

SPL.C.S. No. 242/2011

Chandrashekhar Purshottamdas

alias Shrikant Sheth Shedji

– Plaintiff

Vs.

Purshottamdas alias Shrikant Govinddas

Sheth-Shedji Etc.8

– Defendants

ORDER BELOW EX. 17

(Delivered on 30-06-2016)

Application is filed by defendant No. 2 for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure.

2) It is the case of the defendant No. 2 that Spl. Darkhast No.66/1991 was transferred to the Debt Recovery Tribunal. Accordingly, during the course of execution proceeding the recovery officer conducted auction of the property and defendant No. 6 to 8 purchased the said property for consideration of Rs. 50,21,000/-. Accordingly, the recovery officer issued certificate. Defendant Nos. 6 to 8 became owner of that property. As per Section 27 and 30 the aggrieved party has right to file appeal against that order within 30 days from the date of that order. That remedy is not opted by the plaintiff. This court has no Jurisdiction to try and decide this suit as per the provisions of The Recovery Of Debts Due to Banks and Financial Institutions Act 1993. Hence,

plaintiff has prayed for rejection of plaint.

3) Plaintiff filed say at EX 38. He has denied all the contentions in the application. It is further contended that present plaintiff was never party to the proceeding between defendant No. 1 and defendant No. 2. The auction conducted by the defendant No. 2 is illegal and by avoiding the lawful share of plaintiff. Plaintiff has prayed for rejection of the application.

4) Considering the application and say following points arise for my determination and my findings to them are as stated below for the following reasons.

Sr.No.	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether defendant No. 1 proves that the suit is barred by the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act 1993 ?	In the negative
2)	What order ?	As per final order

REASONS

5) For considering the maintainability of the suit, we have to go through the contents of the plaint. It is the case of the plaintiff that suit property is joint family property of Plaintiff and defendant No. 1 and plaintiff has got birth right in the same. One Kirti Steel Company had borrowed loan amount of 3,50,000/- from defendant No. 2 for business. Defendant No. 1 was surety to the said loan. The said loan was not repaved within time. Hence, defendant

No. 2 instituted a Special Civil Suit No.76/1983 against the said company. It was decreed in favour of defendant No. 2. Defendant No. 2 filed an execution proceeding bearing No. 66/1991. During the pendency of the said proceeding, the Recovery Of Debts Due to Banks and Financial Institutions Act 1993 came into force. Accordingly, the execution proceeding was transferred to the Debt Recovery Tribunal Pune (hereinafter referred as DRT for the sake of convenience) as per the provisions of that Act. During the course of that proceeding the DRT auctioned the suit property. However, it was not verified as to whether the defendant No. 1 is the sole owner of the suit property ?. The DRT did not follow the procedure laid down for selling the suit property. Plaintiff was not party to the said proceeding.

6) Plaintiff has further stated that the loan was not taken for the need of the joint family. Defendant No. 3 to 6 are the purchasers of the property. They have forcefully taken possession of the suit property and started construction therein. Plaintiff has share in the suit property. The plaintiff has further pleaded that the execution proceeding as well as the sale certificate is not binding upon $\frac{1}{2}$ share of the plaintiff. For all these reasons he has prayed for declaration of his $\frac{1}{2}$ share alongwith partition. He has further prayed for declaration to the effect that the sale proceeding conducted by Debt Recovery Tribunal, Pune is illegal and null so far as $\frac{1}{2}$ share of plaintiff is concerned and for injunction to the effect that defendant Nos.3 to 6 may be directed not to alienate the suit properties or create any third party interest.

7) Learned advocate for defendants relied upon section 17, 18, 19 and 34 of the R.D.D.D.F.I. Act 1993.

Sec 34 of the Act states:

"Act to have overriding effect -

(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made there under shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948, the State financial Corporations Act, 1951, the Unit Trust of India Act, 1963, the Industrial Reconstruction Bank of India Act, 1984 and the Sick Industrial Companies (special provisions) Act, 1985."

8) First we have to consider section 34 of the said Act which states that the provisions of the Act are having overriding effect and more specifically sub section 2 states that the provisions of this Act or the rules made thereunder shall be in addition to the Industrial Finance Corporation Act, State Finance Corporation Act, Unit Trust of India Act, Industrial re-construction of Bank of India Act, Sick Industrial Corporation Act 1985. Thus, it is clear that so far as the provisions of this Act are concerned, whenever there is a specific provision, it will prevail over any other law for the time being in force.

Sec. 17 states that,

17. Jurisdiction, powers and authority of Tribunals.- (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

Section 17 prescribes the jurisdiction, power and authority of the Tribunal. It states that the Tribunal shall decide applications from the Bank and financial institutions for recovery which due to such Banks and financial institutions. Section 18 states that no Court shall entertained any matter in relation to the matters specified in section 17 of the Act.

Sec. 18 states that,

18. Bar of jurisdiction.- On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in section 17.

9) The plaintiff has come with four different prayers. So far as the prayers at clause 13(B) an 16(D) are concerned, it is regarding the illegality and nullity. The orders passed by the D.R.T. Pune and regarding relief of perpetual injunction against defendant Nos.3 to 6 who have acquired the rights by virtue of the said

certificate issued by D.R.T. Pune. As per section 17 of the Act it is the exclusive jurisdiction of the D.R.T. to entertain applications from the Banks and financial institutions for recovery of debts due to such Banks or financial institutions. Therefore, any person aggrieved can challenge the validity of any action taken by D.R.T. or any officer thereof only before the D.R.T. and not before the civil Court. When the plaintiff is coming before the Court with a prayer that the action taken by the recovery officer be declared as null and void. It is the sole jurisdiction of D.R.T. to decide the same and civil Court cannot interfere with the matter. In view of section 17 and 18 it appears that the relief as 16 (B) is barred by the provisions of the said Act. Furthermore, section 30(1) of the said Act provides for appeal to the Tribunal against any order passed by recovery officer.

10) So far as relief at clause 16(A) and 16(C) of the plaint are concerned, they are for declaration of $\frac{1}{2}$ share of the plaintiff and for partition of that share. This is purely a civil right which is not related with the recovery of any debt by any Bank. The D.R.T. cannot decide, declare and make separate any share of any co-sharer in the Hindu Joint Family. The jurisdiction regarding the same exclusively lies with the civil Court U/sec.9 of the Code of Civil Procedure. Therefore, it cannot be said that the jurisdiction of civil Court to entertain, try and decide the suits claiming reliefs of partition and separate possession is barred by the provisions of section 18 of the Act. In view of the said discussion, it cannot be said that the suit needs to be thrown out as the Court has no jurisdiction to try and decide the same. I have come to the

conclusion that this Court has every jurisdiction to decide the share of the plaintiff in the joint family property, if that is proved by the plaintiff. So far as the prayers regarding the validity of action taken by the recovery officer are concerned, the plaintiff may take appropriate reports before appropriate Forum. In view of the same, suit is maintainable before this Court so far as prayers at clause 16 (A), (B) and (D) are concerned. Accordingly, I answer point No.1 in the affirmative and proceed to pass following order.

ORDER

Application (Exh.17) is rejected with costs.

Sdxxx/-

Date : 30-06-2016

(Vidyadhar B.Kakatkar)
Civil Judge (Sr.Dn.) Sangli

(Dictated directly on computer and pronounced in open Court)