
(2015) 07 CAL CK 0005
In the Calcutta High Court
Case No : C.O. 1590 of 2015

State Bank of India and Others

APPELLANT

Vs

Ramkrishna Builders and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(d), 9
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 1
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 13, 17, 31(h), 34, 35

Citation : (2015) 132 SCL 703

Hon'ble Judges : Ashis Kumar Chakraborty, J

Bench : Single Bench

Advocate : Swarup Banerjee, H.C. Yadav, S.N. Mishra and Chandan Kumar Lal,
for the Appellant

Final Decision : Disposed off

Judgement

Ashis Kumar Chakraborty, J.—This revisional application has been filed by State Bank of India and its officers, the defendants in Title Suit No. 411 of 2012 filed by the opposite party No. 1/plaintiff the constituent of the bank.

2. In spite of service of the application the opposite party No. 1 has not appeared before this Court to contest this application. In these circumstances, this application was taken up for hearing in the absence of the opposite party No. 1.

3. In this application the petitioners have challenged the Order No. 15 dated March 24, 2015 passed by the learned Judge, 13th Bench, City Civil Court at Calcutta in Title Suit No. 411 of 2012 rejecting an application under Order 7 Rule 11(d) of the Code of Civil Procedure.

4. The ground on which the petitioner No. 1, being the defendant No. 1 in the said suit, filed the application for rejection of the plaint is that from the plaint filed in the said suit it is evident that the opposite party No. 1/plaintiff has filed

the said suit challenging the notices issued by the petitioner No. 1 bank under sub-sections (2) and 4(a), Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act of 2002") in respect of the secured asset being the immovable property mortgaged by the opposite party No. 1/plaintiff to secure the repayment of loan obtained from the defendant No. 1 bank. By the impugned order the learned Court below held that since the claim of the defendant No. 1 bank against the opposite party No. 1/plaintiff is Rs. 6,10,111/- which is less than the Rs. 10 lakhs, the suit is not barred under the Act of 2002 and the City Civil Court has the pecuniary jurisdiction to try the suit.

5. It is the well settled principle of law that for the purpose of deciding an application under Order 7 Rule 11 of the Code the averments contained in the plaint filed in the suit should be treated as true and correct. In the instant case from the averments made in the plaint filed in the suit it is evident that the cause of action of the opposite party No. 1/plaintiff in the suit is receipt of the notices under sub-sections (2) and Section (4)(a) of the Act of 2002 issued by the defendant-bank.

6. In the plaint filed in the said suit the opposite party No. 1 claimed declarations that the notices issued by the bank under sub-section (2) and 4(a) Section 13 of the Act, 2002 are void, the bank has no right to demand from it any amount under sub-section (2) and 4(a) of Section 13 of the Act of 2012 and the defendant bank and its officers have no right to demand possession of the mortgaged property mentioned in the said notices under the Act of 2002 and consequential reliefs of permanent injunction.

7. In support of his contention that the said suit filed by the opposite party No. 1/plaintiff is barred by law, Mr. Swarup Banerjee appearing for the petitioner bank submitted that in view of the provisions contained in Sections 17 and 34 of the Act of 2002, the actions taken by the petitioner bank in this case under the provisions of sub-section (2) and 4(a) of Section 13 of the Act of 2002 cannot be challenged in a suit before any Civil Court.

8. Mr. Banerjee strenuously urged that in view of the provisions contained in Sections 34 and 35 of the Act of 2002 the civil court does not have the jurisdiction to entertain any suit or proceeding in respect of the dispute raised by the opposite party No. 1/plaintiff with regard to the notices issued by the petitioner bank under sub-section (2) and (4) of Section 13 of the Act of 2002 and the remedy of the opposite party No. 1/plaintiff lies in a filing an appeal before the Debts Recovery Tribunal or the Appellate Tribunal, under Section 17 of the Act of 2002. He further submitted that the trial court rejected the application of the defendant/petitioner under Order 7 Rule 11(d) of the Code by holding that since the claim of the petitioner-defendant bank is less than ten lakh rupees, in view of the sub-section (4) of Section 1 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "RDB Act"), the Debts Recovery Tribunal does not have the jurisdiction to decide the validity of

actions of the bank against the plaintiff under the provisional of the Act of 2002 and the City Civil Court at Calcutta has the pecuniary jurisdiction entertain the suit of the plaintiff. According to him in the instant case, the impugned order passed by the learned court below rejecting the application of the defendant No. 1 petitioner under Order 7 Rule 11(d) of the Code is patently illegal.

9. In support of his contention that the said suit filed by the opposite party No. 1/ plaintiff before the learned court below is not maintainable in view of the provisions contained in sections 17 and 34 of the Act of 2002, Mr. Banerjee relied upon the decisions of the Supreme Court in the cases United Bank of India Vs. Satyawati Tondon and Others, AIR 2010 SC 3413 : (2010) 3 BC 495 : (2010) 3 CompLJ 585 : (2010) 7 SCALE 696 : (2010) 8 SCC 110 : (2010) 9 SCR 1 : (2010) 9 UJ 4395 : (2010) AIRSCW 7049 : (2010) AIRSCW 5267 and Jagdish Singh Vs. Heeralal and Others, (2014) 1 ABR 124 : (2014) 2 AD 647 : (2013) 11 AD 624 : AIR 2014 SC 371 : (2013) 4 BC 744 : (2013) 117 CLA 173 : (2014) 1 CompLJ 307 : (2014) 1 CTC 652 : (2013) 14 JT 173 : (2013) 13 SCALE 359 : (2014) 1 SCC 479 : (2014) 2 SCJ 460 .

10. Since the in the said suit the opposite party No. 1 has challenged the notice under sub-section (2) and 4(a) Section 13 of the Act of 2002 the said provisions are extracted below.

"13. Enforcement of security interest-

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

(3)

(3A).....

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset:

PROVIDED that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

PROVIDED FURTHER that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt." Section 17 of the Act confers a right of appeal to any person, (including the borrower) if that person is aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 taken by the secured creditor to the Debts Recovery Tribunal."

11. It is now well settled that the expression "any person" used in Section 17 of the Act is of wide import and the said expression includes not only the borrower but also the guarantor or any other person who may be affected by the action taken by the secured creditor under sub-section (4) of Section 13 of the Act of 2002. In this regard reference may be made to the decision of the Supreme Court, in the case of United Bank of India Vs. Satyawati Tondon and Others, AIR 2010 SC 3413 : (2010) 3 BC 495 : (2010) 3 CompLJ 585 : (2010) 7 SCALE 696 : (2010) 8 SCC 110 : (2010) 9 SCR 1 : (2010) 9 UJ 4395 : (2010) AIRSCW 7049 : (2010) AIRSCW 5267 , cited by Mr. Banerjee. Therefore, the expression "any person" referred to in Section 17 also includes the opposite party No. 1, the plaintiff in the said suit.

12. Since Mr. Banerjee contended that the said suit filed by the opposite party No. 1/plaintiff is barred in view of Sections 34 and 35 of Act, said Sections are extracted hereinbelow:

"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."

13. In the case Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc.

Etc., AIR 2004 SC 2371 : (2004) 2 BC 397 : (2004) 120 CompCas 373 : (2004) 2 CompLJ 209 : (2004) 2 CTC 759 : (2004) 4 JT 308 : (2004) 138 PLR 271 : (2004) 4 SCALE 338 : (2004) 4 SCC 311 : (2004) 51 SCL 513 : (2004) 3 SCR 982 : (2004) 2 UJ 980 : (2004) AIRSCW 2541 : (2004) 3 Supreme 243 while deciding the validity of the Act of 2002 the Supreme Court held that the full reading of Section 34 of the Act shows that the jurisdiction of the civil court is barred in respect of matters which a Debt Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken or to be taken in pursuance of any power conferred under the Act of 2002. The Supreme Court held that the jurisdiction under Section 34 of the Act of 2002 covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under Section (4) of Section 13 of the said Act.

14. The Act of 2002 has created statutory interest 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 of the Act provides for various measures that can be taken by the secured creditor against the secured asset for recovery of its debt from the borrower. One of such measures provided by the statute is to take possession of the secured assets of the borrowers, including the right to transfer by way of lease, assignment or sale for realizing the secured assets and any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has the statutory right of appeal to the Debts Recovery Tribunal under Section 17 of the Act. In the case of Jagdish Singh (supra) cited by Mr. Banerjee the Supreme Court held that the expression "in respect of any matter" referred to in Section 34 of the Act of 2002 would take in the "measures" provided under sub-section (4) of Section 13 of the Act and if any person has got any grievance against any "measures" taken by the borrower under the said provision, the remedy open to him is to approach the Debts Recovery Tribunal or the Appellate Tribunal and not the civil court. The Supreme Court held that Section 35 of the Act of 2002 expressly provides that the said Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 of the Code of Civil Procedure, 1908 as well.

15. The scope and effect of Section 34 of the Act also fell for consideration before the Supreme Court in the case of Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Ltd. and Others, (2014) 5 JT 75 : (2014) 3 RCR(Civil) 501 : (2014) 4 SCALE 484 : (2014) 6 SCC 1 . In the said case one of the questions of law raised before the Supreme Court was whether the tenants of a secured asset can have remedies under the tenancy law of the State of Maharashtra, under Maharashtra Rent Control Act, 1999 to move the appropriate Court having jurisdiction and obtain the relief of injunction against the secured creditor from taking possession of the secured asset under sub-section 4 of section 13 of the Act of 2002 The Supreme Court answered the said question of law in the negative in view of Section 34 of the Act of 2002.

16. In the impugned order the learned court below has held that since Sub-section (4) of Section 1 of the RDB Act provides that the provisions of the said Act shall not apply where the amount of debt to this bank or financial institution is less than ten lakhs rupees, and in this case as the dues of the petitioner bank is less than rupees ten lakhs, the Debts Recovery Tribunals constituted under the said Act, cannot entertain an appeal under Section 17 of the 2002 Act against the steps taken by the petitioner bank against the opposite party No. 1/plaintiff under sub-section (4) of Section 13 and as the claim of the petitioner bank, against the opposite party No. 1 is less than rupees ten lakhs, City Civil Court has the jurisdiction to entertain the suit.

17. Section 31(h) of the Act of 2002 provides that the provisions of the Act of 2002 shall apply to any security interest for securing repayment of any financial asset exceeding one lakh rupees. However, Section 17 of the 2002 Act being a provision of a subsequent special statute confers the appellate jurisdiction on the Debts Recovery Tribunal to decide an application of any person aggrieved by any measure adopted by the secured creditor under sub-section (4) of Section 13 of the Act of 2002. Sub-section (4) of Section 1 the RDB Act relates to the original jurisdiction of the Debts Recovery Tribunal to entertain an application of the banks or financial institutions for recovery of their dues from the borrowers under the said Act and by no means the said provisions can be construed to have any bearing on the jurisdiction conferred by the Act of 2002 to entertain an appeal under Section 17 of the said Act against any decision of the secured creditor under sub-section (4) of Section 13 of the Act of 2002. Section 35 of 2002 Act provides that the provisions of the said Act shall have overriding effect on any provision of any Act, which is inconsistent with the provisions of the said Act.

18. For all the aforesaid reasons, I have no hesitation to hold that the suit, filed by the opposite party No. 1 is not maintainable and the impugned decision of the learned court below rejecting the application under Order 7 Rule 11(d) of the Code cannot be sustained. Accordingly, the order being No. 15 dated March 24, 2015 passed by the learned Judge, 13th Bench, City Civil Court at Calcutta in Title Suit No. 411 of 2002 is set aside. The plaint filed in Title Suit No. 411 of 2002 before the Court of the learned Judge 13th Bench, City Civil Court at Calcutta stands rejected.

19. With the aforesaid directions, C.O. 1590 of 2015 stands disposed of. However, there shall be no order as to costs.