

Jagdish Singh vs Heeralal & Ors on 30 October, 2013

Equivalent citations: AIR 2014 SUPREME COURT 371, 2014 (1) SCC 479, 2013 AIR SCW 6378, 2014 (1) AIR BOM R 124, 2014 (1) AIR KANT HCR 97, AIR 2014 SC (CIV) 281, (2013) 13 SCALE 359, (2013) 132 ALLINDCAS 38 (SC), (2013) 2 CLR 1173 (SC), (2014) 2 PUN LR 649, (2013) 4 BANKCAS 744, (2014) 3 CIVLJ 149, (2014) 1 MAD LW 108, (2014) 122 REVDEC 375, (2014) 1 ANDHLD 46, (2014) 102 ALL LR 253, (2013) 4 CURCC 283, (2014) 3 MAH LJ 588, (2013) 6 ALL WC 6233, (2014) 1 CAL HN 121, (2014) 2 MPLJ 560, (2013) 8 MAD LJ 84, 2014 (2) KCCR SN 72 (SC)

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Bench: A.K. Sikri, K.S. Radhakrishnan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 9771 OF 2013
(Arising out of Special Leave Petition (Civil) No.18 of 2011)

Jagdish Singh

..... Appellant

Versus

Heeralal and others

..... Respondents

J U D G M E N T

K.S. Radhakrishnan, J.

Leave granted.

2. The appellant herein was the auction purchaser, being the highest bidder for Rs.18,01,000/-, in respect of the land admeasuring one acre in Khasra Nos.104/3 and 105/2, Patwari Halka No.4, Village Segaoon, Anjad Road, Barwani, M.P., which was brought to sale for recovery of loan amounts under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the Securitisation Act”). The auction was confirmed by the bank on 08.11.2005 on the appellant’s depositing Rs.2,90,250/- by 09.11.2005 and remaining 75% within 15 days. The appellant was not put in possession of the property in question even though the auction was confirmed.

3. The appellant – auction purchaser then came to know that Respondent Nos.1 to 5 herein have filed a Civil Suit No.16A/07 in the Court of District Judge, Barwani District for a declaration of title, partition and permanent injunction against Respondent Nos.7 to 9 and others in which the appellant and the bank were also made parties. Following are the reliefs sought for in the said civil suit:

“(A) Decree may be passed in favour of the plaintiff and against the defendants for declaration of title to this effect that one acre land in survey No.104/3 and 105/2 described in plaint para

4 (a) is undivided joint family property of plaintiff and defendants No.1 to 4 and the defendants have no right to mortgage it or attachment and auction of the same against any loan recovery by defendant No.5 and if defendants No.1 to 5 might have created any charge on the said land then it is not binding on the plaintiff.

(B) Decree of partition may be passed in favour of the plaintiffs and against the defendants for division of the suit land by metes and bounds and decree may be passed for separating the land of title of the plaintiffs and mutation effected in revenue papers.

(C) Decree of permanent injunction may be passed in favour of the plaintiffs against the defendant that the defendants shall not, directly or indirectly, transfer, auction or interfere over the suit land of the plaintiff in any manner.

(D) Costs of the suit may be awarded against the defendants.

(E) Other relief which the Hon’ble Court may deem proper may be granted to the plaintiff against the defendants.”

4. Respondent Nos.7 to 9 herein, in the meanwhile, filed an application before the Debt Recovery Tribunal (for short “the DRT”), Jabalpur under Section 17 of the Securitisation Act challenging the sale notice dated 08.11.2005. The application was opposed by the bank and the same was dismissed by the DRT vide its order dated 21.07.2006.

5. Respondent Nos.6 and 7 (the Bank) filed a preliminary objection before the civil court stating that in view of Section 13 read with Section 34 of the Securitisation Act, the civil court has no jurisdiction to entertain the suit. The court, therefore, framed the following issues:

“Whether under the provisions of Section 34 & 35 of SARFAESI Act 2002 this court does not have the jurisdiction to decide the suit as mentioned in special pleadings in para 10 of the written statement of defendant No.10 and also mentioned in para 15 of the written statement of defendant Nos.6 & 7.”

6. The civil court upheld the preliminary objection stating that if the plaintiffs had any right, they ought to have filed an appeal under Section 17 of the DRT Act and not

a suit in view of the specific bar contained in Section 34 of the Securitisation Act. Civil court, therefore, passed an order on 18.01.2008 holding that the suit is not maintainable and, hence, the application preferred by the bank under Order 7 Rule 11 of the Civil Procedure Code (for short “the CPC”) was allowed.

7. Aggrieved by the said order, Respondent Nos.1 to 5 herein filed Civil First Appeal No.130/08 before the High Court of Madhya Pradesh at Indore.

The High Court, however, allowed the appeal. The operative portion of the judgment reads as follow:

“I have perused the contents of the plaint from the record of the case. A bare perusal of the plaint indicates that the plaintiffs have raised the question of title, on the basis of Joint Hindu Family property and they being the members of the Joint Hindu Family, it has been pleaded by them that the property in question had been acquired through the earnings of the joint family property. On that basis, it has been maintained by them that the property in question was liable to be treated as Joint Hindu Family property, and not the exclusive property of the defendants. In these circumstances, on the bare perusal of the contents of the plaint, it cannot be suggested at all that the civil suit, filed by the plaintiffs, is barred under any provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2000, or that civil court has no jurisdiction in the matter.”

8. Aggrieved by the same, this appeal has been preferred. Shri A.K. Chitale, learned senior counsel appearing for the appellant, submitted that the High Court has not properly appreciated the scope of Section 34 of the Securitisation Act and has completely over-looked the principle laid down by this Court in various Judgments with regard to the scope of Section 9 CPC vis-à-vis Section 34 of the Securitisation Act. Reference was made to the Judgments of this court in *Mardia Chemicals and others v. Union of India and others* (2004) 4 SCC 311, *Central Bank of India v. State of Kerala and others* (2009) 4 SCC 94, *United Bank of India v. Satyavati Tondon and others* (2010) 8 SCC 110 and *Authorised Officer, Indian Overseas Bank and others v. Ashok Saw Mill* (2009) 8 SCC 366. Learned senior counsel submitted that the appellant is a bona fide purchaser for value and the sale was confirmed in his favour as early as on 08.11.2005. Further, it was pointed out that the application preferred by Respondent Nos.7 to 9 before the DRT, challenging the sale notice dated 08.11.2005, was also dismissed by the DRT on 21.07.2006. Consequently, the High Court was not justified in interfering with the order passed by the District Judge.

9. Shri Sanjay Parikh, learned counsel appearing for the respondents, on the other hand, submitted that the High Court has rightly interfered with the order of the District Judge after having found that the civil court has got the jurisdiction to deal with the rights of the respondents – plaintiffs. Learned counsel submitted that the

High Court has correctly appreciated the scope of Section 34 of the Securitisation Act. Reference was made to the Judgments of this Court in *Nahar Industrial Enterprises Limited v. Hongkong Shanghai Banking Corporation* (2009) 8 SCC 646, *Indian Bank v. ABS Marine Products Pvt. Ltd.* (2006) 5 SCC 72 and also to the *Mardia Chemicals Ltd.* (supra). Learned counsel submitted that the DRT, exercising powers under Section 17 of the Securitisation Act, cannot decide the rights of Respondent Nos.1 to 5 vis-à-vis Respondent Nos.7 to 9 in a proceeding under Section 17 of the Securitisation Act and civil court is the right forum to decide as to whether the secured assets are ancestral properties of a Hindu Undivided Family (HUF) and they were acquired through the earnings out of the joint family properties.

Discussion

10. The Bank of India had advanced a loan of Rs.25 lakhs to M/s Guru Om Automobiles, 10th respondent herein, through its proprietor, the 6th respondent on 17.02.2000. The loan was secured by equitable mortgage executed by Respondent Nos.7 to 9 in respect of land measuring one acre in Khasra No.104/3 and 105/2, Patwari Halka No.5, Village Seagon, Anjad Road, Barwani, MP. Respondent Nos.6 to 8 had also created equitable mortgage on three houses, which were in their respective names. Original title deeds of all the above-mentioned properties were duly deposited with the bank at the time of availing of the loan. Since they committed default in re- paying the loan, the bank issued notice under Section 13(2) of the Securitisation Act and took steps under Section 13(4) of the Securitisation Act in respect of properties on 01.03.2004. Auction notice was duly published in the newspapers on 30.09.2005. No objection was raised by the plaintiffs and the suit land was auctioned on 08.11.2005, which was settled in favour of the highest bidder – the appellant herein. The entire auction price was paid by the auction purchaser and the sale in his favour was duly confirmed. Respondent Nos.7 to 9 challenged the sale notice, as already indicated, by filing an application No.19/2005 before the DRT, Jabalpur, which was dismissed on 21.07.2006. No appeal was preferred against that order and that order has attained finality.

11. We notice, at this juncture, Respondent Nos.1 to 5 filed Civil Suit No.16A/07 in the Court of the District Judge, Barwani against the appellant, as well as the bank and Respondent Nos.6 to 9, alleging that the family members of Respondent Nos.1 to 9 herein being sons/grandsons of deceased Premji, constituted a HUF engaged in agriculture. It was stated that the said properties were purchased in the names of Respondent Nos.7 to 9 out of the funds of HUF and house Nos.41/1, 42/3 and 42/2 were also purchased in the names of Respondent Nos.6 to 8 respectively, out of the funds of HUF and, therefore, the properties of HUF. But, the facts would clearly indicate that the properties referred to above were purchased by Respondent Nos.6 to 8 in their individual names, long after the death of Premji and that too by registered sale deeds and no claim was ever made at any stage by any member of the HUF that the suit land was a HUF property and not the individual property. Respondent Nos.7 to 9 had purchased those lands vide sale deed dated 14.09.1999 and the 6th respondent had also purchased in his individual name House No.42/1 on 31.03.1998 vide registered sale deed. Similarly, Respondent No.7 had also purchased House No.42/3 in his individual name. No claim, whatsoever, was made at any stage by any member of the family that those properties and buildings were HUF properties and not the individual properties of

Respondent Nos.6 to 8 herein.

12. We find that the bank had advanced loans on the strength of the above-mentioned documents which stood in the names of Respondent Nos.6 to

9. Due to non-repayment of the loan amount, the Bank can always proceed against the secured assets.

13. Security interest, within the meaning of Section 2(zf) has been created in respect of the above mentioned properties which are secured assets within the meaning of Section 2(zc), in favour of the secured creditor (the bank) within the meaning of Section 2(zd). On failure to re- pay, the bank, secured creditor can always enforce its security interest over the secured assets.

14. Secured asset is defined under Section 2(zc) of the Securitisation Act to mean the property on which security interest is created. Section 13(1) of the Securitisation Act states that notwithstanding anything contained in Section 69 or 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal by such creditor, in accordance with the provisions of the Act. In case the borrower fails to discharge his liability, the bank can take the measures provided in Section 13(4) of the Securitisation Act for recovery of the loan amount. The “measures” available for enforcement of security interest is dealt with in the following provision:

13. Enforcement of security interest – (1) to (3) xxx xxx xxx (4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

PROVIDED that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

PROVIDED further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.”

15. Section 17 of the Securitisation Act confers a right of appeal to any person, including the borrower, if that person is aggrieved by any of the “measures” referred to in sub-section (4) of Section 13 taken by the Secured Creditor. The operative portion of Section 17 is extracted hereinbelow for ready reference:

“17. 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 authorised 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 measure had been taken:

PROVIDED that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation : For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of Section 1.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-

section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

PROVIDED that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-

section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder.”

16. Any person aggrieved by any order made by the DRT under Section 17 may also prefer an appeal to the Appellate Tribunal under Section 18 of the Act.

17. The expression ‘any person’ used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13(4) of the Securitisation Act. Reference may be made to the Judgment of this Court in Satyavati Tondon’s case (supra).

18. Therefore, the expression ‘any person’ referred to in Section 17 would take in the plaintiffs in the suit as well. Therefore, irrespective of the question whether the civil suit is maintainable or not, under the Securitisation Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the Securitisation Act, in case the bank (secured creditor) adopt any measure including the sale of the secured assets, on which the plaintiffs claim interest.

19. Section 34 of the Securitisation Act ousts the civil court jurisdiction. For easy reference, we may extract Section 34 of the Securitisation Act, which is as follow:

“34. 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 Institutions Act, 1993 (51 of 1993).

20. The scope of Section 34 came up for consideration before this Court in Mardia Chemicals Ltd. (supra) and this court held as follow:

“50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub- section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken “or to be taken in pursuance of any power conferred under this Act”. That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.”

21. Section 13, as already indicated, deals with the enforcement of the security interest without the intervention of the court or tribunal but in accordance with the provisions of the Securitisation Act.

22. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower’s debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the “measures” referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding “in respect of any matter” which a DRT or an Appellate Tribunal

is empowered by or under the Securitisation Act to determine. The expression ‘in respect of any matter’ referred to in Section 34 would take in the “measures” provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any “measures” taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.

23. We are of the view that the civil court jurisdiction is completely barred, so far as the “measure” taken by a secured creditor under sub-section (4) of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal. to determine as to whether there has been any illegality in the “measures” taken. The bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondent Nos.6 to 8 have been crystallised, before creating security interest in respect of the secured assets. In such circumstances, we are of the view that the High Court was in error in holding that only civil court has jurisdiction to examine as to whether the “measures” taken by the secured creditor under sub-section (4) of Section 13 of the Securitisation Act were legal or not. In such circumstances, the appeal is allowed and the judgment of the High Court is set aside. There shall be no order as to costs.

.....J. (K.S. Radhakrishnan)J. (A.K. Sikri) New Delhi, October 30, 2013.