

IN THE COURT OF THE CIVIL JUDGE & JMFC, MANVI

Dated this the 19th day of March, 2020

Present: Sri. Vijaykumar S. Hiremath
B.Sc., LL.B
Civil Judge & JMFC, Manvi.

O.S.No.23/2018

Plaintiff : Ahmed Ali S/o Ali Nayak Sab,
Age: 85 yrs, Occ: Agri and business,
R/o: H.No.10-2-403, I.B Road, Manvi.

(By Sri. IMP - Adv. for Pltf.)

-Vs-

Defendants : **1.** Mohammed Nasir Ahmed S/o Ahmeduddin,
Age: 49 yrs, Occ: Business, R/o: 2-3-68,
Near Hazara Baig Masjid, Androon Quilla,
Raichur
2. Union Bank of India, Raichur Branch,
Goshala Road, Raichur.

**(Def-1By Sri RSN,
Def-2 by Sri. ANR - Adv.)**

ORDER ON I.A.No.II

Petitioner : Union Bank of India Raichur by its
Branch Chief Manager

(By Sri. ANR-Adv)

-Vs-

Respondent : Ahmed Ali S/o Ali Nayaksab, Age: 85 yrs,
Occ: Agri and Business, R/o: Manvi

(By Sri. I.M.P - Adv.)

(Sri. Vijaykumar S.Hiremath)
Civil Judge & JMFC, Manvi.

ORDER ON I.A.No.II

This interim application is filed by the defendant No.2 U/o VII Rule 11(d) R/w Sec.151 CPC seeking for rejection of plaint.

2. In the affidavit in support of the interim application, the defendant No.2 has stated that, defendant No.1 mortgaged the entire suit property infavour of defendant No.2 by availed the loan of Rs. 2,18,00,000/-. Plaintiff and his wife and their sons stood as guarantor to the loan obtained by the defendant No.1. It is further stated that, defendant No.1 failed to repay the loan amount. In default of repayment of loan amount defendant No.2 bank attached the property under SARFAESI Act and approached DRT Bangalore in OA No.625/2012 and DRT passed an award on 24.11.2014 infavour of defendant No.2 bank. Thereafter DC

Raichur passed an order to take physical possession of the entire suit property. Accordingly, auction has been taken place and sale certificate has issued in favour of the successful bidder through registered sale certificate on 31.03.2018. It is further stated that, as per section 34 of SARFAESI Act, this court has no jurisdiction to try this case. Hence, he prays to reject the plaint.

3. On the other hand, plaintiff has filed objection stating that, plaintiff was not party to the proceeding taken place before the DRT. Plaintiff has sold only godown portion to the extent of 5600 Sq.ft out of 2 acre of NA land to the defendant No.1 through registered sale deed dated: 11.11.2008. This being so, civil right of the parties are involved in this case. As such SARFAESI Act, 2002 is not applicable to the present suit and this court has jurisdiction to try this suit. Hence, plaintiff prays to dismiss the application.

4. Heard the learned counsels appearing for the parties and perused the materials on records.

5. The points that arises for my consideration are as under:-

1. Whether the defendant No.2 has made out sufficient grounds for allowing IA No.II and thereby rejecting the plaint as a suit is barred under section 17 and 34 of the SARFAESI Act 2002 ?
2. What Order?
6. My answers to the above points are as follows:-

Point No.1:- In the **Affirmative**

Point No.2:- As per final order
for the following:

REASONS

7.**Point No.1:-** The learned counsel for the defendant argued before this court that, defendant No.2 initiated the proceedings under the SARFAESI Act 2002. So, plaintiff had filed this false suit and same is deserves to be dismissed as this court has no jurisdiction to entertain and try this suit as per section 16 and 34 of the SARFAESI Act 2002.

08. Per contra, the learned counsel for plaintiff argued that, the plaintiff was owner and in possessor of non-agricultural land bearing Sy.No. 122/E measuring 2 acre situated at Neermanvi and said 2 acres of land is converted as non agricultural land for

industrial purpose on 28.08.1993. The total measurement of construction area of factory and godown is about 12,800 Sq.ft. The plaintiff sold the godown portion measuring 5600 Sq.ft in NA land Sy.No. 122/E to the defendant No.1 on 11.11.2008 through registered sale deed. Accordingly the name of the defendant No.1 is mutated in the property register. The plaintiff continued to be the owner and possessor of remaining NA land of Sy.No.122/E. This being so without knowledge of plaintiff, the defendant No.1 mortgaged entire NA land measuring 2 acre in Sy.No. 122/E in favour of defendant No.2. Subsequently defendant No.1 failed to repay the loan amount. Therefore defendant No.2 initiated proceedings before Hon'ble DRT Karnataka at Bangalore in OA No.625/2012 and same is allowed, but plaintiff was not party to the said proceedings. The defendant No.1 is not having title or interest over the remaining area in Sy.No.122/E. This being so the defendant No.2 issued E-auction sale notice on 01.08.2017 in Deccan Herald News paper in respect of 2 acres of land in Sy.No.122/E. As such the plaintiff filed this suit against the defendant No.2 for permanent injunction. So, SARFAESI Act is

not applicable to the present case in hand. Because, civil rights of plaintiff are involved. Hence he prays to reject the application.

09. This court has carefully perused the material on record in order to ascertain whether the suit filed by the plaintiff is maintainable before this court as per the provision of section 17 and 34 of the SARFAESI Act 2002. The present suit filed by the plaintiff against the defendants for the relief of perpetually injunction for not disposing the plaintiff from the possession of the suit schedule 'A' property and also for restraining the defendants from interfering the peaceful possession and enjoyment of the suit schedule 'A' property. According to the plaintiff defendant No.1 has mortgage the suit schedule A property to the defendant No.2 bank but defendant No.1 is not the owner of the said property. So, defendant No.1 has no better title than the plaintiff. As such plaintiff cannot be disposed from the suit schedule A property. On the contrary it is the case of the defendant No.2 that defendant No.1 mortgage the entire 2 acres of land in Sy. No.122/E including suit schedule A property also. Hence, defendant No.2 proceed the case against the defendant

No.1 under SARFAESI Act when the defendant No.1 has failed to repay the loan dues. Hence as per section 17 and 34 of the SARFAESI Act 2002 this court has no jurisdiction to entertain and try this suit.

10. The plaintiff has produced the documents to show that, as per the order of the DC Raichur dated: 28.08.1993, 2 acres of land converted in to non agricultural land for the industrial purpose in Sy.No.122/E. The plaintiff has also produced sale deed dated: 11.11.2008, from the said document plaintiff has sold the 5,600 sq.ft of NA land in the Sy.No. 122/E to the defendant No.1, plaintiff also produced the E-auction sale notice issued by the defendant No.2 and it is published in the Deccan Herald newspaper dated: 01.08.2017. Defendant No.2 produced the copy of the order passed by the DC Raichur dated: 30.10.2014.

11. After perusal of the above said material on record it is not dispute that, entire 2 acre of land in Sy.No.122/E situated at Neermanvi village is mortgaged by the defendant No.1 as a security towards discharge of the loan obtained from the defendant No.2. It is not in dispute that, defendant No.2 has

published the E-auction sale notice and also obtained the order from DC Raichur on 30.10.2014 to take physical possession of the 2 acres of land.

12. Let us discuss whether the jurisdiction of this court is barred to entertain and try this suit as per section 17 and 34 of SARFAESI Act 2002. For considering this point it is relevant to re-producing the **section 34 of SARFAESI Act**, which reads as follows:-

i) 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 Institution Act, 1993(51 of 1993).

It is also profitable to refer to the provisions contained in section 17 of the SARFAESI Act.

ii) Right to appeal:- (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorized officer under this chapter (may make an application along with such fee, as may be prescribed) to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

13. In the instant case defendant No.2 has published the E-auction sale notice under SARFAESI Act. In these circumstances, this court is of the opinion that, if the plaintiff is aggrieved by the auction taken by the defendant No.2, he has to prefer an appeal before the competent authority as per the section 17 of the SARFAESI Act. But the plaintiff without exhausting the said remedy has filed the present suit. It is to be noted here that, the words used U/s 17 of the SARFAESI Act is any person. In these circumstances this court is of the opinion that, the plaintiff being aggrieved party by the notice published by the defendant no.2 under SARFAESI Act could have approached the Debt Recovery

Tribunal by way of preferring of appeal under section 17 of the SARFAESI Act. But plaintiff failed to do so.

14. The learned counsel for the plaintiff vehemently argued before the court that, the provisions of SARFAESI Act is not applicable to the present case in hand and also relied upon the decision reported in ***ILR 2007 part 4 Karnataka 1998. between Vysya Co-operative Bank Ltd. V/s Ms. G. Keerthana and other.***

15. The learned counsel for defendant No.2 relied upon the following 2 judgment in support of his arguments namely;

ILR-2013 Karnataka Page No.3903 between Yashavant V/s Senior Manager ABN Amro Bank. N.V. New Delhi. And AIR-2011 Karnataka 138. between M.G. Ashwath Shastri V/s Canara Bank, Chamarajpet, Branch, Bangalore and others.

16. This court has carefully perused the above 2 decisions wherein Honb'le High Court of Karnataka, held that, *when the statue prescribes particular remedy, the aggrieved party is required to take recourse to that remedy only. Skipping or bypassing that remedy, he cannot choose the remedy of filing the suit, more so when it is expressly barred by section 34 of the SARFAESI Act.*

17. Moreover the *Honb'le Supreme Court (2018(8) SCC120: (2018) 4 SCC (Civ) 33: 2018 SCC Online SC 550 between Authorized officer, State Bank of India V/s ALLWYN ALLOYS private limited and others*: held that, mandate of section 13 and in particular section 34 of Act bars filing of civil suit and no civil court exercise jurisdiction to entertain any suit or proceedings in respect of any matter which DRT is empower under SARFAESI Act. Further it is held that, no injunction can be granted by any court or authority in respect of any auction to be taken in pursuance of any power conferred by or under such act. So, in the present case also though plaintiff contended that, defendant No.1 mortgaged his property without any authority but as per section 17 of SARFAESI Act, the remedy lies before the Debts recovery Tribunal. As such when forum is establish to adjudicate the matters which are covered under SARFAESI Act. Then party has to approach to the said forum and seek appropriate relief. In these circumstances, this court is of the opinion that, the jurisdiction of this court is barred in respect of the matters which come within the jurisdiction of Debts Recovery

Tribunal. Hence having regard to the above facts and circumstances, this court is of the opinion that, the plaintiff is not entitled for the relief of permanent injunction from this court. Accordingly I answered point No.1 in the **Affirmative**.

18. **Point No.2:-** In view of my finding on point no.1, the following order is passed.

ORDER

IA No.II filed by the defendant No.2 U/o VII
Rule 11(d) R/w section 151 of CPC is hereby allowed
and accordingly the plaint is rejected as it is barred by
the statute i.e., SARFAESI Act 2002.

No order as to cost.

Draw decree accordingly.

(Dictated to the Stenographer directly on computer, typed by him, corrected and initialed by me and then pronounced in the Open Court on this the 19th day of March, 2020.)

(Sri. Vijaykumar S. Hiremath)

Civil Judge & JMFC, Manvi