintiff should not have filed the suit seeking injunction and the first appellate Court ought not have granted injunction also. With this I would like to decide the substantial questions of law in favour of the defendants and as against the plaintiff as under:

Substantial Question of Law No. (1) is decided to the effect that the first appellate Court was not justified in holding that the suit was maintainable, contrary to S. 34 of the SARFAESI Act and the dictum as found laid down in the judgment of the Division Bench of this Court in Sree Lakshmi Products Vs. State Bank of India,

Substantial Question of Law No. (2) is decided to the effect that there is perversity and illegality in the judgment and decree of the first appellate Court.

In the result the judgment and decree of the first appellate Court are set aside and the original suit shall stand dismissed by allowing this second appeal. No costs. Consequently connected miscellaneous petition is closed.