IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, CHENGALPATTU

Present: Thiru.A.Saravanakumar.,B.A.B.L.,
Additional District Judge,
Chengalpattu.

Monday, 22nd day of September 2025
I.A.No.4/2023 in O.S.No.624/2022
CNR.No:TNCG01-008267-2022

1.Indian Bank ..Petitioner/ 5th defendant

-Vs-

1.Lakshmi Prabha S
2.Anirud Srinivasan ..Respondents/Plaintiffs
3.Revathi
4.M/s. Fine Rock Minerals Pvt Ltd
5.G.Ramya
6.Ravi. A ...Respondents/Defendant 1-4
7.K.B.Gopinathanan ...Respondent/Defendant 6

This Petition coming before this court on 23.6.2025 for final hearing in the presence of Mr.N.R.Rajagoapalan, V.V.Ramesh, M.Neshapriyan and P.Abishek, Counsels for the Petitioner/ 5th defendant and Mr.A.G.Sathyanarayana, Counsel for the Respondents 1 and 2. Respondents 3 to 7 are ex parte in suit and upon hearing the arguments of both sides and perusing the material records and having stood over for consideration till this day, this Court delivered the following:-

ORDER

This Petition has been filed under Section 34 of the securtization and reconstruction of Financial Assests and enforcement of security interest Act, 2002 read with order 7 rule 11 of CPC 1908 to dismiss the suit O.S.No.624/2022 on the file of this court against the petitioner/5th defendants in view of the sec, 34 of the SARFEAST Act 2002 read with order 7 rule 11 of CPC 1908.

2. **Petition averments in brief:-**

The petitioner is the authorised officer fully aware of the facts and circumstances of the case and able to depose to the same and perused the records and proceedings in the captioned matter and made conversant with the facts.The present civil suit is pending before this court for permenant injunction restraining the defendants and hence now M/s Indian Bank Chief Manager, Mylapore Branch through its authorised officer Mr.P.Sandeep Kumar Reddy is filling this application for the dismissal of the present suit and referring the dispute of the subject matter, as raised by the respondent in the present petition according to law. The respondent 3 to 6 have approached petitioner claiming that they are the absolute owner of the suit schedule property and requested sanction of loan against the security interest in the suit property in way of mortgage. The petitioner extended the loan against security interest created in the schedule property. The respondents 3 to 6 committed default and there asset were classified as non performing assets and a notice under section 13(2) of the SARFAESI ACT was servered on them demanding sum of Rs.2,60,24,473.00/-. The respondents 3 to 6 did not respond to the petitioner bank issued possession notice under section 13(4) of the SARFAESI ACT and issued paper publication with regard to taking possession of the suit property. That pursuant to the possession notice the petitioner bank filed 14 application before Chief Judicial Magistrate in Crl.M.P. SR.No.11860 of 2022 on 19.9.2022 and the same is pending. The proceeding under SARFAESI act were filed as document to support case of the petitioner bank. Hence the application filed by the respondents 1 and 2 sceking declaration in the suit to declare the mortgage as null and void, to declare the possession notice as null and void permanent injuncion to restraining the petitioner to encumber the property which more fully stated to the plant prayer C,D,E,F are not mantainable and this Hon'ble Court has na jurisdiction to try the same under section 34 of SARFAESI Act though they have no locus. The respondents 1 and 2 have already filed a SARFAESI appeal in SA.No.405/2022, before DRT III, Chennai against the petitioner as well as the other respondent with regard to steps taken to petitioner under SARFAESI act. The respondents 1 and 2/Plaintiff were aware of the possession of the suit property by respondents 3 to 6 from 18.8.2018 and have not taken any legal steps till filing of this case before this court. On contrary the respondents 3 to 6 have already filed a suit in O.S.No.423/2021 on the file of District Munsif Court Alandur for injunction against the respondents 1 and 3. The petitioner has sanctioned the loan on 17.04.2021 and MODT was created on 19.04.2021 and have informed about filing of FIR with respect to property only on

06.10. 2021, and the Respondents/Plaintiff have not taken any steps from 2018 as alleged to establish their title. If the Respondents/Plaintiffs are genuine in their approach, they should have taken proper legal steps to protect their title and ownership and not doing the same itself will prove that they are not the owners having clear title. The sequences of events and acts done by both respondents/plaintiffs and defendant 1 to 4 clearly establish their coilusiveness, with a nefarious design to cheat by denying its dues and mere filing of FIR will not give any title to the respondents/ plaintiffs and they need to prove the same before the court of law. The respondents/plantiffs have no focus standi to question the loan sanctions to the defendant 1 to 4 and loan cannot be disbursed to whims and fancies of any person and there is house procedures, parameters and qualification is fixed for disbursement of loan to eligibile borrowers and the loan was extended only for the carrying the business of the 2nd defendant, after due and proper verification of the documents and the records the loan was sanctioned and security interest created by the defendam 1 to 4 and there is no lapses or laxity on the part of Petitioner / 5th defendant. Further, the petitioner submits that admitting and not assuming that the respondents/Plaintiffs are having the genuine sale deed and that the document of the 1 defendant is forged. It is further submitted that it is then admitted case that from 2018 they were aware of the 1st defendant claiming title to the property and even the 1st defendant has filed the suit against the respondents/ plaintiffs saying that they are the owners of the property, however interestingly the respondents/plaintiffs have not filed any legal proceedings till date to declare their title to the property knowing fully well that their claim is time barred. The applicant have also not taken any steps to cancel the revenue records, and encumbrances standing in the name of the 1st defendant. The legal actions under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 has already been initiated against the said plaintiff and even after issuing the notice under section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, the Respondents/Defendants1-4 have not paid the demanded amount of Rs 2,60,24,473.00/- and hence, the petitioner/5th defendant has got the right to take the possession of the immovable. The petitioners/5th defendant has taken paper publication of the demand notice on 18.08.2022 in English Newspaper Business Standard and Tamil Newspaper Makkal Kural. The above suit has been filed seeking a relief of permanent injunction not to interfere with the peaceful living in the suit schedule property. Since SARFAESI proceedings are initiated, in order to intimidate the petitioner/5th defendant has filed the suit. A perusal of the suit filed by the respondent/plaintiffs does not reveal any cause of action as such the present suit is also bad in law considering the specific provision of Order 7 rule 11. In view of the facts above and keeping in consideration the settled provisions of the law under SARFAESI Act and those enumerated under CPC, the present suit is bad in law and and not maintainable against the petitioners/defendants. However reserve their right to seek all legal remedies available to them under the said loan agreement against the plaintiffs to recover the amounts due under the said loan agreement. No prejudice would cause to the respondents in allowing this application. Hence the petition.

3. <u>Counter averments filed on behalf of the respondent 1 and 2. in brief:-</u>

The present Petition drawn up by the Petitioner bank is false, frivolous and vexatious and is not maintainable both in law and on facts of the case and the same should be dismissed in limine together with exemplary costs. Respondents deny all the averments made in the application, excepting those that are specifically and expressly admitted. These respondents are the true and absolute owners of the immovable property located at house site plot Nos. 1487 and 1489 in Ram Nagar North extension layout, comprised in Old Survey No. 75/4C, Madipakkam village, Solinganallur Taluk, Chengalpattu District which is referred as schedule property in the suit. One Mr. P.T. Venkatesan had purchased the house site Nos. 1485, 1487 and 1489 measuring a total extent of 14400 square feet comprised in Punja Land Paimash Nos. 1265/10 & 11 in Madipakkam Village in "Ram Nagar" North Extension Layout vide Sale Deed dated 30.12.1963 executed by K.B. Gopinathan in his favour, registered as document No.5247 of 1963 in the office of the Registrar, Madras-Chengalpattu District. The said Mr. P.T. Venkatesan was in absolute Possession and enjoyment of the said immovable property. Patta No.4045 dated 28.05.1986 has also been granted in his name by Deputy Tahsildhar, Saidapet Taluk for the above-said property. On 10.12.2001, Mr. P.T. Venkatesan died intestate leaving his legal heirs V. Jayalakshmi, P.T. Srinivasan and P.T. Alamelu. After his demise, his legal heirs entered partition deed dated 09.07.2009 and registered in Document No.2053 of 2009 in Book 1 in the office of the Sub-Registrar, Kodambakkam. It is significant to note that the memo copies about the registration of the partition deed dated 09.07.2009 was also registered as Document No.9 of 2009 in Book 1 in the office of the sub Registrar, Velachery. As per the Partition Deed Mr. P.T. Srinivasan, husband of the 1st respondent was allotted plot Nos.1487 and 1489 measuring an extent of 9,600 square feet out of 14,400 Square feet in Madipakkam Village in "Ram Nagar" North Extension layout and plot No.1485 measuring an extent of 4,800 Square feet out of 14,400 Square feet was allotted to Mrs.P.T. Alamelu, Mr P.T. Srinivasan was in absolute possession and enjoyment of the Immovable Property allotted to him and did not enter any conveyance/transactions regarding Plot Nos: 1487 and 1489 allotted to him and those plots are vacant even as on date. On 18.08.2018, Mr. P.T. Srinivasan was shocked to find some illegal encroachment by squatters in the Immovable Property and police complaint before the Madipakkam Police Station and CSR No.586/2018 dated 31.08.2018 was given to him. during the investigation, one Mr. M. Thirukadal Udhayam appeared in the Police station and stated that one Mrs.Revathi, the 3rd Respondent has appointed him as her power agent vide registered General Power of Attorney Deed dated 06.07.2018 in Doc. No.4195/2018 in Book 1 in the office of Sub-Registrar, Velachery. It was further alleged that vide Sale Deed dated 17.08.1964 alleged to have been executed by Mr. K.B. Gopinathan, in favour of the 3rd Respondent, represented by her father Venkatraman, as guardian since the 3rd respondent was minor at the time of executing the alleged sale deed. On further examination ,it was found the patta for plot Nos: 1487 and 1489 in S.No.75/21 and 75/20 was fraudulently transferred in the name of the 3rd respondent based on the forged sale deed dated 17.08.1964. Mr. P.T Srinivasan immediately complained about the fraud to the Commissioner of Police, Greater Chennai and the same was forwarded to Central Crime Branch and was handed over to Land Grabbing Cell for investigation. During preliminary investigation the Sub-Registrar, Pallavaram has given a statement that the alleged Sale Deed document No.2276/1964 bearing Survey No.75/1 stands in the name of one Ramamoorthy not in the name of the 3rd Respondent and it is proved beyond doubt that the sale deed Document No.2276/1964 is a fabricated one. Subsequently, FIR was registered on

31.10.2019 in Cr.No.164/2019, U/s.465, 467,468, 471 r/w 34 IPC in Central Crime Branch II (Land Grabbing Cell II) against the 3rd respondent as Accused No.1 and Mr. M. Thirukadal Udhayam as Accused No.2. Meanwhile Mr. P.T. Srinivasan, had died on 23.05.2020 leaving behind these respondents as his legal heirs. After his death, the Immovable property devolved in favour of these respondents and in possession and enjoyment of the Immovable property as on date. They applied for Encumbrance Certificate for the scheduled property that they came to know that about the fraud was played by 3rd to 6th respondent and the petitioner and about forged sale deed document No.2276/1964 and that FIR was registered on 31.10.2019 in Cr.No.164/2019, u/s 465, 471 r/w 34 IPC in Central Crime Branch II against the 3rd respondent and obtained loan through M/s.Finerock Minerals Pvt.Ltd., from the petitioner bank to the tune of Rs.2,44,00,000/- vide Memorandum of Deposit of Title deeds dated 19.4.2021 bearing Doc.No.2931/2021 in the office of Sub Registrar Velachery. The 3rd respondent is one of the directors of the 4th respondent company to which loan was sanctioned by the petitioner bank. The petitioner bank failed to disclose the action taken against the 4th respondent company , whereas they are taking action against the suit property which is in dispute. The petitioner bank and other respondents jointly fabricated the documents as original to defraud these respondent and acted collusively with the connivance of the petitioner bank officials. The petitioner bank has issued the possession notice which was liable to be set aside as the schedule of property specified in the possession notice dated 18.08.2022 was intentionally forged nothing but to take advantage of these respondent petitioners property to achieve wrongful gain hence it is incorrect. The schedule of property mentioned in the possession notice specifies wrong Survey No.75/1, New Survey No.s. 75/20 & 75/21 of the property and also does not contain Paimash Nos, for the said reason it is liable to be set aside. The petitioner bank failed to verify the Encumbrance Certificate for the full extent of S.No.75 for the subsequent periods from 01.06.1969 to till the date of registering the MODT. However, the petitioner bank without properly verifying the sancity of the title documents submitted by the 3rd respondent had created security interest on the schedule mentioned property of these respondents which is not enforceable under law and is liable to be set aside. Consequently, the possession notice now affixed in the immovable property is neither enforceable nor legal in the eyes of law. The 3rd respondent had subsequently cancelled the power of attorney executed to M. Thirukadal Udhayam on 7.2.2020, after the criminal complaint lodged by Late P.T.Srinivasan. However, the respondents 3 to 6 have gained undue enrichment by fraudulently creating security interest by using the 4th respondent as a shell entity, the 3rd respondent along with 5th and 6th respondent has siphoned off the loan amount and played fraud on these respondents in collusion with the petitioner bank. The 3rd respondent has also filed a suit in O.S.No.423 of 2021 before the Alandur Court against these respondents seeking a permanent injunction restraining these respondents with respect to the scheduled property. These respondents have contested the same and subsequently the plaintiff called absent, and the suit was dismissed for default on 7.7.2023. Whereas the 3rd respondent is not appeared in the suit which is instituted by these respondents before this court and defending the title of the suit property. These respondents are true and real legal owners, having absolute possession of the schedule property. These respondents, through a legal notice dated 06.10.2021, informed respondents 3 to 7 and the petitioner about the fraudulent creation of a security interest over the suit schedule property belonging to them, and called upon the petitioner bank to discharge or rescind the same. Despite being informed of the title dispute, the petitioner bank, in collusion with respondents 3 to 6, issued a possession notice under Section 13(4) of the SARFAESI Act. The respondents served a legal notice to the Chief Manager and General Manager of the petitioner bank reiterating the fraudulent acts of respondents 3 to 6 and requesting that no coercive steps be taken pursuant to the notice dated 18.08.2022. However, the petitioner bank proceeded with steps to sell the property, leaving the respondents with no option but to approach the Hon'ble Debts Recovery Tribunal-III, Chennai.

Along with SARFAESI Appeal, these respondents have filed an application for stay of all further proceedings. These respondents without admitting the allegations, even though they were aware of the possession of the suit property. The bank has lent the money to the 3rd respondent company after its incorporation on 10.12.2019 which further clarifies that the idea is itself to grab the property of these respondents and the original borrower did not even pay 1 installment which further clarifies the collusive acts of the petitioner bank. The supreme court had referred in para 51 of Mardia Chemicals Vs. Union of India (2004) 4 SCC 311, to the effect that the jurisdiction of the Civil Court can be invoked to the limited extent where the action of the secured creditor is alleged to be fraudulent or the claim of the secured creditor is found to be absurd and untenable which may not require any probe and reiterated in Nahar Industrial Enterprises Ltd. supra, held that it could thus not be said that the jurisdiction of Civil Court could not be invoked in any circumstances. The bar on the power of a Civil Court is not absolute but is only with respect to matters covered under the Securitisation Act. So long as the Civil Court is not examining a question involving the legality of the action taken by a Bank under Section 13, all other issues are certainly not hit by Section 34 of the Act. Ownership, after all is a bundle of rights. If a rightful owner files a suit for declaration of ownership, when proceedings are pending under the Securitisation Act, to say that the rightful owner has no right to file a suit and would be bound by the finding by a Tribunal of limited jurisdiction is to do violence to the plain reading of Section 34 and Section 17 of the Act. The Hon'ble Debts Recovery Tribunal vide its order dated 20.04.2023 in S.A. No. 405 of 2022 directed the petitioner bank to wait for the outcome of the dispute about title pending before the civil court to initiate and exercise their mortgage rights under SARFAESI Act. This being so, the petitioner bank has filed this petition deliberately and is pursuing the same, only to drag the proceedings and abuse the process of law. Hence it is clear that the petition filed by petitioner bank for rejection of plaint is not maintainable and liable to be dismissed.

4.<u>The points for consideration</u>:- Upon the perusal of the petition, and counter other materials this court has framed the following point for consideration:

"Whether the petition is to be allowed as prayed?"

<u>5. Answer to the Points:-</u>

The petitioner is the 5th defendant in the original suit. The 1st and 2nd respondent are the plaintiff therein. The 3rd to 7th defendants are the 1st to 4th defendant in the original suit. The original suit was filed for the relief of declaration that the suit schedule property belonged to the 1st and 2nd respondents and also declare that the sale deed dated 17.8.1964 executed by 6th defendant in favour of 1st defendant is null and void and also for the declaration that the memorandum of deposit of title deeds executed by 1st defendant in favour of 5th defendant is null and void. Besides that the relief of permanent injunctions are also sought for. Pending the suit the 5th defendant/ petitioner alone filed the present application for rejection of plaint.

6. As per the case of the petitioner/5th defendant, The 3rd to 6th respondents have committed default and their asserts were classified as non performing assets and after issuing notice under section 13(2) of SARFAESI Act, the possession notice was given under section 13(4) of the above act as per the order CJM, Chengalpattu. The 1st and 2nd respondents also already filed a SARFAESI Appeal in SA No.405/2002 before the DRT III, Chenni. Suppressing the said facts the present suit is filed. Therefore the suit of the 1st and 2nd respondents are barred by section 34 of the SARFAESI Act. The claim of the petitioner has been stoutly resisted by the 1st and 2nd respondents/plaintiff. It is his submissions that the Hon'ble Supreme Court has rendered a judgment in **Mardia Chemical Vs Union of India (2004)4 SCC 311** to the effect that the jurisdiction of the civil court can be invoked to the limited extend where the action of the secured creditor is alleged to be fraudulent or the claim of the secured creditor is found to be absurd and untenable which may not to be required any probe and reiterated in Nahar Industrial Enterprises Limited. They further submits this jurisdiction of civil court is

not completely ousted. As long as civil court is not examined a question involved in the legality of action taken by a bank under section 13, the suit is not hit by section 34 of the Act. Therefore the 1st and 2nd respondents submit that the petition may be dismissed.

7. This court has considered the submissions of the respective sides. It is to be considered that the Hon'ble Supreme Court in **Mardia Chemical Vs Union of India (2004)4 SCC 311** as held that the civil court has jurisdiction to decide in case of fraud and disputed title. A perusal of the plaint averments would go to show that the plaintiffs/1st and 2nd respondents have clearly set out the cause of action to file the suit. Moreover, the plaint is also not barred in the considered opinion of this court. Moreover it is well established principle of law that the plaint can be rejected only in toto, not in piecemeal. In the case on hand even assuming that the plaint is not maintainable as against 5th defendant, the suit filed against 1st to 4th defendants cannot be rejected.

8. From the foregoing discussion this court holds that the petition is liable to be dismissed.

In the result, the petition is dismissed. No cost.

Dictated to the Shorthand writer and directly typed by her and corrected and pronounced by me in open Court, this the 22nd day of September 2025.

A. SARAVANAKUMAR
Additional District Judge
Digitally signed by A. SARAVANAKUMAR
Location: Chengalpattu
Date: 2025.09.22 17:23:21 +0530

Additional District Judge,
Chengalpattu

List of witnesses examined and exhibits marked on both sides: Nil

A. SARAVANAKUMAR
Additional District Judge
Digitally signed by A. SARAVANAKUMAR
Location: Chengalpattu
Date: 2025.09.22 17:23:28 +0530

Additional District Judge,
Chengalpattu.

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Draft/Fair Order
I.A.No.4/2023
in O.S.No.624/2022
Dated:22.09.2025
ADJ/CPT

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