IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC
AT : HUBBALLI.

Dated this the 5th day of January, 2024

PRESENT: **Sri. Rajashekhar M. Tilaganji,**
B.Com. LL.M., PGDBS
Prl. Civil Judge & JMFC,
HUBBALLI.

O.S. No.654/2021

PLAINTIFF: Sri. Sangeeta W/o Santosh Gujarati,
Age: 42 years, occ: Housewife,
R/o Jamadar galli, Chitaguppi Chawl,
Ganeshpeth, Hubballi.

(By Sri. B.S.Asundi, Advocate)

-*Versus*-

DEFENDANTS:The Manager,
Canara Bank, Station Road,
Hubballi and another.

(By Sri. V.N. Bhat and Sri. M.R.M Advocates)

PARTIES TO I.A.No.I

APPLICANT: Sri. Sangeeta W/o Santosh Gujarati,
Hubballi.

-*Versus*-

OPPONENT: The Manager,
Canara Bank,

ORDERS ON I.A.NO.I

The plaintiff has filed this suit against defendant for the relief of Permanent Injunction.

2. I.A.No.I filed by plaintiff under Order 39 Rules 1 and 2 R/w.Sec.151 of C.P.C., praying to grant temporary injunction order against the defendant, their representatives, men and agent and any person or person acting on their behalf from interfering in the suit property and restraining them from disposing the plaintiff from the suit property in any manner till pending disposal of the case.

3. In support of this IA, affidavit is filed by the plaintiff and submitted that, plaintiff is in actual and peaceful ownership use and enjoyment and in physical possession of the suit property. Plaintiff is the bonafide purchaser of the suit property and enjoying the suit property since from the date of purchase. He availed a bank loan of Rs.21,00,000/- from defendant and he has remitted about Rs.5,00,000/-. The defendants are intending to dispossess the plaintiff from the suit property. Many times he requested the defendants not to dispossess, but the defendant is not to heed his request. If the order of ad-interim temporary injunction against the defendant is not passed, he will be put to untold hardship and on the contrary no loss or hardship will be caused to the other side. Hence, prayed to allow the application.

4. Defendant has filed written statement and adopted contentions of written statement as objections to IA No.I. The defendant contended that the suit of the plaintiff is false, frivolous and vexatious. The suit property has been sold in e-auction and sale proceeds have been credited to the loan account of plaintiff on 18.02.2021. suit of the plaintiff is bad for non-joinder of necessary parties. Plaintiff has purchased the suit property from one Noorbegum Mahboobsab Pathan through registered sale deed on 22.11.2017. Plaintiff after availing loan from defendant bank remitted approximately about Rs.5,00,000/-. But due to lock down declared by the Government of India due to Covid-19 pendemic and due to some other unavoidable circumstances the plaintiff failed to remit the monthly EMI to the defendant bank are not admitted by this defendant. Further contended that defendant bank to regularize the loan account, but defendant bank refused to receive the EMI from the plaintiff and given evasive reply stating that plaintiff's house has been already sold on 09.10.2020 by the bank on 09.10.2020 during lock down to one Smt. Abedabegum W/o Nannesab Neelagar and sale transaction has been confirmed on 13.01.2021.

5. On 28.12.2020 the plaintiff received notice from D.C.Dharwad and instructed the plaintiff to hand over the physical possession of the suit property to the defendant bank, immediately plaintiff approached the D.C., on enquiry by the plaintiff the DC in front of the defendant bank orally directed

the plaintiff to deposit Rs.1,00,000/- to the defendant bank for revival of loan and to regularize the said loan. Thereafter the plaintiff approached the defendant authority to deposit the said amount,but defendant bank refused to receive the said amount are not admitted by the defendant.

6. The defendant bank has granted housing loan of Rs.15,40,000/- on 20.11.2017 to the plaintiff for purchase of CTS ward No., CTS No.767/A measuring 44.6/9 sq. yards, area consisting of old RCC building and open space at Chitaguppi Chawl, Ganesh peth, Hubballi. She has offered the said property as security and she has created registered equitable mortgage by deposit of title deed vide document No. HBN-1-11864-2017-18 ON 01-03-2018 securing the loan of Rs.15,40,000/-.The plaintiff has committed default in repayment of the debts due to the bank and the loan account of the plaintiff has been classified as non-performing asset with effect from 19.10.2018 and notice has been issued by the bank on 11.01.2019 to discharge the full liability by paying the outstanding dues of Rs.16,00,684.07 p.s. with further interest and costs within 60 days. Notice was served on the plaintiff for taking constructive possession of the property on 4.4.2019 and notice was published in daily news papers. Hence, the suit is not maintainable. Hence, prays to dismiss the suit.

7. In support of this, the plaintiff has produced documents i.e. notarized copy of order sheet before D.C.Dharwad, affidavit by bank, notice by bank, RPAD card,

possession notice, paper publication, loan application, legal opinion, Annexures, sale deed, encumbrance, receipt.

8. In support of this, the defendants have produced documents i.e., xerox copy of housing loan agreement, memorandum of deposit of title deeds, notice issued U/s. 13(2) of SARFAESI Act, 2002, copy of possession notice, notice issued U/Sec. 13(4) of SARFAESI Act, 2002, paper publications, certificate of sale and certified copy of statement of loan account.

9. Now the points arise for my consideration are:-

1. *Whether the plaintiff made out prima facie case?*
2. *Whether the balance of convenience lies in favour of plaintiff ?*
3. *Whether the plaintiff will suffer irreparable injury, if injunction is rejected ?*
4. *What order?*

10. Heard both side and perused materials placed before the Court.

11. The above points are answered as below:

Point No.1 :: In the Negative
Point No.2 :: In the Negative
Point No.3 :: In the Negative

Point No.4 :: As per final order for the following:

R E A S O N S

12. **Point Nos.1 to 3**: These points are interconnected with each other, hence taken together for discussion to avoid repetition of facts and for convenience.

13.This is a suit filed by the plaintiff against the defendants for declaration permanent injunction.

14. The plaintiff has stated in his plaint that plaintiff is in actual and peaceful ownership use and enjoyment and in physical possession of the suit property. Plaintiff is the bonafide purchaser of the suit property and enjoying the suit property since from the date of purchase. She availed a bank loan of Rs.21,00,000/- from defendant and se has remitted about Rs.5,00,000/- The defendants are intending to dispossess the plaintiff from the suit property. With respect to this the plaintiff has furnished documents and photographs. On the other hand, defendant has filed the detailed written statement and taken Plaintiff after availing loan from defendant bank remitted approximately about Rs.5,00,000/-. But due to lock down declared by the Government of India due to Covid-19 pendemic and due to some other unavoidable circumstances the plaintiff failed to remit the monthly EMI to the defendant bank are not admitted by this defendant. The defendant bank has granted housing loan of Rs.15,40,000/- on 20.11.2017 to the plaintiff

for purchase of CTS ward No., CTS No.767/A measuring 44.6/9 sq. yards, area consisting of old RCC building and open space at Chitaguppi Chawl, Ganesh peth, Hubballi. She has offered the said property as security and she has created registered equitable mortgage by deposit of title deed vide document No. HBN-1-11864-2017-18 ON 01-03-2018 securing the loan of Rs.15,40,000/-. The plaintiff has committed default in repayment of the debts due to the bank and the loan account of the plaintiff has been classified as non-performing asset with effect from 19.10.2018 and notice has been issued by the bank on 11.01.2019 to discharge the full liability by paying the outstanding dues of Rs.16,00,684.07 p.s. with further interest and costs within 60 days.

15. During the hearing learned counsel for the plaintiff submits that the defendants have not obtained the permission from the Deputy Commissioner to auction the property. Without taking the possession of the suit property banks have issued the sale certificate to the third party, which is illegal, the party has paid sum amount which was payable to the defendant bank, defendants have to take the possession of the suit property from the plaintiff with due process of law. By illegal act or illegal transaction defendants cannot take the possession. Due to Covid-19 pandemic the plaintiff has suffered loss and not able to pay the debt in time. Hence, prayed to allow the application of the plaintiff.

16. The counsel for the defendant has produced the following decision:

In **AIR 2014 Supreme Court 371 between Jagadish Singh Vs. Heeralal and others** wherein it is held that:

> *"Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act(54 of 2002). Ss. 13, 17, 34-Civil P.C.(5 of 1908), S.9-Enforcement of security interest-any person aggrieved thereby-Has to file appeal to DRT-Civil Courts jurisdiction in such matter is completely barred-Property mortgaged to bank as security to loan advanced-Auction sale by bank to recover money advanced- respondents claiming that mortgaged property was HUF property and they were co-owners-Suit filed by them for declaring property as HUF and for partition-Not maintainable-Respondent plaintiff has to approach DRT."*

If the parties aggrieved by any of the steps taken in SARFAESI Act, the plaintiff has to approach the appropriate Court i.e. Debt Recovery Tribunal. Hence, the acts done in SARFAESI Act, the Civil Court cannot question since there is a bar with respect to jurisdiction.

17. Looking in to the facts and circumstances of this case, at this juncture, the plaintiff has not made out prima face

case and balance of convenience lies in favour of the defendant, because if the temporary injunction is granted against the defendant from restraining them from disposing the plaintiff from the suit property and defendant bank will suffer irreparable loss. On the other hand, if the temporary injunction is not granted there is no any harm would caused to the plaintiff since the plaintiff having opportunity to lead the evidence to prove her case, at this juncture temporary injunction cannot be granted in favour of the plaintiff. Since the balance of convenience lies in favour of the defendants. If the loss is caused to the defendant which cannot be measured in terms of money. Therefore, irreparable loss will be caused to the defendants if the Temporary Injunction is granted. Therefore, the point No.1 to 3 are answered in the Negative.

18. **Point No.4:** For the reasons assigned to above points resulted in following:

ORDER

I.A.No.I filed by plaintiff Under order 39 Rule 1 and 2 R/W Sec. 151 of C.P.C., is hereby rejected.

No orders as to cost.

(Dictated to the Stenographer directly on Computer and corrected by me, then pronounced in open Court on this the 5th day of January, 2024).

(Rajashekhar M. Tilaganji)
Prl. Civil Judge & J.M.F.C
Hubballi.

(Order pronounced in the Open Court vide separate Order)

ORDER

I.A.No.I filed by plaintiff Under order 39 Rule 1 and 2 R/W Sec. 151 of C.P.C., is hereby rejected.

No orders as to cost.

Prl. Civil Judge & J.M.F.C
Hubballi.