(2014) 12 MAD CK 0172

In the Madras High Court

Case No : C.R.P. (PD). Nos. 941, 2496 of 2011 and M.P. Nos. 1 and 1 of 2011

K. Deenadayalan APPELLANT

Vs

N. Sathish Kumar RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 9
Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 19(22), 19(7)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 34, 35

Citation : (2015) 2 BC 353 : (2015) 1 LW 229 : (2015) 1 MLJ 170

Hon'ble Judges : K. Ravichandra Babu, J

Bench : Single Bench

Judgement

K. Ravichandra Babu, J.—C.R.P.(PD).No. 941 of 2011 is filed by the fourth defendant in O.S.No. 35 of 2010 on the file of the Subordinate Court, Nilgiris at Udhagamandalam, aggrieved by the order of interim injunction granted in I.A.No. 153 of 2010, confirmed in C.M.A.No. 26 of 2010 on the file of the District Court, Nilgiris at Udhagamandalam.

2. C.R.P.(PD).No. 2496 of 2011 is filed by the very same fourth defendant in the said suit, challenging the order of the trial Court in dismissing his application filed under Order 7 Rule 11 CPC for rejection of plaint.

3. The respondent in these two Civil Revision Petitions is one and the same and he is the plaintiff in the abovesaid suit filed for declaration that the sale by public auction and the Sale Certificate issued pursuant to the public auction by the sixth defendant, namely the Recovery Officer of the Debts Recovery Tribunal, Coimbatore, to the fourth defendant, namely the petitioner herein in respect of the first schedule property, are null and void, unenforceable and not binding on the plaintiff; for injunction restraining the defendants from interfering or disturbing the peaceful possession and enjoyment of the plaintiff in respect of

the second schedule property and for partition of the first schedule property and allotment of separate possession of the second schedule property forming part of the first schedule property, to the plaintiff.

4. The case of the plaintiff in the said suit, in short, is as follows:

(a) The first schedule property is a joint family property of one Late C.Lakkay Gowder and during his lifetime, the said property was enjoyed jointly by the said person and his sons. After his demise, the sons as members of coparcenary, entered into a family arrangement and oral partition in the year 1968. An extent of 1.16-1/4 acres together with the building bearing Door Nos. 2/379 and 2/387 in R.S.No. 169/1 of Ootacamund Rural Village, which is the first schedule property, was allotted to one L.Srikantiah, one of the sons of the said Late C.Lakkay Gowder. The said Srikantiah constituted a joint family along with his two sons, namely the defendants 1 and 2 and all the three of them conveyed the property measuring 1.51 acres of agricultural land in R.S.No. 169/1.A described as the second schedule, in favour of the plaintiff, in pursuant to the sale agreement, dated 17.10.2002 and the sale deed dated 17.2.2003. The possession was also delivered, in between, on 21.10.2002. The plaintiff is the bona-fide purchaser.

(b) The fourth defendant purports to be the auction purchaser in a fraudulent sale conducted by the sixth defendant in respect of the amount advanced by the fifth defendant to a third party. The deceased Srikantiah purports to have stood as surety for certain amounts said to have been advanced by the fifth defendant to a third party. The plaintiff had no notice of any transaction or dealings between the deceased Srikantiah and the Bank. The plaintiff is in continuous possession and enjoyment of the properties from 21.10.2002 onwards.

(c) The fourth defendant who is an utter stranger, came to Adasholai on 28.2.2010, claiming to have purchased the second schedule property and that he had taken over vacant possession of the land through the Recovery Officer. The alleged sale by the sixth defendant had been done contrary to the Act and Rules and in utter violation of the principles of natural justice. The sale is illegal and tainted by fraud and mala-fide, inasmuch as the conveyance executed in favour of the plaintiff is very much anterior in point of time, which was suppressed by the sixth defendant without disclosure in the proclamation of sale. The sale if any, can bind only the undivided share of Late Srikantiah and the rights and interest of the defendants 1 and 2 cannot be burdened towards the liability of a surety, namely their father-Srikantiah.

(d) The plaintiff is neither the borrower nor a party to the alleged proceedings before the Debts Recovery Tribunal (for short, ''the DRT''), and therefore, the Civil Court has jurisdiction to adjudicate upon the disputes regarding the rights of the parties and the legality and validity of public auction sale and the Sale Certificate issued by the DRT.

5. The fourth defendant filed written statement and contended that he has

purchased the subject matter property by way of auction sale, dated 6.2.2009 conducted in accordance with law, followed by delivery of possession by the Court Officer and the plaintiff was never in possession and enjoyment of the suit properties. The civil Court has no jurisdiction to entertain or restrain the proceedings of the DRT. The deceased Srikantiah as Kartha-cum-Manager of the Hindu joint family, stood as guarantor for the loan with the fifth defendant and voluntarily gave his properties as security by way of deposit of title deeds with intent to create an equitable mortgage on 6.5.2000 itself and therefore, the alleged purchase by the plaintiff in the year 2003 is not only illegal, but also invalid and it cannot bind the rights of the secured creditor.

6. The fourth defendant, thus questioning the jurisdiction of the trial Court, filed application under Order 7 Rule 11 CPC, which was resisted by the plaintiff by contending that the ouster of jurisdiction of the Civil Court relates to matter regarding the debts only and insofar as the relief which does not pertain to the debts, the Civil Court continues to have the jurisdiction.

7. Both sides marked several exhibits in support of their respective claims. The trial Court, after considering the rival submissions of the parties as well as their respective pleadings, rejected the said application, by holding that the jurisdiction of the Civil Court is not completely ousted under the Act 51 of 1993 and the Civil Court has got exclusive jurisdiction to decide the title of the parties even relating to the properties covered under the DRT proceedings. It was further observed by the trial Court that the DRT cannot grant the relief of partition and separate possession and that can be considered and decided only by the Civil Court. Challenging the said order, the fourth defendant filed C.R.P.(PD).No. 2496 of 2011.

8. Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner/fourth defendant submitted that the suit is barred under law, in view of Section 18 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (Act 51 of 1993) (for short, ''the Act''). The bar is total, and therefore, the plaintiff cannot maintain the suit and the Civil Court is not having jurisdiction to decide the present dispute between the parties. Section 20 of the said Act relating to appeal to the Appellate Tribunal, applies also to a person who is not a party to the proceedings before the DRT. In support of the above submissions, the learned Senior Counsel relied on the following decisions:

(a) Jagdish Singh Vs. Heeralal and Others,

(b) V. Thulasi Vs. Indian Overseas Bank,

(c) 2010 (3) CTC 310 (Madras High Court) (Punjab National Bank Vs. J.Samsath Beevi);

(d) Sri Chandra and S. Chitra Vs. K. Nagarajan and Others, (Sri Chandru Vs. K.Nagarajan);

(e) Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., and

(f) Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation, ;

9. Per contra, Mr.V.Raghavachari, learned counsel appearing for the respondent/ plaintiff submitted that the entire proceedings before the DRT took place against a dead person, i.e. the said Srikantiah. The suit is not barred, since the jurisdiction of the Tribunal as contemplated under Section 17 of the said Act is in respect of the applications from the Banks and financial institutions and not from third parties. The bar of jurisdiction of Civil Court contemplated under Section 18 of the Act is only in relation to the matters specified in Section 17 of the Act. Section 19(8) of the Act deals with the counter claim made by the defendant in an application filed by the Bank before the DRT and therefore, it is only for the Bank''s suit, there is a bar of the Civil Court to entertain the same. The plaintiff cannot file an appeal before the Appellate Tribunal, since he was not a party to the proceedings before the DRT. The tenor of Section 20 of the Act makes it clear that such appeal is maintainable only by a party to the proceedings. In support of the above submissions, learned counsel for the first respondent relied on the following decisions:

(a) S.V. Subramaniam Vs. Cypress Semiconductor Technology India Private Limited, MG Brothers Lorry Services and Punjab National Bank Limited, Periamet Branch,) and

(b) Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation,

10. Heard the learned counsel appearing for the parties and perused the materials placed on record.

11. The point for consideration in C.R.P.(PD).No. 2496 of 2011 is as to whether the suit, from the statements made in the plaint, appears to be barred by Section 18 of the said Act and if so, whether the plaint is liable to be rejected under Order 7 Rule 11 CPC?

12. In order to decide the said issue, the following provisions of the abovesaid Act ,are relevant to be referred to:

"Section 17: Jurisdiction, powers and authority of Tribunals--(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act."

"Section 18: Bar of jurisdiction--On and from the appointed day, no Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17."

"Section 19: Application to the Tribunal--(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction,--

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(c) the cause of action, wholly or in part, arises:

Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor."

"Section 20: Appeal to the Appellate Tribunal--(1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal."

"Section 31: Transfer of pending cases--(1) Every suit or other proceeding pending before any Court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any Court."

13. It is also useful to quote Order 7 Rule 11 CPC, which reads as follows:

"Order 7: Plaint:

Rule 11: Rejection of plaint--The plaint shall be rejected in the following cases:--

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

14. The main contention of the petitioner/fourth defendant is that the present suit is barred by law, namely the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, more particularly under Section 18 of the said Act. The said provision has already been extracted supra. According to the learned Senior Counsel appearing for the petitioner, the bar is total and therefore, no suit can be filed and maintained, which is otherwise barred under Section 18 of the said Act. Therefore, it has to be seen as to whether the bar is total as claimed by the petitioner, or it is qualified and conditional.

15. A careful perusal of Section 18 of the said Act would show that it contemplates that no Court shall be entitled to exercise any jurisdiction, powers or authority, except the Supreme Court and the High Court, in relation to the matters specified under Section 17 of the said Act. Thus, it is manifested that only in relation to the matters specified under Section 17 of the Act, the Civil Court''s jurisdiction is ousted. While considering the scope of Section 17 of the said Act dealing with the jurisdiction, powers and authority of the Tribunals, it is evident that such jurisdiction, powers and authority shall be entertained by the Tribunals in respect of the applications from the Banks and financial institutions for recovery of debts due to such Banks and financial institutions. To put it simply, the jurisdiction of the Tribunals to entertain the applications is only in respect of the applications filed by the Banks and financial institutions, that too for recovery of debts due to them. Thus, such jurisdiction, exclusively to be exercised by the Tribunals, as empowered under Section 17 of the Act, cannot be entertained by the Civil Courts and such entertainment is barred under Section 17 of the said Act. Thus, a combined reading of Section 18 and Section 17 of the said Act would only drive this Court to come to a conclusion that the "bar of jurisdiction" imposed under Section 18 on the Civil Courts, is not total to exercise its jurisdiction in all matters in respect of the disputes between the parties, and on the other hand, such restriction is imposed only in relation to the matters specified under Section 17 of the said Act. So, the bar is only qualified and conditional.

16. At this juncture, the decision of the Honourable Supreme Court reported in Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation, , more particularly paragraphs 96 and 97, are relevant to be quoted:

"96. The Tribunal was constituted with a specific purpose as is evident from its Statement of Objects. The Preamble of the Act also is a point to that too. We have also noticed the scheme of the Act. It has a limited jurisdiction. Under the Act, as it originally stood, it did not even have any power to entertain a claim of set-off or counter-claim. No independent proceedings can be initiated before it by a debtor.

97. A debtor under the common law of contract as also in terms of the loan

agreement may have an independent right. No forum has been created for endorsement of that right. Jurisdiction of a civil court as noticed hereinbefore is barred only in respect of the matters which strictly come within the purview of Section 17 thereof and not beyond the same. The civil court, therefore, will continue to have jurisdiction."

(emphasis supplied)

17. Further, in a decision reported in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., , the Apex Court held in paragraph 51 as follows:

"51. 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 his 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. ... .."

(emphasis supplied)

18. Considering the scope of Section 18 of the Act, coupled with a combined reading of Section 17 of the Act and considering the above decisions of the Apex Court, I am of the view that the "bar of jurisdiction of Civil Courts" contemplated under Section 18 of the Act, is not a total bar as claimed by the petitioner/fourth defendant and on the other hand, it is only under the circumstances stated therein.

19. Further, a perusal of Section 31 of the said Act dealing with the transfer of pending cases, would show that though every suit or other proceeding pending before any Court immediately before the date of establishment of a Tribunal under the said Act, shall stand transferred on that date to such Tribunal, proviso to the said Section would make it clear that such transfer shall not apply to any appeal pending before any Court. Thus, it is seen that a suit, which has culminated into an appeal, is not at all disturbed and the appellate Court also being a Civil Court, is entitled to continue its jurisdiction over such appeal even after the establishment of the Tribunal. Therefore, the total ouster of jurisdiction is not at all contemplated under the said Act and exercise of jurisdiction by the Civil Court depends upon the facts and circumstances of each case.

20. As this Court has found that the bar of the Civil Court''s jurisdiction is not total and it can be exercised other than the circumstances contemplated under Section 17 of the Act, it has to be now seen as to whether the facts and circumstances of the present case, as stated in the plaint, excludes the jurisdiction of the Civil Court.

21. I have already pointed out while discussing the facts of the case that the respondent/plaintiff has filed the present suit for declaration that the sale of the first schedule to the suit properties, in public auction by the sixth defendant to the fourth defendant, is null and void, unenforceable and not binding on the plaintiff. Apart from the said relief, the plaintiff is also seeking the reliefs of

injunction and partition. It is the categorical case of the plaintiff that the entire proceedings before the DRT were made against a dead person, namely the said Srikantiah and that the plaintiff was not a party to the said proceedings before the DRT. It is also specifically stated in the plaint that the sale conducted was a fraudulent one and the fifth defendant-Bank has not disclosed the earlier sale of the property in favour of the plaintiff in the proclamation of sale. Thus, it is the case of the plaintiff that the auction sale is illegal and tainted by fraud and mala-fide, inasmuch as the conveyance executed in favour of the plaintiff was very much anterior in point of time, which was suppressed in the proclamation of sale. It is also not in dispute that the plaintiff is neither a borrower nor a party to the proceedings before the DRT. Thus, it is evident from a reading of the plaint that the plaintiff has made allegations of fraud, mala-fide and suppression of material facts and further claimed that the entire proceedings before the DRT were against a dead person. Further, the plaintiff claims that the suit property was the joint family property consisting of the said Srikantiah and his two sons and therefore, the surety said to have been executed by the said Srikantiah will not bind the sons.

22. When the above allegations are made in the plaint with the prayers as stated supra, can it still be said that the Civil Court has no jurisdiction to go into the matter and that its jurisdiction is ousted, in view of Section 18 of the Act? The answer to the said question would be in negative and this view is in fact justified by a decision of a Division Bench of this Court in almost an identical matter, reported in S.V. Subramaniam Vs. Cypress Semiconductor Technology India Private Limited, MG Brothers Lorry Services and Punjab National Bank Limited, Periamet Branch, . The facts of the said case also disclose that the very same Sections 17 and 18 of the said Act came up for consideration before the Division Bench and after considering the various aspects of the matter, it has been observed in paragraph 11 as follows:

"11. Bar of jurisdiction under Section 18 of the 1993 Act:-

(a) In the case of Lala Ram Swarup and Others Vs. Shikar Chand and Another, , the Supreme Court noticed the observation of the Privy Council in the case of Secretary of State Vs. Mask & Co. (67 I.A. 222), wherein, the Privy Council observed that even where jurisdiction is excluded, the Civil Courts have jurisdiction "to examine into cases where the provisions of the Act have not been complied with, or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. In the said case of Lala Ram Swarup (cited supra) , the Supreme Court observed that, "in our opinion, the bar created by relevant provisions of the Act excluding the jurisdiction of the civil courts cannot operate in cases where the plea raised before the civil court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity."

(b) In the case of State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others, , the Supreme Court observed that, "The normal rule of law is that the civil courts have jurisdiction to try all suits of civil nature except those of which cognisance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure .... where a statute gives finality to the orders of the Special Tribunals, jurisdiction of the civil courts must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit and such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

(c) We have noticed the aforesaid observations, as in the present case, one of the grounds taken is that the DRT has not followed the procedure contemplated under the Debts Recovery Tribunal (Procedure) Rules, 1993 and the impugned orders were passed, which are nullity in the eye of law.

(d) Section 17 of the 1993 Act relates to "jurisdiction, powers and authority of Tribunals, as quoted hereunder:

"Section 17. Jurisdiction, powers and authority of Tribunals.-- (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act."

On the other hand, Section 18 of the 1993 Act imposes a "bar of jurisdiction", which reads as follows:

"Section 18: Bar of jurisdiction--On and from the appointed day, no Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17."

From the aforesaid provisions, it would be evident that there is no total ouster of jurisdiction of the civil Court. The ouster is by virtue of Section 18 of the 1993 Act, which sets out that no Court or other authority can try matters of recovery of debts. Insofar as the reliefs which do not pertain to debts, on a plain reading of Section 17 of the 1993 Act, are concerned, there can be no doubt that the civil Court will still retain the jurisdiction Centurion Bank Ltd. Vs. Indian Lead Ltd. and Another,

(e) In the case of Allahabad Bank Vs. Canara Bank and Another, , having noticed Sections 17 and 18 of the 1993 Act, the Supreme Court while observing that, "it is clear from Section 17 of the Act that the Tribunal is to decide the applications of the Banks and Financial Institutions for recovery of debts due to them", held as follows:

"21. In our opinion, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to Banks or financial institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate under Section 19(22) (formerly under section 19(7)) to the Recovery Officer for recovery of the debt specified in the certificate. The question arises as to the meaning of the word ''recovery'' in Section 17 of the Act. It appears to us that basically the Tribunal is to adjudicate the liability of the defendant and then it has to issue a certificate under Section 19(22). Under Section 18, the jurisdiction of any other Court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is ousted and the power to adjudicate upon the liability is exclusively vested in the Tribunal. (This exclusion does not however apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Article 226 or 227 of the Constitution). This is the effect of Sections 17 and 18 of the Act.

22. We hold that the provisions of Sections 17 and 18 of the RDB Act are exclusive so far as the question of adjudication of the liability of the defendant to the appellant Bank is concerned."

(f) Section 17 of the 1993 Act, again fell consideration before the Supreme Court in the decision reported in Indian Bank Vs. ABS Marine Products Pvt. Ltd., wherein, the Supreme Court made the following observation:

"15. It is evident from Sections 17 and 18 of the Debts Recovery Act that civil court''s jurisdiction is barred only in regard to applications by a bank or a financial institution for recovery of its debts. The jurisdiction of civil courts is not barred in regard to any suit filed by a borrower or any other person against a bank for any relief. ......"

"16. .... What is significant is that Sections 17 and 18 have not been amended. Jurisdiction has not been conferred on the Tribunal, even after amendment, to try independent suits or proceedings initiated by borrowers or others against banks/financial institutions, nor the jurisdiction of civil courts barred in regard to such suits or proceedings. The only change that has been made is to enable the defendants to claim set-off or make a counterclaim as provided in sub-sections (6) to (8) of Section 19 in applications already filed by the banks or financial institutions for recovery of the amounts due to them. In other words, what is provided and permitted is a cross-action by a defendant in a pending application by the bank/financial institution, the intention being to have the claim of the bank/financial institution made in its application and the counterclaim or claim for set-off of the defendant, as a single unified proceeding, to be disposed of by a common order."

(g) While dealing with the question of grant of injunction restraining the enforcement of the orders passed by the Tribunal, in the case of Industrial Investment Bank of India Ltd. Vs. Marshal''s Power and Telecom (I) Ltd. and

Another, , the Supreme Court observed as follows:

"8. .... That apart, to grant an injunction restraining the enforcement of orders passed by the Tribunal having jurisdiction to pass such orders cannot normally be granted unless it is a case of fraud or the existence of some such vitiating factors is established or prima facie made out. Even then, the order of injunction as now granted could be granted only in exceptional cases."

(emphasis supplied)

(h) In the present case, as the plaintiff is neither the Bank/financial institution nor the borrower, the provisions of Section 17 of the 1993 Act are not attracted. It is not the case of the Bank that they filed an application for recovery of its debt from the plaintiff. The plaintiff who is not a party before the DRT, has only alleged fraud played by the parties to obtain orders from the DRT and therefore, in view of the decisions of the Supreme Court, as referred to above, we hold that the present suit is not barred by the provisions of Section 18 of the 1993 Act."

23. In the abovesaid case also, the plaintiff therein was not a party before the DRT and has alleged fraud played by the parties to obtain orders from the DRT. The suit filed therein also is to declare the order passed by the DRT and the Sale Certificate issued by the same, as null and void and not binding on the plaintiff and for permanent injunction. Thus, from the above decision of the Division Bench of this Court, it is clear that if the allegations of fraud, misrepresentation and mala-fide are made, coupled with the further allegation of not following due procedures, the Civil Court can entertain the suit, more particularly at the instance of a person who is not a party in the DRT proceedings. Further, in this case, the plaintiff questions the right of the said Srikantiah to execute the surety for the entire property by claiming that the property is joint family property.

24. Learned Senior Counsel appearing for the petitioner strongly relied on a recent decision of the Honourable Supreme Court reported in Jagdish Singh Vs. Heeralal and Others, to contend that the Civil Court''s jurisdiction is ousted in the present matter. A perusal of the said decision would show that the same is in respect of the proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, ''the SARFAESI Act''), wherein Section 34 of the SARFAESI Act deals with the ousting of jurisdiction of the Civil Court. The Honourable Supreme Court, while considering the scope of Section 34 of the SARFAESI Act, ousting the Civil Court''s jurisdiction, held that the suit filed therein is not maintainable. The relevant paragraphs 21 and 24 of the said decision are extracted hereunder:

"21. Section 34 of the Securitisation Act ousts the civil court jurisdiction. For easy reference, we may extract Section 34 of the Securitisation Act, which is as follows:

"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)." "

"24. 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 realising 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 the 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. The 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 CPC as well."

25. In my considered view, the scope of Section 34 of the SARFAESI Act and Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, is not one and the same or similar in its application. While Section 34 of the SARFAESI Act contemplates ouster of Civil Court''s jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or the Appellate Tribunal is empowered to determine under the SARFAESI Act, Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act contemplates the bar of jurisdiction only in relation to the matters specified under Section 17 of the Act therein. This aspect has already been discussed in the earlier paragraph of this order. Therefore, the above decision of the Apex Court, which was rendered while considering the scope of Section 34 of the SARFAESI Act, will not help the petitioner/fourth defendant, as I find that the scope of the relevant provisions of the SARFAESI Act and the Recovery of Debts Due to Banks and Financial Institutions Act, as discussed supra, is not one and the same. Even otherwise, a perusal of the factual aspects of the matter before the Honourable Supreme Court in the Jagdish Singh''s case (cited supra) would show that there was no plea of fraud or misrepresentation or failure to follow due procedures. Therefore,

I consider that the said decision in Jagdish Singh''s case (cited supra) is also factually distinguishable.

26. The other Division Bench decision of this Court, relied on by the learned Senior Counsel appearing for the petitioner, is reported in Sri Chandra and S. Chitra Vs. K. Nagarajan and Others, . Again, this decision was made while considering the scope of Section 34 of the SARFAESI Act. A further perusal of the facts of the said case before the Division Bench, would show that the father of the plaintiffs therein was a party to a loan transaction. In the present case, admittedly, the plaintiff is not a party to any of the transaction, nor he was a borrower or guarantor. Therefore, the said decision is also not helping the petitioner in any manner.

27. Next decision relied on by the learned Senior Counsel appearing for the petitioner is reported in V. Thulasi Vs. Indian Overseas Bank, . Here again, the matter pertains to SARFAESI Act, wherein the plaintiff therein was a guarantor and the recovery proceedings were initiated against the plaintiff therein. Therefore, this decision is also not helping the petitioner in any manner.

28. The other decision relied on by the learned Senior Counsel appearing for the petitioner, is reported in 2010 (3) CTC 310 (Punjab National Bank Vs. J.Samseth Beevi), which again would show that the plaintiffs therein are parties before the DRT. Therefore, I am of the view that this decision also is factually distinguishable and not helping the petitioner in any manner.

29. Arguments were also advanced to interpret the scope of Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, dealing with the appeal to the Appellate Tribunal. According to the learned counsel for the respondent/plaintiff, the plaintiff being not a party to the proceedings before the DRT, is not entitled to file any appeal, as sub-section (3) of Section 20 of the said Act contemplates time limit of 45 days from the date of receipt of a copy of the order made by the Tribunal, to file an appeal before the Appellate Tribunal. On the other hand, the learned Senior Counsel appearing for the petitioner/fourth defendant submitted that the appeal can be filed by any person as provided under sub-section (1) of Section 20 of the said Act, and therefore, "any person" shall mean and include even a person who is not a party to the proceedings before the DRT. This Court is not inclined to go into that issue and give a finding on the same, because, the present issue before this Court is as to whether the plaint is liable to be rejected under Order 7 Rule 11 CPC on the ground that the suit is barred by law. As this Court has found that the suit is not barred, the question of considering the appeal provision at this stage, does not arise, as admittedly the respondent/plaintiff was not a party to the proceedings before the DRT.

30. Further, it is to be seen that apart from the first limb of the prayer made in the suit, the plaintiff has also sought for two other reliefs, namely injunction and partition. It is needless to say that those reliefs which are purely of civil nature,

have to be considered and adjudicated upon only by the Civil Court.

31. It is well settled that for considering the application under Order 7 Rule 11 CPC, only the plaint averments as such, have to be taken into consideration to find out as to whether the plaint is liable to be rejected for the grounds referred to in the application under Order 7 Rule 11 CPC. As the plaint in this case has referred to fraud, suppression of facts and invalid proceedings before the DRT, as though they were initiated against a dead person, etc., it is for the plaintiff to establish the same before the trial Court, and therefore, whether there was any fraud or not, etc., as alleged by the plaintiff, is not for this Court to consider the same at this stage and decide based on the counter allegations made by the petitioner/fourth defendant. Therefore, other decisions relied on by the learned Senior Counsel appearing for the petitioner in respect of all these contentions, are not relevant to be referred to at this stage.

32. Considering all the above aspects, I am of the view that the trial Court is justified in rejecting the application filed by the petitioner/fourth defendant for rejection of the plaint. Accordingly, C.R.P.(PD).No. 2496 of 2011 fails and the same is dismissed. No costs. The Miscellaneous Petition is closed.

C.R.P.(PD).No. 941 of 2011:

33. Since this Court has held in C.R.P.(PD).No. 2496 of 2011 that the Court below has got jurisdiction to entertain the suit and considering the fact that the suit is of the year 2010, instead of considering the rival contentions of the parties in respect of the interim order of injunction granted by the trial Court and confirmed by the first appellate Court, this Court is of the view that the main suit itself can be directed to be taken up and disposed of on merits and in accordance with law, without further loss of time. Accordingly, C.R.P.(PD).No. 941 of 2011 is disposed of, with a direction to the trial Court to take up O.S.No. 35 of 2010 and dispose of the same on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. The Miscellaneous Petition is closed.