

(2017) 08 CAL CK 0036
In the Calcutta High Court
Case No : 167 of 2017

Jalan Inter Continental Hotels Pvt. Ltd.

APPELLANT

Vs

State Bank of India & Anr.

RESPONDENT

Date of Decision : 01-08-2017

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 34, Section 13(2) - Civil court not to have jurisdiction - Enforcement of security

Citation : (2017) 08 CAL CK 0036

Hon'ble Judges : Soumen Sen

Bench : SINGLE BENCH

Advocate : Rajesh Upadhayay

Judgement

1. The preemptive suit apparently with innocuous prayers to attract the jurisdiction of this Court in order to circumvent notice under Section 13(2) of the SARFAESI Act is liable to be dismissed.

2. There cannot be any doubt that the RDB Act completely ousts the jurisdiction of this Court. In the SARFAESI Act, the provisions are more stringent and there is a complete ouster of the jurisdiction of the Civil Court. Section 34 of the SARFAESI Act is the ouster clause. The said Section reads: "S. 34. Civil Court not to have jurisdiction - No civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

3. The scope of the said section was considered by the Hon"ble Supreme Court in Mardia Chemicals and Ors. v. Union of India and Ors. reported at (2004) 4 SCC

311.

4. The said decision was subsequently followed in *Jagdish Singh v. Heeralal and Ors.* reported at 2014 (1) SCC 479 and the *Standard Chartered Bank v. Noble Kumar and Ors.* reported at 2013 (9) SCC 620.

5. The scope of Section 34 came up for consideration in the said *Mardia Chemicals* (supra). In paragraph 50 of the said judgment the Hon"ble Court held: "It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-Section (4) of Section 13, it is submitted by Mr. Salve, one of the counsel for the Respondents that there would be no bar to approach the Civil Court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Sri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the Civil Court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act." That is to say, the prohibition covers even matters which can be taken to cognizance of by the Debts Recovery Tribunal though no measures in that direction has so far been taken under Sub-Section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the Civil Court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil courts thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of the Section 13.

6. Elaborating on these aspects, the Hon"ble Supreme Court in *Jagdish Singh* (supra) in paragraphs 22 and 23 held:- "22. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured 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 arrived 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 subsection (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.

23. We are of the view that the Civil Court jurisdiction is completely barred, so far as the "measures" taken by a secured creditor under Sub-section (4) of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal to determine as to whether there has been any illegality in the "measures" taken."

7. The plaintiffs cannot by clever drafting seek to create an illusion of a cause of action and thereby continue with an action in a civil Court by passing the provisions of special statutes. The purpose and object of the special statutes are required to be kept in mind while considering the claims made in the plaint. Parliament enacted SARFEASI Act because it was found that the legal mechanism available till then was wholly insufficient for recovery of the outstanding dues of banks and financial institutions [United Bank of India v. Satyawati Tandon & Anr.] : 2010 (8) SCC 110 and Indian Bank v. Blue Jaggars Estates Limited & Ors. : 2010 (8) SCC 129) The plaint, as it stands, in my view, is not maintainable in this Court.

8. The Hon"ble Supreme Court in no uncertain terms has stated that once a notice under Section 13(2) of the SARFAESI Act is issued even a contemplated suit cannot be filed. It is settled law that what cannot be achieved directly cannot be achieved indirectly. It may so happen that the case pleaded in the plaint could be a defence to an action initiated under Section 13(4) of the SARFAESI Act but once a notice is issued under Section 13(2) of the SARFAESI Act the Civil Court is denuded of his jurisdiction where the Court would be required to adjudicate issues that will fall within the scope of the suit.

9. The plaintiff argues that no declaration has been claimed against the notice issued by the Bank under Section 13(2) of the SARFAESI Act. It is obvious that challenge to the said notice would make the suit ex facie barred by law. Absence of challenge to the said notice in any event does not advance the case of the plaintiff to get away with the Section 34 of the SARFAESI Act.

10. Under such circumstances, leave under Clause 12 of the letters patent is refused. CS No. 167 of 2017 is not admitted.