COMMERCIAL COURT AT ASANSOL

(FOR THE DISTRICTS OF MURSHIDABAD, BIRBHUM, PURBA BARDHAMAN, PASCHIM BARDHAMAN, PURULIA AND BANKURA)

Present : Sri Sourav Bhattacharya.
Judge, Commercial Court at Asansol.

JO Code : WB00854.

Money Suit No. : 19/2021

CNR No. : WBBD17-000036-2021

Plaintiff(s) : M/s. TESCON and Anr.

V/s.

Defendant(s) : Punjab National Bank and 2 Ors.

Order No. – 18
Dated - 02/09/2022

Today is fixed for passing order in respect of two applications / petitions filed by the plaintiff :-

(i) An injunction application under order XXXIX Rule 1 and 2 read with Section 151 of the C. P. Code being I.A. No. 08 of 2022, dated 01/06/2022.

(ii) A petition under Section 151 of the C. P. Code being I.A. No. 09 of 2022, dated 05/07/2022.

These applications / petitions were opposed by the defendant No. 2 (Punjab National Bank) by filing written objection thereto.

The facts that led to the filing of injunction application being I.A. No. 08 of 2022, dated 01/06/2022 are narrated below in the following manner :-

(i) The plaintiff / petitioner No. 1 is a partnership firm. The plaintiff /

Contd/...(P/2)

petitioner No. 2 is one of the partner of the said firm as well as constituted attorney. In order to run the business, the partners of the firm opened cash credit account vide Account No. 0464210031514 with the defendant / opposite party No. 2 (Bank) [formerly United Bank of India, Barjora Branch].

(ii) For the purpose of execution of different contracts, the plaintiffs approached the defendant / bank to sanction and disburse loan for the purpose of procurement of different machineries and / or equipments from the dealers. The Bank made payment directly to the selling dealers for the said purpose through the said cash credit account.

(iii) The dealers / sellers after receiving such payments issued tax invoice, road challans for delivery of the machineries at the requisite locations required for executing different job works with the connotation 'under hypothecation with United Bank of India, Barjora, Bankura.'

The rate of interest on such cash credit account was applicable / chargeable @18% per annum on the cash credit holders on the basis of availed credits by such account holders at that relevant point of time, whereas the applicable rate of interest on different loans was 8% per annum with a specific tenure of repayment. The defendant / opposite party (Bank) has entered around Rs. 65,67,095/- on the transactions as stated in paragraph No. 9 of this injunction application.

(iv) It is alleged that the defendant opposite party / Bank having *mala fide* intention to earn interest on the enhanced credit from 10/03/2012 to 31/10/2019 has already deducted aggregate sum of

Contd/...(P/3)

Rs. 2,34,69,984/- towards realization of interest till 31/10/2019 but the aggregate amount shown as credit balance was to the tune of Rs. 2,57,09,464.96/-.

(v) The plaintiffs / petitioners approached the defendant / Bank to rectify the erroneous procedure of granting loans for purchase of equipment / machineries through cash credit account instead of granting term loan for purchasing fixed assets violating the bank norms and issued a letter in this regard on 23/04/2019 followed by further correspondences dated 22/05/2019 and 05/08/2019 but the defendant / Bank instead of taking remedial measure has already released Rs. 57,86,752/- from different deposits including LIC.

(vi) On 05/09/2020, the defendant opposite party No. 2 issued a written notice asking the plaintiffs / petitioners to regularize their said cash credit account by depositing required amount immediately in default, the Bank authority threatened to convert the said account into N.P.A. In response to this notice, the plaintiffs / petitioners made a written representation on 15/09/2020 followed by further correspondences in this regard.

(vii) The defendant No. 2 / Bank by way of recall notice dated 09/04/2021 addressed to the plaintiffs / petitioners stated that with reference to Term Loan Account against the security mortgage property, it would declare the account as irregular and urged the plaintiffs / petitioners to take steps within 7 days failing which the defendant / bank would be constrained to take legal steps.

(viii) The plaintiffs / petitioners has taken out similar injunction applications which was disposed of on merit vide Order No. 5, dated 16/08/2021, wherein this court has rejected the temporary injunction prayer.

Contd/...(P/4)

(ix) It is alleged that subsequently during the pendency of this proceeding on 27/05/2022, some officials of the defendant / opposite party bank visited the residence of plaintiff / petitioner No. 2 to take measurement for the purpose of valuation of all the movable property leading to facilitate their recovery process of the purported loan amount and this has caused damage to the social prestige, reputation and goodwill of the plaintiff / petitioner.

(x) It is alleged that the defendant bank has acted contrary to the standard operating procedure for a cash credit account and in total the defendant / opposite party bank has realized an excess amount of Rs. 2,00,62,312.78/- from the plaintiff / petitioner illegally.

Prayer has been made in the subject injunction application for an order to restrain defendants / bank from resorting any illegal methods of recovery of the claimed purported amount lying in the said cash credit account along with other consequential prayers. The plaintiff has further prayed to restrain the defendant / bank authority to take possession of Schedule - A assets.

This injunction application has been opposed by the defendant / opposite party No. 2 by filing written objection thereto containing *inter alia* the following facts :-

(i) Attention has been drawn to the Order No. 5, dated 16/08/2021 wherein this court has rejected the prayer for temporary injunction on merit. This court has held in the said order that *"having regard to the principle of balance of convenience and inconvenience and irreparable loss and injury, I find that interference by this court at this stage having regard to the nature of the dispute would not be appropriate and no substantial injury is likely to be caused to the*

Contd/...(P/5)

plaintiffs if the injunction is refused in the given facts when the alleged cause of action has arisen long before the institution of the suit."

(ii) It has been pointed out that the contents of the present injunction application are almost the same as that of the previous injunction application except the allegation that are demonstrated at paragraph No. 30.

(iii) It has been pointed out that in the case of hypothecated immovable properties, it falls within the power of bank to take measurement of such properties for the purpose of making valuation at periodic intervals.

(iv) The defendant No. 2 / opposite party No. 2 (Bank) has proceeded following guidelines of Reserve Bank of India in case of NPA accounts.

Prayer has been made to reject the injunction application.

During the course of hearing, the learned Advocate of the plaintiff has emphasized that the defendant No. 2 / opposite party No. 2 (Bank) has recovered an excess amount of Rs. 2,00,62,312.78/- from the plaintiff company. *Per Contra,* the learned Advocate of the defendant No. 2 has submitted that neither the Civil Court can entertain nor pass any order against the action of the defendant (Bank) in view of the provisions as per Section 13(2) of the Securitisation And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 (for short referred to as SARFAESI Act, 2002).

(v) Under such situation, the plaintiff has taken out another

Contd/...(P/6)

application under Section 151 of C. P. Code being I.A. No. 09 of 2022, dated 05/07/2022 which has been heard conjointly with the injunction application.

The brief facts that are narrated in this subject application under Section 151 of C. P. Code are stated below in the following manner :-

(i) On 27/05/2022, some persons including a lady purportedly claiming to be officials of the defendant / opposite party No. 2 (Bank) came at the residence of the plaintiff / petitioner No. 2 to take measurement for the purpose of valuation of all the immovable properties leading to facilitate their recovery process of the purported amount of loan which is the subject matter of the instant suit.

(ii) The plaintiff / petitioner has reported the matter to the local Police Station since such action of the bank authority has caused damage to the social prestige and reputation of the plaintiff / petitioner No. 2. During the pendency of this proceeding, the defendant / opposite party No. 2 (Bank) issued a notice under Section 13 (2) of the SARFAESI Act, 2002).

(iii) The credit enhanced due to payment to the sellers / dealers in respect of the Schedule – A assets have been spent exclusively for purchasing and / procuring fixed assets and such action is contrary to the standard operating procedure for a cash credit account like the matter in hand.

(iv) On and from the period commencing from 30/04/2012 to 31/10/2019 for the said cash credit account, the bank realized an amount of Rs. 2,34,69,984/- uninterruptedly whereas the actual and correct amount of interest would be Rs. 26,26,838/- taking

Contd/...(P/7)

into account the rate of interest at the rate of 8% per annum on total borrowed principle amount of Rs. 6,67,095/- for maximum three(3) years.

The plaintiffs / petitioners have prayed for an order *inter alia* to restrain the defendants / opposite party (Bank) from proceeding any further in connection with the said notice under Section 13(2) of the SARFAESI Act, 2002 and / or to initiate any other proceedings under the provisions of the said Act of 2002.

This application has been opposed by the defendant No.2 (Bank) by filing written objection thereto contending *inter alia* the following facts which are relevant for the present purpose :-

(i) The defendant No. 2 is under the management of principle bank i.e. Punjab National Bank (defendant No. 1). The defendant No. 3 has no existence.

(ii) The subject suit account is NPA in character and the officials of the defendant / opposite party (Bank Authority) along with empanelled valuers went to the suit properly as alleged in order to make valuation of the properly charged with the bank in the name of the plaintiff / petitioner No. 2. The defendant / opposite party No. 2 has alleged that the said plaintiff / petitioner No. 2 had not only restrained them to take the valuation but they were also prevented from exercising their statutory right. The bank authority has submitted reply to the local police station against the alleged complaint filed by the plaintiff / petitioner No. 2.

(iii) Issuance of notice under Section 13(2) of SARFAESI Act, 2002 falls within the domain of the bank authority and such facts as alleged are out of the pleadings of the plaint.

Contd/...(P/8)

(iv) All the Schedule – A properties are charged by hypothecation to the defendant No. 2 (Bank) for which no question would arise for the attachment or any other legal steps.

(v) It is stated that as per request of the plaintiff, the defendant No. 2 bank has sanctioned, renewed, enhanced the said OD subject loan account time to time and in this context the plaintiff has executed document from time to time for the said purpose.

The plaintiff / petitioner has relied on the following decisions :-

(i) **AIR 2003 SC 1177** (Modi Entertainment Network & Anr. V/s. W.S.G.Cricket Pte. Ltd)**,** wherein the Hon'ble Supreme Court has held the aspects to be considered for grant of Anti-Suit Injunction.

(ii) **AIR 2004 SC 2371** (Mardia Chemicals Ltd., etc. etc. V/s. Union of India & Others etc. etc.)**,** wherein the Hon'ble Supreme Court has held that borrower has the right to approach DRT after recovery measure is taken and he can also approach Civil Court in cases of fraud and absurdity. The Hon'ble Supreme Court has further held that classification of debt as NPA cannot be at whim and fancies of financial institution for which RBI has laid guidelines.

The defendant opposite party No. 2 has filed photocopy of some documents by firisti like sanctioned letter, copy of the cheque (RTGS) and other correspondences in connection with the subject transaction between the plaintiff / petitioner and the defendant opposite party No. 2 (Bank). The learned Advocate of the defendant / opposite party No. 2 has drawn attention of the court to the letter dated 22/05/2019, wherein the plaintiff / petitioner No. 2 has requested the bank authority to close the assigned LIC Policy in order to credit the proceeds to the OD account of the plaintiff since they are facing financial crisis.

Contd/...(P/9)

The learned Advocate of the defendant No. 2 has relied on the following decision :-

(i) **AIR 1995 Kerala 52** (Unique Alliance Industries, Goa V/s. Anupama Agencies, Trichur and others).

In this judgment, the Hon'ble Kerala High Court has held that the grant of temporary injunction is purely a discretionary exercise of power of the court which has to be exercised fairly and equitably. It can refuse temporary injunction against the bank if the court feels that granting of such injunction will result in gross injustice to the bank or the public at large.

The respective decisions relied by both the sides bear no resemblance with the facts of the instant suit. However, I have duly considered the contentions of the respective parties in the light of the law laid down in those reported cases.

The learned Advocate of the defendant No. 2 (Bank) has tried to canvass that having regard to the sanctioned letter followed by RTGS, it would be seen that all the payments were made at the instance of the plaintiff and injunction, if any, granted would obstruct the recovery process of the bank. *Per Contra*, the learned Advocate of the plaintiff has contended that the plaintiff is not a defaulter for which SARFAESI Act, 2002 will not apply in the facts of the instant suit. He has further pointed out that in the instant case there is no unpaid amount rather the plaintiff has made excess payment.

Section 13(4) of the SARFAESI Act, 2002 stipulates the measures to be taken by the secured creditable in case the borrower fails to discharge his liability within the specified period.

Section 34 of the said Act stipulates that no Civil Court shall have jurisdiction to entertain or suit or proceeding in respect of any matter

Contd/...(P/10)

which Debts Recovery Tribunal or Appellate Tribunal is empowered by or under proposed legislation to determine and no injunction shall be granted by any Court or other authority in respective of any action taken or to be taken in pursuance of any power conferred by or under the proposed legislation or under Recovery of Debts Due to Banks and Financial Institution Act, 1993. Even it is not out of place to mention that the Hon'ble Supreme Court in the aforesaid decision of Mardia Chemicals Limited has held that the bar of Civil Court applies to all such matters which may be taken cognizance of by Debt Recovery Tribunal apart from those matters in which measures have already taken under sub-section 4 of Section 13 of the said Act.

It is also relevant to note in the context of pleadings in the plaint that there is no averment in the plaint or in the injunction application regarding registration of the plaintiff partnership firm. Even, if the firm is unregistered then the plaint as well as the injunction application do not demonstrate any issue regarding effect of non-registration.

As held in Order No. 5, dated 16/08/2021 while disposing of the previous injunction application, it is again reiterated that whether the defendant bank raised / earned / charged excess amount of interest or not from the plaintiffs / petitioners violating the Banking Rules and Regulations are question of fact which cannot be adjudicated at this stage unless evidence is led subject to the maintainability of this suit before this court.

At this initial state of the suit, no inference can be drawn whether the defendant bank debited the cash credit account for purchasing fixed assets as mentioned in Schedule – A of the plaint in violation of banking rules since such alleged actions are mixed question law and facts. Having regard to the statutory bar in the SARFAESI Act, 2002, the

Contd/...(P/11)

plaintiff has no *prima facie* case to get an order of injunction. Nowhere in the plaint or injunction application, the plaintiff has been *prima facie* able to demonstrate any fraudulent action of the defendant bank for which I find little scope to consider the injunction prayer having regarding to the principle of balance of convenience and irreparable loss. This is a Money Suit which can be compensated in terms of money in the event the suit is decreed following which no substantial injury is likely to be caused to the plaintiffs, if the injunction is refused in the given facts.

Accordingly, the prayer for injunction as made in the application of the plaintiffs is devoid of any merit and is liable to be rejected.

In view of the discussion made above and having regard to the prayer made above in the application under Section 151 C. P. Code, it is seen that the plaintiff / petitioner has tried to restrain defendant (Bank) from exercising its statutory action in terms of the SARFAESI Act, 2002. Such injunction as prayed for has in fact would result in interference with the jurisdiction of another Court. Having regard to the facts as discussed above, it is seen that the defendant (Bank) has initiated action under Section 13(2) of the SARFAESI Act, 2002 which falls within the domain of the statutory power of the bank authority. Such Anti-Suit Injunction as prayed for to restrain the defendant (Bank) from exercising statutory power has no merit for consideration following which the petition under Section 151 of C. P. Code as filed by the plaintiff is also liable to be rejected.

Having regard to the facts of the case, there would be no order as to costs.

Contd/...(P/12)

HENCE,

IT IS

O R D E R E D

The injunction application being I.A. No. 08 of 2022, dated 01/06/2022 as well as petition under Section 151 of C. P. Code being I.A. No. 09 of 2022, dated 05/07/2022 stand rejected on contest without costs.

Fix **31/10/2022** for **framing of issues and first case management hearing.**

D/C by me.

Judge, Commercial Court
Asansol

Judge, Commercial Court
Asansol

Money Suit – 19/2021
CNR No. : WBBD17-000036-2021
J.O. Code : WB00854.

Later
Order No. – 18
Dated - 02/09/2022

The plaintiff has filed this day a petition under Section 151 of C. P. Code along with copy for the defendant (Bank) against the notice under Section 13(4) of SARFAESI Act, 2002.

Let this be registered as separate I.A.

Liberty is given to the defendant (Bank) to collect this copy from the record observing usual practice and procedure.

(To date).

D/C by me.

Judge, Commercial Court
Asansol

Judge, Commercial Court
Asansol