
(2012) 10 MP CK 0170
In the Madhya Pradesh High Court
Case No : F.A. No. 406 of 2012

Prabha Jain

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 30-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Court Fees Act, 1870 — Section 7(v)(a)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 17, 18, 34
Transfer of Property Act, 1882 — Section 69, 69A

Citation : (2013) 111 BC 571 : (2012) ILR (MP) 2800 : (2013) 1 MPLJ 385

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Advocate : Anand Kumar Jain, for the Appellant; Abhijit C. Thakur and S.P.S. Rai, Government Advocate for Respondents No. 5, for the Respondent

Final Decision : Allowed

Judgement

Ajit Singh, J.—This plaintiffs appeal is against the order dated 10-2-2012 passed by the 5th Additional District Judge, Bhopal, in Civil Suit No. 34-A/2011 whereby he has rejected the plaint under Order 7, Rule 11 of the Code of Civil Procedure. The plaintiff's case is that the suit land was purchased by her late father-in-law vide-sale deed dated 19-6-1967 and after his death on 15-8-2005 the same was inherited in equal shares by her late husband Mahendra Kumar Jain, husband's elder brother Sumer Chand Jain (defendant No. 4) and mother-in-law. After the death of Mahendra Kumar, his 1/3rd share was inherited by the plaintiff. But Sumer Chand Jain without any partition amongst the heirs divided the land into several plots and illegally sold them to different persons. One such plot was also sold to Bhupendra Kumar Sakalle (defendant No. 3) vide registered sale deed dated 30-9-2008 who mortgaged the same with the Central Bank of India (defendant No. 1) for obtaining loan. Defendant No. 2 is an Authorized Officer of the Central Bank of India. The Authorized Officer in order to enforce the security

interest has taken possession of the plot u/s 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "the SARFAESI Act") and thereafter published an advertisement in the newspaper for its auction. In the suit the plaintiff has prayed that the sale deed and mortgage be declared illegal and she be given possession of the suit land after demolishing the construction raised on it. The sale consideration mentioned in the sale deed is Rs. 2,00,000/- and the default amount due to the Central Bank, of India is shown to be Rs. 8,02,972/-. The plaintiff has paid the Court fee of Rs. 1000/- for the relief of declaration, Rs. 100/- for the relief of possession and Rs. 875/- for damages caused to the suit land i.e. total Rs. 1975/-.

2. The Central Bank of India and its Authorized Officer raised an objection under Order 7, Rule 11 of the Code, of Civil Procedure before the trial Court that since security interest created in their favour was being enforced u/s 13 of the SARFAESI Act, the suit is barred u/s 34 of the SARFAESI Act. They also took the objection that as the plaint is written upon paper insufficiently stamped, it be rejected on this ground also. Similar objection regarding insufficient payment of Court fee was taken by Bhupendra Kumar Sakalle in a separate application.

3. The trial Court after hearing the parties by the impugned order allowed the objections and rejected the plaint on the ground that it is barred u/s 34 of the SARFAESI Act. The trial Court has even held that having regard to the valuation of the suit plaintiff has not paid the proper Court fee. We, therefore, have to examine whether the trial Court has committed an illegality in rejecting the plaint.

4. The Recovery of Debts Due to Banks and Financial Institutions, Act, 1993 (in short the RDDBFI Act") was enacted because banks and financial institutions were experiencing considerable difficulties in recovering loans and enforcement of securities charged with them. This Act provided for the establishment of Debts Recovery Tribunals and Debts Recovery Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions. For few years the new dispensation under the RDDBFI Act worked well and the officers appointed to man the tribunals worked with great zeal for ensuring that cases involving recovery of the dues of banks and financial institutions were decided expeditiously. But with the passage of time the proceedings before the tribunals stopped bringing desired results. A committee was, therefore, constituted to suggest measures for expediting the recovery of debts due to banks and financial institutions. The committee in its report made various suggestions for bringing about radical changes in the existing adjudicatory mechanism for facilitating speedy recovery of the dues of banks and also for quick resolution of disputes arising out of the action taken for recovery of such dues. The Government of India accepted the suggestions, and that led to enactment of the SARFAESI Act in the year 2002 by which for the first time the secured creditors have been empowered to take steps for recovery of their dues without intervention of the Courts or Tribunals (See United Bank of India Vs.

5. Section 13 of the SARFAESI Act contains detailed mechanism for enforcement of security interest. Sub-section (1) thereof empowers the secured creditors to enforce the security interest without the intervention of the Court or Tribunal notwithstanding anything contained in section 69 or section 69-A of the Transfer of Property Act. Sub-section (2) enables the secured creditor to call upon the borrower by notice in writing to discharge in full his liabilities within sixty days from the date of notice with an indication that if he fails to do so, the secured creditor shall be entitled to exercise all or any of its rights under subsection (4). Sub-section (3) lays down that the notice issued u/s 13(2) shall contain details of the amount payable by the borrower as also the details of the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower. Sub-section (3-A) provides that if the borrower makes any representation or raises any objection in response to the notice issued u/s 13(2), the secured creditor has to consider such representation or objection and if he comes to the conclusion that such representation or objection is not acceptable, then reasons for non-acceptance are required to be communicated within one week to the borrower. Sub-section (4) of section 13 enumerates various modes which can be adopted by the secured creditor if the borrower fails to discharge in full his liabilities in response to the notice under sub-section (2). Section 17 of the SARFAESI Act speaks of the remedies available to any person, including the borrower, who may have grievance against the action taken by the secured creditor by any of the measures provided under sub-section (4) of section 13. Such an aggrieved person can make an application to the Debts Recovery Tribunal within 45 days from the date on which action is taken under that sub-section. Section 18 provides for an appeal to the Appellate tribunal against any order made by the Debts Recovery Tribunal. We have earlier also made reference of these provisions in *M/s. Seth Banshidhar Kedia Rice Mills Pvt. Ltd. vs. State Bank of India*, AIR 2011 M.P. 205.

6. Section 34 of the SARFAESI Act bars the jurisdiction of Civil Court by declaring that 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 RDDBFI Act.

7. It is now well settled principle of law that there is a strong presumption that Civil Courts have jurisdiction to decide all questions of civil nature. The exclusion of jurisdiction of Civil Courts is, therefore, not to be readily inferred and such exclusion must either be "explicitly expressed or clearly implied". It is a principle by no means to be whittled down" and has been referred to as a ""fundamental rule". As a necessary corollary of this rule provisions excluding jurisdiction of Civil Courts and provisions conferring jurisdiction on authorities and tribunals

other than Civil Courts are strictly construed. The existence of jurisdiction in Civil Courts to decide questions of civil nature being the general rule and exclusion being an exception, the burden of proof to show that jurisdiction is excluded in any particular case is on the party raising such a contention. The rule that the exclusion of jurisdiction of Civil Courts is not to be readily inferred is based on the theory that Civil Courts are Courts of general jurisdiction and the people have a right, unless expressly or impliedly debarred, to insist for free access to the Courts of general jurisdiction of the State. Indeed, the principle is not limited to Civil Courts alone, but applies to all the Courts of general jurisdiction including criminal Courts. (See Principles of Statutory Interpretation by Justice G.P. Singh 13th Edition, 2012 PP 757 to 760).

8. From the scheme of the SARFAESI Act narrated above it is apparent that the Debts Recovery Tribunal has no jurisdiction to decide the question whether persons other than the mortgager had title in the mortgaged property. In that context the validity of the sale deed of a property mortgaged with the Central Bank of India cannot be decided by the Debts Recovery Tribunal. If the sale deed is held to be wholly or partially invalid it will immediately affect the validity of the mortgage of that property. The jurisdiction of Civil Court is ousted in respect of matters which the Debts Recovery Tribunal is empowered to decide. Absence of a provision to enable the Debts Recovery Tribunal for holding an enquiry on a particular question is indicative that jurisdiction of Civil Courts on that question is not excluded. The above question relating to the validity of the sale deed and its consequent effect on the mortgage are matters which the Debts Recovery Tribunal is not empowered to decide; The provision for appeal u/s 17 of the SARFAESI Act by "any person" does not oust the jurisdiction of Civil Court on matters which cannot be decided by the Debts Recovery Tribunal. Therefore, the jurisdiction of the Civil Court to decide these matters cannot be held to be ousted u/s 34 of the SARFAESI Act.

9. We also disagree with the finding of the trial Court that proper Court fee has not been paid by the plaintiff. The plaintiff is not a signatory or party in the sale deed as well as in the mortgage deed. She is, therefore, not required to claim the consequential relief of the cancellation of these documents. And for the relief claimed by her for the declaration of sale deed and mortgage as illegal, she has paid the proper Court fee. The consequential relief which the plaintiff has claimed and which is appropriate in the circumstances of the case is possession of the suit land/plot. The suit land/plot is assessed to the land revenue at Re. 1/-. She has valued this relief at Rs. 20/- and paid Rs. 100/- Court fee as required u/s 7(v) (a) of the Court Fees Act, 1870. The plaintiff has thus paid the proper Court fee.

10. For these reasons we set aside the impugned order dated 10-2-2012 and remand the case to the trial Court for its trial and decision in accordance with law. The appeal is allowed with costs of Rs. 2000/-, which shall be payable to the appellant by respondent Nos. 1 and 2.