
(2010) 12 CHH CK 0027
In the Chhattisgarh High Court
Case No : First Appeal No. 153 of 2010

Smt. Anjana Nagadia

APPELLANT

Vs

Branch Manager, Dena Bank and Another

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 96
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 34, 35

Citation : AIR 2011 Chh 61 : (2011) 3 BC 354 : (2011) 2 MPHT 9

Hon'ble Judges : N.K. Agarwal, J; I.M. Quddusi, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—Heard on admission.

2. The Appellant has filed this appeal u/s 96 of the CPC against the order dated 24-11-2010 passed by the learned Additional District Judge, (FTC), Rajnandgaon in Civil Suit No. 38/2004 rejecting the plaint as not maintainable.

3. The Appellant has filed a civil suit before the Court below for declaration of title over the suit property and permanent injunction. The purpose of getting injunction was that the Plaintiff/Appellant had taken Cash Credit Loan from the Respondent Bank in the year 2004. Limit was extended up to Rs. 9 lac in the year 2008. For the propose of security of the loan two shops, which were constructed on the plot owned by the Appellant, were pledged. Due to default when the notice u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act, 2002") for depositing the amount within sixty days and for attachment of property for the purpose of sale was issued, the Appellant filed the suit in question for declaration of title and injunction. However, the Court below rejected the plaint of the Appellant as not maintainable.

4. Before proceeding further, it is necessary to peruse the provisions of Sections 34 and 35 of the Act, 2002, which are quoted herein below:

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).

35. The provisions of this Act to override other laws.- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

5. Order 7 Rule 11(d) of the CPC also envisages as under:

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

6. In the matter of Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., , the Hon'ble Supreme Court has held that the prohibition contains in Section 34 of the Act, 2002 covers even matters which can be taken cognizance by the Debts Recovery Tribunal though no measure 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 Court 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 Section 13.

7. In the instant case, since the property was pledged to the Respondent Bank and for non-payment of the loan amount the property was attached for the purposes of sale, provisions of the Act, 2002 will be applicable in the instant which bars such suits and grant of injunction. Therefore, we are of the opinion that the learned Court below has rightly rejected the plaint for want of jurisdiction.

8. In the result, the appeal fails and is dismissed in limine. No order as to costs.