**(2013) 07 DEL CK 0487**

**In the Delhi High Court**

**Case No :** Regular First Appeal 222 of 2013 and CM No. 7275 of 2013

Smt. Davinder Kaur — APPELLANT

Vs

Punjab and Sindh Bank and Others — RESPONDENT

**Date of Decision :** 29-07-2013

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Constitution of India, 1950 — Article 226
Delhi Municipal Corporation Act, 1957 — Section 478
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4), 14, 14(2), 17, 17(1)
Specific Relief Act, 1963 — Section 34, 41(h)

**Citation :** (2013) 202 DLT 103

**Hon'ble Judges :** Rajiv Sahai Endlaw, J

**Bench :** Single Bench

**Advocate :** Sanjay Jain and Mr. Jayant Tripathi, Mr. Sarfaraz Ahmad and Ms. Ruchi Jain, for the Appellant; Pratap Singh, for R-1 and Mr. Sandeep Dahiya, for R-2, for the Respondent

**Final Decision :** Dismissed

# Judgement

Rajiv Sahai Endlaw, J.—The appeal impugns the rejection of the plaint under Order VII Rule 11 of the CPC (CPC), 1908 in a suit filed by the appellant and the resultant judgment and decree of dismissal of the suit. The appellant filed the plaint seeking the relief of permanent injunction restraining, (i) the respondent No. 1/defendant No. 1 Punjab & Sindh Bank, (ii) the respondent No. 2/defendant No. 2 Mr. Sandeep Dahiya, Advocate appointed as a Court Receiver in a proceeding u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 and, (iii) the respondent No. 3 Ms. Kiran, from dispossessing the appellant/plaintiff from property No. A-116B, Gulab Bagh, Uttam Nagar, New Delhi belonging to the appellant/plaintiff. It was the case of the appellant/plaintiff that though the property mortgaged with the respondent No. 1 Bank was bearing No. A-116 and the order appointing respondent No. 2/defendant No. 2 as receiver was also with respect to property No. A-116 but in implementation thereof, possession of property No. A-116B of the appellant/plaintiff was being sought to be taken.

2. The respondent No. 1 Bank filed a written statement and reply to the application for interim relief accompanied with an application under Order VII Rule 11 of CPC. The respondent No. 3 Ms. Kiran remained unserved before the Trial Court.

3. It was inter alia the case of the respondent No. 1 Bank that the respondent No. 3 Ms. Kiran was its borrower and had given security of property No. A-116, Gulab Bagh, Uttam Nagar, New Delhi and upon default by the respondent No. 3 Ms. Kiran in re-paying the loans taken by her, the respondent No. 1 Bank had approached the Court of the Metropolitan Magistrate u/s 14 of the SARFAESI Act and which Court had appointed the respondent No. 2 Advocate as the Court Receiver to take possession of the said property No. A-116, Gulab Bagh, Uttam Nagar, New Delhi. It was further the case of the respondent No. 1 Bank that the property claiming injunction with respect to which the suit had been filed, was the same property which had been mortgaged by the respondent No. 3 Ms. Kiran with the respondent No. 1 Bank.

4. The learned Additional District Judge has rejected the plaint on two grounds. Firstly, that a doubt having arisen whether the property owned by the appellant/plaintiff was the same as property mortgaged with the Bank, and secondly, the appellant/plaintiff to have instituted a suit for declaration of his title and not a suit for injunction simpliciter. Reliance was placed on Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others, laying down that in a suit for injunction simpliciter the question of title cannot be adjudicated. The suit for the relief of injunction was thus held not maintainable and barred by Section 41(h) of the Specific Relief Act, 1963. It was further held on the basis of the report of a Local Commissioner appointed by the learned Additional District Judge that the property qua which the suit had been filed was the same property which had been mortgaged with the respondent No. 1 Bank and that the respondent No. 3 had committed a fraud and the provisions of the SARFAESI Act cannot be allowed to be set at naught by unscrupulous persons, who may play fraud with innocent buyers as well as the secured creditors. The plaint was thus also rejected as barred u/s 34 of the SARFAESI Act.

5. Notice of this appeal was issued, though no interim relief granted. The respondent No. 3 remained unserved before this Court also. On 12th July, 2013, the senior counsel for the appellant stated, that the respondent No. 3 was not traceable and had not been served before the Trial Court also; that the respondent No. 3 is the predecessor in interest of the appellant qua the property subject matter of the suit and thus in any case not interested in the lis. On the said statement, the service of the respondent No. 3 was dispensed with and the appeal posted for hearing for today.

6. The senior counsel for the appellant has invited attention to Section 17 and

 

Section 13(4) of the SARFAESI Act and has contended that the remedy of appeal u/s 17 of the said Act is not available to the appellant as the appellant is not a person aggrieved within the meaning of Section 17 of the Act. With reference to the order dated 30th August, 2012 of the ACMM, Delhi on the application of the respondent No. 1 Bank u/s 14(2) of the Act, it is argued that the direction in the said order is for taking possession of property No. A-116, Gulab Bagh, Uttam Nagar, New Delhi only and not property No. A-116B, Gulab Bagh, Uttam Nagar, New Delhi belonging to the appellant. It is thus argued that since the appellant is not aggrieved from the said order also, the appellant is not required to, u/s 17, go before the Debt Recovery Tribunal and the suit is thus not barred u/s 34 of the SARFAESI Act.

7. Qua the other ground given by the learned Additional District Judge of Section 41(h) of the Specific Relief Act, it is contended that the Court at the stage of Order VII Rule 11 of CPC could only see the contents of the plaint and as per which the suit for injunction was maintainable and the learned Additional District Judge has erred, while considering an application under Order VII Rule 11 of CPC, in considering the defence of the respondent No. 1 Bank.

8. As far as the reasoning in the impugned judgment, of the suit being barred by Section 41(h) of the Specific Relief Act is concerned, the senior counsel for the appellant does not controvert the position in law as laid down in Anathulla Sudhakar supra. The Supreme Court in the said judgment has held that in a suit for injunction simpliciter, the question of title is ordinarily not to be adjudicated and the parties are best left to be relegated to a suit for declaration for the said purpose.

9. It has in the circumstances been enquired that whether not the threatened action by the respondent No. 1 Bank qua which injunction was claimed put a cloud on the title of the appellant to the property. It has further been enquired whether the Court, even if not in exercise the powers under Order VII Rule 11 of CPC, can exercise powers under Order XV of CPC or otherwise not entitled to terminate the proceedings in the suit, once it is found that going further with the remaining proceedings would be a meaningless exercise and not serve any purpose.

10. The senior counsel for the appellant fairly agrees to the aforesaid position; he has however contended that in the present case the occasion for the appellant to seek the relief of declaration of her title did not arise since the respondent No. 3 from whom the appellant is claiming title has not challenged the title of the appellant. It is contended that only if the respondent No. 3 controverts the title of the appellant to the subject property would the appellant have been required to sue for the relief of declaration.

11. I am unable to agree. Section 34 of the Specific Relief Act does not, while providing for the relief of declaration, carve out any such distinction. The respondent No. 1 Bank in the present case is claiming through the respondent

 

No. 3 only and the doubt cast by the respondent No. 1 Bank on the title of the appellant was sufficient for the appellant to have claimed the relief of declaration.

12. Be that as it may, I am of the opinion that though the learned Additional District Judge had not discussed the bar to the suit u/s 34 of the SARFAESI Act in detail in law but the jurisdiction of the Civil Court was barred to entertain a suit. Attention of the senior counsel for the appellant in this regard is invited to Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., where the Supreme court has clearly held that the jurisdiction of the Civil Court to entertain a suit with respect to matters qua which the jurisdiction has been conferred in the Debt Recovery Tribunal u/s 17 of the Act, is barred. Though the Supreme Court while holding so has carved out an exception of fraud but the senior counsel for the appellant inspite of attention being invited to the said exception has not pleaded or argued that the present case falls in the said exception.

13. The argument on the contrary is, that since the action taken by the respondent No. 1 Bank with respect to its secured asset being a property bearing a number different from the property of the appellant/applicant is illegally directed against the property of the appellant, the remedy of civil suit is available.

14. I am unable to agree. The language of Section 17 is wide enough to include persons having whatsoever grievance against the measures taken u/s 13(4) of the Act. The action of the respondent No. 1 Bank qua which injunction is sought is undoubtedly in exercise of powers u/s 13(4) of the Act. The Supreme Court in United Bank of India Vs. Satyawati Tondon and Others, has held that the expression ''any person'' used in Section 17(1) takes within its fold not only the borrower but also the guarantor or any other person who may be affected by the action taken u/s 13(4) or Section 14 and that the Debt Recovery Tribunal (DRT) and Debt Recovery Appellate Tribunal (DRAT) are empowered to pass interim orders and required to decide the matters within a fixed time schedule providing expeditious and effective remedies to an aggrieved person. I am also of the opinion that if it were to be held that merely on the averment, of the number of the property against which action is being taken being different from the number of the property in the records of Bank, the jurisdiction of the Debt Recovery Tribunal were to be held to be ousted, would be in negation of the bar created u/s 34 of the Act to the jurisdiction of the Civil Court.

15. Though the senior counsel for the appellant has in this regard sought to show from report of the Local Commissioner appointed by the learned Additional District Judge that the conclusion drawn by the Commissioner that the property of the appellant is the same as the property which was mortgaged is erroneous in the face of the contents of the report but in my opinion, the said report of a Local Commissioner appointed by the Civil Court also cannot be seen. The bar to the jurisdiction of the Civil Court, u/s 34 of the SARFAESI Act, is a bar at the threshold and the Civil Courts are barred from even entertaining the suit. This court in G.C. Sharma Vs. Municipal Corporation of Delhi, in the context of Section 478 of the Delhi Municipal Corporation Act, 1957 also barring ''institution of the

suit'' held that once the suit is found to be bared, no investigation into the facts is required to be done. Once that is so, no reliance can be placed on any proceedings which may have taken place before the Civil Court and which proceedings were barred and without jurisdiction.

16. Once the action by the respondent No. 1 Bank with respect to the property of the appellant is found to be in exercise of powers u/s 13(4) of the Act and the remedy where against is before the DRT u/s 17 of the Act, the bar of Section 34 is complete. Reference in this regard can be made to Sadanand Properties Pvt. Ltd and Others Vs. Punjab National Bank and Others , Sushma Suri and Another Vs. Mahamedha Urban Cooperative Bank Ltd. and Others, and K.R. Radhakrishnan Vs. K and N Trade and State Bank of India,

17. The senior counsel for the appellant has then sought to argue that Section 17 of the Act is not an appropriate remedy as the appellant would have to pay the fee etc. and deposit the amount. However, that was the position prior to the amendment of the SARFAESI Act, pursuant to the judgment in Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., Now, after the amendment, the appellant would not be required to make any deposit or pay any substantial fee u/s 17 of the Act.

18. The senior counsel for the appellant has also contended that the appeal u/s 18 requires the appellant to deposit 50% of the amount. Though jurisdiction has been vested in the DRAT to reduce the said amount to 25% but in my opinion that also does come in the way of bar to the jurisdiction of the Civil Court inasmuch as it has been held in Narayana Chandra Ghosh Vs. UCO Bank and Others, Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, the The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, and M/s. Timpack Pvt. Ltd. Vs. Punjab National Bank that a right of appeal is a statutory right and merely because the appeal is made subject to deposit is no ground for holding the same to be ineffective or for invoking jurisdiction of the Civil Courts or of the High Courts under Article 226 of the Constitution of India.

19. Thus, whichsoever way we see, the suit filed by the appellant cannot be held to be maintainable and there is thus no merit in this appeal, which is dismissed.

20. The counsel for the appellant seeks some time to approach the Debt Recovery Tribunal and protection during the said period.

21. The counsel for the respondent No. 1 Bank informs that the respondent No. 1 Bank will have to approach the ACMM for obtaining fresh orders and thus the Bank is unlikely to take any coercive steps within next fifteen days.

22. The appellant shall accordingly have liberty to approach the Debt Recovery Tribunal with the said time. No costs. Decree sheet be drawn up.