

(2014) 07 DEL CK 0303

In the Delhi High Court

Case No : CS(OS) 2296/2009, IAs No. 15685/2009, 12375/2010 and 16711/2013

Radnik Exports

APPELLANT

Vs

Standard Chartered Bank

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 16, 17, 18, 19
Contract Act, 1872 — Section 23, 30
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 17(1), 18, 19, 20
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 34
Specific Relief Act, 1963 — Section 34

Citation : (2014) 6 AD 208 : (2014) 4 BC 232 : (2014) 211 DLT 436 : (2014) 144 DRJ 160

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : S.L. Gupta and Amitabh Krishan, Advocate for the Appellant; Sumit Bansal, Ateev Mathur, Richa Oberoi and Jagriti Ahuja Advs, Advocate for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The plaintiff, a partnership firm has instituted this suit for declaration that the "Structured Currency Option" Agreements dated 14th January, 2008 and 1st February, 2008 entered into between the plaintiff and the defendant Bank are agreements by way of wagers hit by the bar of Section 30 of the Indian Contract Act, 1872 and are consequently void and unenforceable and for permanent injunction restraining the defendant Bank from in any manner acting upon or seeking to enforce any transaction under the said agreements, pleading:-

(i) that the defendant Bank approached the plaintiff to provide credit facilities for the business of exports by the plaintiff firm to United Kingdom;

(ii) that during the discussions in this respect, the defendant Bank advised the plaintiff to enter into a 5-year Foreign Exchange Leveraged Derivative Transaction with the defendant Bank, assuring the plaintiff that this was a completely risk-free transaction;

(iii) on 8th January, 2008 the defendant Bank made the plaintiff sign "ISDA 2000 Master Agreement" containing general terms and conditions to be signed by every customer entering into the suggested Leveraged Derivative Transactions with the defendant Bank and further representing that the specific terms of the Leveraged Derivative Transaction would be contained in an agreement to be signed by the parties later; on the same day i.e. 8th January, 2008 the defendant Bank also sanctioned a short term credit facility to the plaintiff to the tune of US Dollars One Million for a period of 180 days; the said credit facility was not linked to the Leveraged Derivative Transactions in any manner whatsoever; the two were separate transactions, independent of each other;

(iv) on 14th January, 2008 the defendant Bank made the plaintiff sign an "agreement letter" confirming the terms and conditions of Leveraged Derivative Transaction between them called the "Structured Currency Option" bearing reference 4875280 - 4875387;

(v) on 1st February, 2008 another similarly worded agreement called "Structured Currency Option" bearing reference 4997540-4997647 was also entered into between the parties;

(vi) between 11th February, 2008 to 28th April, 2009 the defendant Bank paid to the plaintiff a total sum of Rs. 9,46,000/- under both the aforesaid agreements taken together;

(vii) between 6th February, 2009 to 28th April, 2009 the plaintiff firm paid to the defendant Bank a total sum of Rs. 1,45,61,000/- under both the agreements taken together;

(viii) in or around mid 2009 the plaintiff sought legal advice on the aforesaid Leveraged Derivative Transactions and was advised that the same being in the nature of wagering contracts, were hit by the bar of Section 30 of the Contract Act and were void and unenforceable;

(ix) accordingly, on 22nd May, 2009 the plaintiff wrote to the defendant Bank asking it to resolve the matter and castigating the defendant Bank for misleading and inducing the plaintiffs General Manager (Finance) into executing the agreements without either explaining the ramifications of the same or trying to meet any of the partners of the plaintiff firm;

(x) on 10th November, 2009 the defendant Bank issued notice to the plaintiff calling upon the plaintiff to pay amounts under the two Agreements dated 14th January, 2008 and 1st February, 2008;

(xi) the defendant Bank thereafter issued a notice dated 24th November, 2009 to

the plaintiff of termination of the ISDA 2002 Master Agreement dated 8th January, 2008 owing to the plaintiff having failed to make payment demanded vide notice dated 10th November, 2009; and,

(xii) the plaintiff responded to the said notices pleading that the transactions were void and unenforceable.

2. It may be mentioned that the plaintiff, in the plaint, has also made detailed pleadings as to the nature of the agreements and the transaction thereunder and as to how the same are by way of wager within the meaning of Section 30 of the Contract Act; however for the present purpose it is not necessary to dilate on the said aspect.

3. Summons of the suit and notice of the application for interim relief were issued to the defendant Bank with the observation that if the defendant Bank sought to enforce its rights under the agreement(s), the plaintiff can approach the Court.

4. The defendant Bank has contested the suit, by filing a written statement, on the grounds:-

(a) that the plaintiff was engaged in the business of exports and had considerable export receivables in foreign currency including US Dollars;

(b) that the plaintiff with a view to hedge its US Dollars receivables approached the defendant Bank for various Leveraged Derivative Transactions attached thereto;

(c) that besides the ISDA 2002 Master Agreement dated 8th January, 2008 the plaintiff also executed a generic risk disclosure statement for swaps and Derivatives, a declaration acknowledging awareness of the contents of regulations issued by Reserve Bank of India (RBI) with respect to foreign exchange forward contracts/derivative transactions and of compliance therewith and a Authority and Declaration-cum-indemnity for foreign exchange forward and derivative contract;

(d) that the ISDA 2002 Master Agreement governed all subsequent transactions between the parties;

(e) that the plaintiff acted under the aforesaid Agreements;

(f) that the plaintiff received Rs. 9,46,000/- from the defendant Bank owing to the US Dollar then being at below Rs. 41/-;

(g) however thereafter on account of adverse movement of US Dollar vis-a-vis Indian Rupee the plaintiff started making losses;

(h) though the plaintiff paid Rs. 1,45,61,000/- towards loss incurred till April, 2009 but subsequently started raising false and frivolous objections;

(i) denying that the Agreements were entered into without explaining the

ramifications thereof to the partners of the plaintiff;

(j) knowledge of the plaintiff of the said transactions is also evident from the letter dated 12th June, 2009 of the plaintiff admitting that 80% of their export orders were hedged with Citi Bank or Canara Bank;

(k) the plaintiff was thereafter under the Agreements aforesaid required to make payment of US Dollars 4,000,000 to the defendant Bank which it failed to make and which compelled the defendant Bank to invoke early termination clause of the ISDA 2002 Master Agreement;

(l) a total sum of Rs. 21,62,27,811/- is due from the plaintiff to the defendant Bank along with interest w.e.f. 4th December, 2009 till the date of payment; and,

(m) denying that the Agreements or the transactions thereunder are by way of wager within the meaning of Section 30 supra or void.

I may record that the defendant Bank also in its written statement has made elaborate pleadings as to how the Agreements and transactions thereunder are not by way of wager.

5. The plaintiff has filed replication to the written statement aforesaid of the defendant Bank but need is not felt to refer thereto.

6. The suit languished for admission/denial of documents and for completion of pleadings on applications including the application filed by the plaintiff for furnishing interrogatories to the defendant Bank. The plaintiff at that stage filed IA No. 16711/2013 for amendment of the plaint to also take a plea that the defendant Bank in its dealing with the plaintiff had violated the RBI Guidelines and the agreements and the transactions between the parties were also hit by the provisions of Section 23 of the Contract Act being opposed to public policy.

7. The said application of the plaintiff for amendment of the plaint was listed first on 5th March, 2014 when during the hearing thereof it was enquired from the counsel for the plaintiff whether the defendant Bank had initiated any proceedings for recovery of the amounts claimed by the defendant Bank to be due to it from the plaintiff. The counsel for the plaintiff informed that the defendant Bank had initiated proceedings against the plaintiff before the Debt Recovery Tribunal (DRT) and that the plaintiff was contesting the said proceedings also inter alia on the same grounds as taken in the present suit. It was further informed that the plaintiff had also applied to the DRT for stay of proceedings before the DRT owing to the pendency of the present suit but which application had been dismissed; that the plaintiff had preferred an appeal to the Debt Recovery Appellate Tribunal (DRAT) against the said order and which appeal was pending consideration and vide interim order in which appeal the passing of the final order in the recovery proceedings initiated by the defendant Bank had been stayed.

8. In view of the aforesaid, it was enquired from the counsel for the plaintiff that

if the same issue had been raised in the proceedings before the DRT and was capable of adjudication by the DRT, how the jurisdiction of this Court to decide the said issue was not barred by Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act).

9. The counsel for the plaintiff on 5th March, 2014 contended that the suit having been entertained and having remained pending since the year 2009, the question of maintainability thereof at that stage be not raised; it was further contended that the summons of the suit were issued only after this Court was satisfied of the maintainability thereof.

10. However not finding any order on the file recording such satisfaction, the aforesaid contention of the counsel for the plaintiff was rejected.

11. The counsel for the plaintiff then sought time to address on the aspect of maintainability and the matter was adjourned for the said purpose.

12. The counsels have been heard on the aforesaid aspect of maintainability.

13. The counsel for the plaintiff has referred to:-

A. the order dated 24th October, 2013 of this Court in CS(OS) No. 2230/2009 titled India Glycols Limited Vs. Standard Chartered Bank holding that suit to be maintainable in the light of paragraphs 96, 97, 105 and 110 of Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation, and has contended that the said suit was/is the same as the present suit. (However the order dated 24th October, 2013 neither records the facts of that suit nor contains any discussions save for recording that the suit was found to be maintainable and deciding the preliminary issue "Whether in view of RDDBFI Act, the present suit is maintainable before this Hon'ble Court?" in favour of the plaintiff therein);

B. Nahar Industrial Enterprises Ltd. (Nahar) supra laying down:-

(i) that a plaintiff is the dominus litus; he may institute a suit having regard to the provisions contained in Sections 16 to 20 of the CPC (CPC) in any Civil Court;

(ii) if the jurisdiction of the Civil is not barred or if he, having regard to common law principle is entitled to maintain an action in two different forums, he may choose one of them;

(iii) a debtor, having regard to the provisions of the DRT Act would not be entitled to maintain an action before the DRT; and,

(iv) if a suit is to be transferred from a Civil Court to the DRT, he would lose some rights including the right to prefer an appeal before a higher Court in terms of Sections 96 and 100 of the Code of Civil Procedure, 1908.

C. Indian Bank Vs. ABS Marine Products Pvt. Ltd., to contend that an independent suit of a defendant in the bank's application before the DRT could be deemed to be a counterclaim and can be transferred to the DRT only when the subject matter of the suit of the bank and the suit of the defendant against

the bank is inextricably connected in the sense that the decision in one would affect the decision in the other and if both the parties agree to the independent suit being considered as a counterclaim so that the same could be heard and disposed of by the Tribunal.

14. The counsel for the plaintiff also argued that though the question for adjudication in this suit as well as in the recovery proceedings filed by the defendant Bank against the plaintiff before the DRT is the same but the finding returned thereon by this Court, being a Civil Court, will have precedence.

15. It is also contended by the counsel for the plaintiff that the finding on the plea of fraud can be returned by this Court only, being the Civil Court and not by the DRT.

16. Per contra, the counsel for the defendant Bank has argued:-

I. that there is no plea of fraud in the plaint filed by the plaintiff;

II. that the jurisdiction of the DRT u/s 17 of the DRT Act to decide the claim of the bank includes the power to adjudicate the defence thereto;

III. that the defence to the claim of a bank before the DRT cannot be subject matter of adjudication in a separate proceeding before the Civil Court;

IV. no concurrent proceedings on the same issue are permissible;

V. the Supreme Court in Nahar supra was concerned with the power of transfer of proceedings u/s 24 of the CPC and held that the said power could not be exercised to transfer proceedings to the DRT because it was not a Civil Court;

VI. that Nahar even otherwise was concerned with a counterclaim against the bank and was not concerned with a defence to a claim of the bank (it is clarified that though from the reading of the judgment, the civil suit in Nahar also was only for the relief of declaration but the findings have been rendered treating the same to be a counter claim);

VII. the suit in India Glycols Limited supra, besides for the relief of declaration was/is also for the relief of recovery of monies from the bank; in the present suit only the reliefs of declaration and permanent injunction have been claimed and there is no claim for any money recovery against the defendant bank;

VIII. that the contents of the plaint in the present suit are identical to the written statement of the plaintiff before the DRT;

IX. reliance is placed on paras 105 to 108 of Nahar to contend that the jurisdiction of the Civil Court is ousted in respect of matters contained in Section 18 which have a direct co-relation with Section 17, i.e. to say that the matter must relate to a debt payable to a bank or financial institution;

X. though the suit, in India Glycols Limited, was held to be maintainable by a non-speaking order but the DRT nevertheless, in view of the pendency of the civil

suit before this Court stayed the proceedings before it and which order of the DRT was upheld by the DRAT and the writ petition preferred by the bank against the said order of the DRAT is pending consideration before this Court; thus the issue cannot be said to have stood closed and is very much open for adjudication;

XI. reliance is placed on *The Official Liquidator, U.P. and Uttarakhand Vs. Allahabad Bank and Others*, laying down the purpose for which the DRT Act was enacted and it is contended that entertaining suits as the present one would be counterproductive thereto; and,

XII. the scope of Section 17 of the DRT Act was not subject matter of *Nahar*.

17. The counsel for the plaintiff in rejoinder has again referred to *Nahar* to contend that the Supreme Court was aware, (a) of the possibility of a debtor filing a pre-emptive suit and obtaining orders of injunction but held that the same by itself would not be a ground to oust the jurisdiction of the Civil Court in the teeth of Section 9 of the CPC; (b) as well as the possibility of the disposal of the Civil Suit taking a long time, but held that the remedy of summary and speedy trial itself would not be sufficient to oust the jurisdiction of the Civil Court and that had the intention of the Parliament been so, it could have expressly said so. It is further contended that the present suit was filed before the initiation of the proceedings by the defendant Bank before the DRT and thus on the date of institution was maintainable before this Court as there was no proceeding before the DRT on that date.

18. I have considered the rival contentions.

19. The preamble to the DRT Act describes the same as "an Act to provide for the establishment of tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto"; Section 3 thereof provides for establishment of tribunals to be known as DRTs, to exercise the jurisdiction, power and authority conferred thereon by the Act. Section 17 provides that such a tribunal shall exercise the jurisdiction, power and authority to entertain and "decide" applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. Section 18 provides that no Court or other authority shall have or be entitled to exercise any jurisdiction, powers or authority in relation to the matters specified in Section 17. Section 19, while laying down the procedure to be followed by the DRTs, in sub section (1) thereof provides for filing of an application by the bank or the financial institution which has to recover any debt from any person; in sub section (4) thereof provides for issuance of notice to show cause by the DRT to the person from whom recovery is sought, as to why the relief of recovery prayed for should not be granted; sub section (5) thereof provides for such person from whom recovery is sought to present a written statement of his defence; sub section (20) thereof provides for passing of a final order by the DRT on such application of the bank for recovery, after giving the applicant bank and the defendant an opportunity of being heard.

20. From the procedure prescribed in Section 19 supra, to be followed by the DRT, it is evident that the DRT, in adjudication/decision of the applications of the bank/financial institution for recovery of debts, while deciding on the entitlement of the bank/financial institution to such debt is to also adjudicate/decide the cause shown by the defendant in such application, of the bank/financial institution being not entitled to the relief of recovery sought. If the DRT were to be not authorized, or to not have jurisdiction or power or authority to decide on such defence of the defendant to an application for recovery filed before it, sub sections (4) and (5) of Section 19 would not have provided for issuance of a notice to show cause to such a defendant or for filing of a written statement/defence by such defendant and passing of an order on the application for recovery only thereafter. Were the DRT to have jurisdiction, power and authority to allow or disallow an application by a bank/financial institution for recovery of debt, by considering only the claim of the bank/financial institution and were to not have jurisdiction, power and authority to rule on the merits of the defence of the defendant to such an application, the provisions aforesaid of Section 19 of the Act would not have provided for issuance of notice and opportunity to such defendant to show cause and of passing of the final order on such application of bank/financial institution only after giving opportunity of hearing not only to the bank/financial institution but also to the defendant to such an application of the bank or financial institution. The use in Section 17(1) of the Act of the words "decide applications from the banks and financial institutions for recovery of debts due" entails, in the light of the aforesaid provisions of Section 19 a decision also on the defence raised to such applications. This is further re-enforced from sub sections (6) and (8) of Section 19 which permit a defendant to such an application, to besides presenting his defence, also claim a set-off or make a counterclaim and from sub sections (7) and (9) which provide for such set-off and counterclaim to be having the same effect as a cross suit and which require the DRT to pass a final order not only on the claim of the bank but also on the set-off or counterclaim of the defendant to such an application. This is yet further fortified from Section 20 providing for appeals to the DRAT not only by the bank but also by any person aggrieved from the order of the DRT. If the DRT were not to adjudicate and decide of the defence of the defendant to the application for recovery of debt, there would have been no need to provide for an appeal to the DRAT by such a defendant. Similarly Sections 22 and 23 while providing for powers of the DRT and DRAT and the right to legal representation, treat the applicant bank/financial institution and the defendant equally, by providing for examination of witnesses as well as legal representation, by both. Had the DRT no jurisdiction, power and authority to adjudicate on the defence of the defendant, there would have been no need to provide for legal representation by the defendant or for the defendant to examine witnesses.

21. I thus conclude that the DRT vide Section 17 supra has the jurisdiction, power and authority to decide on the defence to an application for recovery of debt filed before it. Once the DRT is held to have such a power, the jurisdiction of

the Civil Court to declare existence of a state of affairs which is a defence to a claim before the DRT, has to be necessarily held to be barred.

22. That brings me to the judgments cited by the counsel for the plaintiff.

23. As far as India Glycols Limited is concerned, though from a copy of the plaint in that suit handed over after the close of hearing it is found that the relief of declaration claimed therein is identical to the claim in the present suit and similar relief of injunction as claimed in the present suit has also been claimed therein also but in addition thereto relief of recovery of Rs. 18,52,44,000/- was also claimed therein. Not only so, the order dated 24th October, 2013 therein cannot be said to be a precedent as the same neither contains a discussion of facts or law nor the reasons which prevailed with the Court for holding the suit to be maintainable. I therefore do not find myself persuaded by the said order to either follow the view taken therein or to refer the matter to a larger Bench.

24. As far as Nahar is concerned, the question therein as set-out in para 2 of the judgment itself was whether the High Court or the Supreme Court has the power to transfer a suit pending in a Civil Court situated in one State to a DRT situated in another State. However from para 7 of the judgment it is found that the suit before the Civil Court in that case also was for declaration that the Foreign Exchange Derivative Contracts entered into with the bank were illegal and violative of Foreign Exchange Management Act, 1999 as well as the circulars and guidelines issued by the RBI and thus against public policy and for permanent injunction. The High Court, in that case, on an application by the bank in exercise of powers u/s 24 of the CPC, transferred the said civil suit to the DRT before which the bank had initiated recovery proceedings on the basis of the same agreements/transactions. A reading of the judgment shows that the question, whether such a suit per se was maintainable or not and/or of the maintainability thereof before the Civil Court being barred by Section 18 of the DRT Act was not raised and accordingly not decided. It is the settled principle of law (See Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, and Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others,) that a judgment is a precedent on what falls for decision therein and not what may be logically deduced therefrom. I therefore humbly opine that the question, as has arisen here, cannot be said to be not res-integra owing to Nahar.

25. Similarly in Indian Bank also the Supreme Court was concerned with the transfer of civil suit to the DRT.

26. Though in deciding the different issue which arose for adjudication in Nahar and in Indian Bank certain observations came to be made but the same have to be read in the context of what was for decision in the said judgment and cannot even be termed as obiter of the Supreme Court qua the matter at hand.

27. Section 34 of the Specific Relief Act, 1963 enables any person entitled to any legal character or to any right as to any property to institute a suit, against a

person denying or interested to deny his title to such character or right, for a declaration that he is so entitled. It has been held in *Lachhman Das and Others Vs. Arjan Singh and Narhar Raj (died) by LRs. and Others Vs. Tirupathybibi and Another*, that under the said provision negative declaration can also be claimed. It is thus possible, under the said Section 34 to sue for a declaration that the plaintiff is free of debt. Moreover it has been held in *Veruareddi Ramaraghava Reddy and Others Vs. Konduru Seshu Reddy and Others*, , *Supreme General Films Exchange Ltd. Vs. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar and Others*, that Section 34 is not the sole repository for the relief of declaration. That being the legal position, it would be open to every person against whom a bank or financial institution may have a claim for recovery of a debt, to sue in a Civil Court on the same grounds on which he may have a defence before the DRT to such claim of a bank/financial institution, for declaration that he is not a debtor of the bank/financial institution and is not liable to pay any amount to the bank/financial institution. If it were to be thus held that both, the Civil Court as well as the DRT would have jurisdiction to decide whether a person against whom a bank/financial institution has a claim as a debtor, is in fact a debtor or not and/or is liable to pay the amount claimed by the bank or not, the possibility of a conflicting finding being rendered by the Civil Court and the DRT cannot be ruled out and in which case the finding of the Civil Court will prevail over the finding of the DRT as has been held at least by this Court in *Cofex Exports Ltd. Vs. Canara Bank*, . I have also held so in *Sunayana Malhotra and Others Vs. ICICI Bank*, though in the context of *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)*.

28. I have wondered whether such an interpretation would not set at naught the very reason for the enactment of the DRT Act and establishment of the tribunal and whether not the same would lead to a waste of effort on the part of DRT in adjudication, if the same were not binding. The hard realities of life cannot be overlooked/ignored, where every person against whom the bank or financial institution would have a claim before the DRT would be interested in stalling the same and with the said intent approach the Civil Court for declaration aforesaid, as the decision before the Civil Court takes time as has already been noticed by the Supreme Court in *Nahar*.

29. I find the same to be not permissible.

30. The Supreme Court recently in *Standard Chartered Bank Vs. Dharminder Bhohi and Others*, has reiterated that the intendment of the DRT Act is speedy recovery of dues to the bank and the DRTs and DRATs are expected to see to it that an ingenious litigant does not take recourse to dilatory tactics. It was further held that any delay would fundamentally frustrate the purpose of the legislation. The Supreme Court with the said observations set aside the part of the order of the DRAT giving liberty to the auction purchaser of a property to file a civil suit.

31. Notice may also be taken of another recent judgment of the Supreme Court in *Jagdish Singh Vs. Heeralal and Others*, which was concerned with the

maintainability of a civil suit for declaration of title, partition and permanent injunction with respect to a property auctioned under the provisions of the SARFAESI Act vis-a-vis the provision of an appeal u/s 34 thereof. The Supreme Court, after examining the judgments inter alia in Nahar and Indian Bank held that irrespective of the question whether the civil suit is maintainable or not, once a remedy has been provided under the SARFAESI Act, the jurisdiction of the Civil Court would be barred. Reliance was placed on the judgment of the Constitution Bench in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., laying down, in the context of the SARFAESI Act that the prohibition to the jurisdiction of the Civil Court covers matters which can be taken cognizance of by the DRT and that the bar of jurisdiction is in respect of a proceeding which may be taken to the tribunal and that a 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 Supreme Court held that the Civil Court in such circumstances has no jurisdiction to entertain any suit or proceeding in respect of those matters which fall within the jurisdiction of the DRT and held the jurisdiction of the Civil Court to be barred.

32. Applying the aforesaid principles, the jurisdiction of this Court to entertain this suit has to be necessarily held to be barred. It matters not whether on the date of institution of this suit the bank had initiated any proceedings before the DRT or not and whether not any such proceedings are pending or not. As long as the declaration claimed in the suit is the same as the defence which could be raised by the plaintiff to a claim by the defendant Bank before the DRT, the jurisdiction of the Civil Court would be barred. The consequential relief of permanent injunction against recovery would also be thus barred.

33. Notice in this regard may also be taken of Section 34 of the SARFAESI Act which prohibits a Civil Court from granting any injunction in respect of any action "taken or to be taken" in pursuance to any power conferred by or under, not only the SARFAESI Act, but also the DRT Act. Thus, the grant by this Court, of the relief claimed in suit of permanent injunction restraining the defendant Bank from acting upon or seeking to enforce any transaction under the agreements qua which the relief of declaration as void is claimed, is prohibited. The defendant Bank, before the DRT is enforcing its claim against the plaintiff under the said agreements/transactions. The claim of the defendant Bank against the plaintiff, before the DRT, is "an action taken in pursuance of a power under the DRT Act". Section 34 supra, prohibits this Court from injuncting the defendant Bank from agitating its claim against the plaintiff before the DRT.

34. I have wondered that if the jurisdiction of this Court to grant the consequential relief of injunction is barred, can this Court have jurisdiction to grant the relief of declaration and/or should this Court grant the relief of declaration, which, without the consequential relief of injunction, would be a toothless declaration, incapable of saving the plaintiff from the claim of the defendant Bank if the DRT was to conclude otherwise and thus, but a mere scrap

of paper. I am, (without foraying into the aspect of whether the jurisdiction to grant declaration would also be barred) of the view that in these circumstances this Court ought to refuse to grant the relief of declaration also, which is but a discretionary relief. It cannot be forgotten that grant of every injunction entails declaration of rights and no injunction can be granted without adjudicating conflicting rights of the parties. Thus, where grant of injunction is prohibited, such prohibition cannot be circumvented by instead granting declaration. This follows from Section 34 of the Specific Relief Act also which bars making of such a declaration where the plaintiff, able to seek further relief, omits to do so. The only difference here is that though the plaintiff has claimed further relief, such further relief is barred by Section 34 of the SARFAESI Act.

35. I would be failing in my duty if do not record that I have in Sunayana Malhotra supra taken a view that a Civil Court will have jurisdiction, if no proceeding before DRT is initiated. However, the same cannot be said to be good law in view of the subsequent dicta of the Supreme Court in Jagdish Singh supra. In the same vein, reference may also be made to M/s Richa Industries Ltd. and Others Vs. ICICI Bank Limited and Another, where another single Judge, though held the suit for declaration, injunction and damages to be maintainable, refused interim relief. However I do not consider myself bound thereby because the suit was so held maintainable on a prima facie view of the matter and also because FAO(OS) No. 577/2011 preferred there against was disposed off as compromised on 28th February, 2013.

36. The suit is thus found to be not maintainable. The amendment claimed to the plaint does not affect its maintainability. Thus, the suit is dismissed and resultantly the pending applications are infructuous. The plaintiff is also burdened with costs of the suit. Counsel's fee assessed at Rs. 20,000/-.

Decree sheet be drawn up.