

(2014) 12 CAL CK 0066
Calcutta High Court
Case No: G.A. No. 914 of 2014

Mangalam Fiscal Services Pvt.
Ltd.

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision: Dec. 3, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 9
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13, 13(2), 13(4), 14, 14(1)(A)

Citation: (2015) 1 CHN 22 : (2015) 2 WBLR 602

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Advocate: Satarup Banerjee, Advocate for the Appellant; Ranjan Bachawat, Sr. Advocate and Sreyea Basu Mallick, Advocate for the Respondent

Judgement

Soumen Sen, J.

This application is at the instance of the defendant Bank for rejection and or dismissal of the plaint on the ground that the suit is barred under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act).

2. The plaintiff has instituted the suit on 18th December, 2013 praying, inter alia, for a declaration that the classification of the account of the plaintiff borrower in the cash credit account maintained with the bank as non-performing asset is bad and all measures taken on the basis of such classification is invalid and unforeseeable.

3. The plaintiff is a constituent of the defendant bank. The plaintiff availed cash credit facility to the tune of Rs. 4.50 crores in terms of a letter of sanction dated 25th June, 2007. The account was classified as non-performing asset on 8th July, 2013. According to the defendant such classification was made following the Reserve Bank

guidelines. The defendant had issued a notice under Section 13(2) of the SARFAESI Act followed by measures taken under Section 13(4) of the SARFAESI Act. The possession notice was issued on 3rd December, 2013. The plaintiff following measures taken by the Sate Bank of India has filed an appeal under Section 17 of the SARFAESI Act being S.A. No. 1447 of 2013 on 26th December, 2013. Admittedly, the suit was filed subsequent to the measures being taken by the defendant and also the appeal preferred by the plaintiff before the Debt Recovery Tribunal.

4. The learned Counsel appearing on behalf of the bank submits that the suit is barred under Section 34 of the SARFAESI Act.

5. Section 34 of the SARFAESI Act is the ouster clause. The said Section oust the jurisdiction of the Civil Court. The said Section reads:--

"S. 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)."

6. The scope of the said section was considered by the Hon"ble Supreme Court in [Mardia Chemicals Ltd. Vs. Union of India \(UOI\) and Others Etc. Etc.,](#) .

7. The said decision was subsequently followed in [Jagdish Singh Vs. Heeralal and Others,](#) and the [Standard Chartered Bank Vs. V. Noble Kumar and Others,](#) .

8. In Standard Chartered Bank (supra), the Hon"ble Supreme Court in paragraph 37 referred to three modes of taking possession of the Secured Assets by the Secured Creditors which are as follows:--

"i) The first method would be where the secured creditor gives the requisite notice under rule 8(1) and where he does not meet with any resistance. In that case, the authorized officer will proceed to take steps as stipulated under rule 8(2) onwards to take possession and thereafter for sale of the secured assets to realize the amounts that are claimed by the secured creditor.

ii) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under rule 8(1) is given. In that case he will take recourse to the mechanism provided under section 14 of the Act viz. making application to the Magistrate. The Magistrate will scrutinize the application as provided in section 14 and then if satisfied, appoint an officer subordinate to him as provided under Section 14(1)(A) to take possession of the assets and documents. For that purpose the Magistrate may authorize the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.

iii) The third situation will be one where the secured creditor approaches the Magistrate concerned directly under section 14 of Act. The Magistrate will thereafter scrutinize the application as provided in section 14 and then if satisfied, authorize a subordinate officer to take possession of the assets and documents and forwards them to the secured creditor as under clause (ii) above.

9. The Hon^{ble} Supreme Court thereafter noticed Mardia Chemicals (supra) and held in paragraph 37:--

"In this connection, it is material to refer to the judgment in Mardia Chemicals wherein the Court was concerned with the legality and validity of the SARFAESI Act. The court held the Act to be valid except Section 17(2) thereof as it then stood. In paragraphs 59, 62 and 76 of the Judgment the Court in terms held that in remedy under Section 17 of the Act was essentially like filing a suit in a Civil Court though it was called an Appeal. It is also relevant to note that in the ultimate conclusions in paragraph 80 of the judgment this Court held below:--

"As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debts Recovery Tribunal."

10. The grievance of the respondent that it will be left with no remedy is, therefore, misplaced. As held by a bench of three Judges in Mardia Chemicals, it would be open to the borrower to file an appeal under Section 17 any time after the measures are taken under Section 13(4) and before the date of sale/auction of the property. The same would apply if the secured creditor resorts to Section 14 and takes possession of the property with the help of the officer appointed by the Magistrate.

11. The scope of Section 34 came up for consideration in the said Mardia Chemicals (supra) In paragraph 50 of the said judgment the Hon^{ble} Court held:

"It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under Sub-section (4) of Section 13, it is submitted by Mr. Salve, one of the counsel for the Respondents that there would be no bar to approach the Civil Court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Sri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the Civil Court is barred in respect of matters which a Debts 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 this Act". That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measures 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 courts 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 the Section 13."

12. Elaborating on these aspects, the Hon"ble Supreme Court in Jagdish Singh (supra) in paragraphs 22 and 23 held:--

"Statutory interest is being created 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 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person arrived by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no Civil Court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation act to determine. The expression in respect of any matter referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently, if any aggrieved person has got any grievance against any "measures" taken by the borrower under Sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the Civil Court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9, Code of Civil Procedure as well. We are of the view that the Civil Court jurisdiction is completely barred, so far as the "measures" taken by a secured creditor under Sub-section (4) of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal to determine as to whether there has been any illegality in the "measures" taken."

13. A perusal of the plaintiff shows that in the suit the plaintiff is seeking to challenge measures that had already been taken by the bank. The plaintiff is not remediless. In fact, the plaintiff has filed an appeal under Section 17 of the SARFAESI Act. The said appeal is pending.

14. In view thereof, the suit is barred by law and stands dismissed.

15. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.