

(2007) 10 KAR CK 0017
In the Karnataka High Court
Case No : C.R.P. No. 397 of 2007

Vysya Co-operative Bank Ltd.

APPELLANT

Vs

Ms. G. Keerthana and Others

RESPONDENT

Date of Decision : 25-10-2007

Acts Referred:

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 34

Citation : AIR 2008 Kar 25 : (2008) 2 KarLJ 380 : (2008) 1 KCCR 423

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Ganapathi Hegde, for Dua Associates, Rayappa Y. Hadagali and S.R. Ravi Prakash, for the Appellant; Mahantesh Deviprasad Shetty, for Jayakumar S. Patil Associates, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This civil revision petition u/s 115 of Code of Civil Procedure, by the second defendant in O.S. No. 82 of 2006, on the file of the Additional Civil Judge (Sr. Dn.), Tumkur, which is a suit for partition filed by the respondents 1 and 2, minors represented by their mother as guardian and next friend, impleading the third respondent-father as first defendant and the petitioner-Bank as the second defendant, wherein the trial Court has answered a preliminary issue regarding jurisdiction of the Civil Court raised at the instance of the petitioner, in terms of the order dated 5-4-2007 holding that the Court has jurisdiction to try the suit, is for setting aside this order in this revision petition.

2. It appears, the petitioner-Bank had taken the defence that the suit itself is not tenable in view of the provisions of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the Act); that the petitioner-Bank, in whose favour the subject properties as mentioned in the schedule to the suit, which is also the subject-matter of suit for partition, had been mortgaged for the monies borrowed by the

first defendant-father of the plaintiffs 1 and 2; that the bank had taken shelter u/s 13 of the Act for taking the possession of the properties; that it had already taken possession of the properties; that the very plaintiffs had made an attempt to get over such action by filing an application u/s 17(1) of the Act before the Debts Recovery Tribunal, Bangalore, but the Tribunal having rejected that appeal u/s 17(1) of the Act, thereafter have filed the present suit, which is not a bona fide suit; that proceedings having already been taken before the Tribunal by the very party. Civil Court is barred from entertaining the suit. It is therefore urged in the petition that the finding recorded by the trial Court that the suit is maintainable before the civil suit, is not tenable, calls for setting aside and dismissal of the suit etc.

3. Submission of Sri Ganapathi Hegde, learned Counsel for the petitioner is that Section 34 of the Act is a clear bar for maintaining a civil suit in respect of the subject-matter which is governed under the provisions of the Act and in respect of which proceedings can had taken before the Debts Recovery Tribunal; that in fact against the very properties, proceedings have already been initiated and having failed before the Tribunal, a second round of litigation in the form of civil suit is not maintainable and, therefore, the answer on the preliminary issue regarding the maintainability of the suit for want of jurisdiction of Civil Court should have been in favour of the petitioner and against the respondent.

4. Section 34 of the Act reads as under:

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).

5. A perusal of this statutory provision indicates that the exclusion of jurisdiction of the Civil Court is in respect of matters which can be taken before the Debts Recovery Tribunal for adjudication. The suit filed by the respondents 1 and 2 before the Civil Court is a suit for partition. It is very obvious that the Tribunal or the appellate Tribunal is not the competent forum to adjudicate a suit for partition. The present suit filed by the respondents 1 and 2-minor children of third respondent assuming to be a collusive one, it is nevertheless a suit which can be adjudicated only by a Civil Court and not by the Debts Recovery Tribunal or the appellate Tribunal. In fact, the Debts Recovery Tribunal or the appellate Tribunal has no jurisdiction to entertain a suit of this nature. If so as a consequential corollary Civil Court necessarily continues to have jurisdiction and in fact Civil Court only can adjudicate a matter of this nature, unless the parties have recourse to any other informal forum of resolution of the dispute by choice.

6. Even though the learned Counsel for the petitioner submits that the subject-matter of the suit, is a property mortgaged in favour of the Bank and in respect

of which the bank had already taken proceedings under the Act and had taken possession of the very property and, therefore, it should be construed that Section 34 of the Act is attracted to oust the jurisdiction of the Civil Court, I am unable to accept this submission for the simple reason that the right of the bank in whose favour the properties are mortgaged is only that of a secured creditor. That right remains intact. It is for the enforcement of that security the bank invokes the provisions of the Act. Whether it invokes the provision of Section 13 or approaches the Debts Recovery Tribunal for recovery, it is only for the enforcement of the security or recovery of the amount in respect of the amount lent by the bank. There is absolutely no embargo for such a course of action even if the civil suit for partition is filed involving the very property as subject-matter and is decreed also.

7. It is also to be noticed that the petitioner-Bank is only a mortgagee and legally and technically, the title suit remains with the mortgager and if at all the respondents 1 and 2-plaintiffs in the suit should succeed in the suit also, that will in no way defeat the rights of the petitioner-Bank as if assuming that the plaintiffs get a share in the properties, it will be subject to the mortgage in favour of the petitioner-Bank. But such aspects are not one which have the effect of excluding the jurisdiction of the Civil Court to entertain a partition suit even in respect of the same properties. It is for this reason, I hold that the learned trial Judge has rightly answered the preliminary issue regarding the maintainability of the suit before the Civil Court. There is absolutely no error or illegality or material irregularity in the impugned order and, therefore, this revision petition is dismissed.