REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2924 OF 2023
(Arising out of SLP (C) No. 16657 of 2017)

PUNJAB AND SIND BANK ...APPELLANT(S)

VERSUS

FRONTLINE CORPORATION LTD. ...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. The present appeal assails the judgment and order dated 30th January 2017, passed by the Division Bench of the High Court of Judicature at Calcutta (hereinafter referred to as "High Court") in A.P.O.T. No.411 of 2016, thereby setting aside the order of the Single Judge dated 2nd November 2016, vide which an earlier interim order of the Single Judge dated 15th July 2013, directing the appellant herein to take steps to sell the suit property but not to pass final orders on the sale, had been vacated.

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Date: 2023.04.19 16:43:51 IST
Reason:

3. The facts, in brief, giving rise to the present appeal are

as under:

3.1 The appellant - Punjab & Sind Bank, was inducted as a tenant in the ground floor of premises No.8, Old Court House Street, Kolkata, 700001, now known as 28, Hemant Basu Sarani, Kolkata, 700001 (hereinafter referred to as the "suit property") in the year 1972 by one M/s Bharat Chamber of Commerce. In the year 2003, M/s Bharat Chamber of Commerce preferred an ejectment suit bearing No. 2 of 2003 against the appellant before the City Civil Court, Calcutta.

3.2 During the pendency of the aforesaid ejectment suit, the respondent - M/s Frontline Corporation Ltd. purchased the suit property from M/s Bharat Chamber of Commerce, vide sale deed dated 17th February 2005. Thereafter, the respondent availed various credit facilities from the appellant to the tune of Rs.42.74 crore by mortgaging, *inter alia*, the suit property as collateral.

3.3 Subsequently, in furtherance of the terms of a purported settlement agreement, dated 29th November 2010, filed in the aforementioned ejectment suit before the City Civil Court, Calcutta, a lease deed dated 11th February 2011 was executed between the parties, thereby demising the suit

property in favour of the appellant for a period of 21 years. It is pertinent to note that no consent decree was actually passed by the City Civil Court, Calcutta.

3.4 Owing to the financial defaults committed by the respondent, the appellant was constrained to classify the credit facilities availed by the respondent as Non-Performing Assets (for short, "NPA") on 31st March 2012. Soon afterwards, a demand notice dated 13th June 2012 was also issued by the appellant under sub-section (2) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as 'SARFAESI Act') for recovery of outstanding dues of approximately Rs.44.89 crore, with interest, from the respondent. The demand remained unmet, and so the appellant issued a possession notice under sub-section (4) of Section 13 of the SARFAESI Act, declaring therein that it had taken possession of the suit property.

3.5 Aggrieved thereby, the respondent preferred a securitization application, being S.A. No. 19 of 2013, before the learned Debt Recovery Tribunal-I, Calcutta (for short, "DRT"). Simultaneously, a civil suit, being C.S. No. 217 of

2013, was also instituted before the High Court, *inter alia*, for specific performance of the purported settlement agreement entered into between the parties, as well as the consequent lease deed. The respondent claimed therein that, as per the terms of the purported settlement agreement, the fulfilment of the obligations on part of the appellant, which involved the temporary vacation of the appellant from the suit property so as to enable the respondent to reconstruct the suit property and, thereafter, to hand over possession of the ground floor of the suit property back to the appellant, would enable the outstanding dues to be set off and adjusted from the amounts receivable from the creation of third party interests in the newly constructed building. An injunction application, being G.A. No. 1884 of 2013, was also moved by the respondent in the suit to restrain the appellant from dealing with, disposing of or encumbering any part or portion of the suit property.

3.6 The learned Single Judge, vide interim order dated 15th July 2013, allowed the aforesaid application and directed that no final orders of sale be passed for a period of 6 weeks. This interim order was extended from time to time, and lastly

vide order dated 2nd December 2013.

3.7 Contending that the ejectment suit had been dismissed and that the purported settlement agreement had not fructified into a consent decree, the appellant filed an application being G.A. No. 2352 of 2014 for vacating the aforesaid interim order. The Single Judge, vide order dated 2nd November 2016, set aside the interim order dated 15th July 2013, noting therein that the appellant, being a secured creditor, could not be restrained from taking appropriate steps *qua* the secured suit property, especially in light of the express bar on the jurisdiction of the civil court, as provided under Section 34 of the SARFAESI Act. Cost of Rs.5,00,000/- was also imposed on the respondent.

3.8 Being aggrieved thereby, the respondent challenged the aforesaid order before the learned Division Bench of the High Court, in A.P.O.T. No. 411 of 2016, along with an application for stay being G.A. No. 3535 of 2016.

3.9 It is pertinent to note that, in the securitization application preferred by the respondent, the DRT, vide order dated 7th August 2013, refused to proceed further on account of the pendency of the civil suit before the High Court.

3.10 Vide the impugned judgment dated 30th January 2017, the learned Division Bench allowed the respondent's appeal and set aside the order of the learned Single Judge dated 2nd November 2016. The Division Bench observed that the bar under Section 34 of the SARFAESI Act was not absolute, and that the appellant, having acted upon the purported settlement agreement by vacating the suit property and having availed Rs.5,00,000/- as shifting charges from the respondent, would be estopped from repudiating its obligations under the terms of the purported settlement agreement. The Division Bench restrained the appellant from selling the suit property until the final determination of the rights of the parties. As such, the interim order initially passed in the suit, dated 15th July 2013, stood revived and was directed to continue till the disposal of the civil suit. Being aggrieved thereby, the present appeal.

4. We have heard Shri Ashim Banerjee, learned Senior Counsel appearing on behalf of the appellant and Shri Karan Batura, learned counsel appearing on behalf of the respondent.

5. Shri Banerjee submitted that the Division Bench has

grossly erred in reversing the well-reasoned order passed by the Single Judge**.** It is submitted that the Single Judge had found the suit to be mischievous and, as such, had refused to grant the discretionary relief under Order XXXIX Rules 1 and 2 of the Civil Procedure Code, 1908 (for short, "CPC"). He, therefore, submitted that the impugned judgment and order dated 30th January 2017 deserves to be set aside and the order of the Single Judge dated 2nd November 2016 needs to be restored.

6. Shri Batura, on the contrary, submitted that the Single Judge, having held that the suit, being for specific performance of the terms of the settlement filed in the eviction suit, was maintainable, could not have vacated the interim relief granted earlier.

7. Undisputedly, the property in question in respect of which the suit is filed, has been mortgaged with the appellant-Bank. As observed by the Single Judge, the suit as well as the application for interim relief has been cleverly drafted. Though various interim reliefs have been sought, it will be relevant to refer to Clause (d) of the prayer, which reads thus:

> "(d) injunction restraining the respondent from in any manner dealing with and/or disposing of and/or encumbering any part or portion of the said premises No. 8, Old Court House Street, Kolkata – 700001."

8. It could thus be seen that a blanket injunction restraining the respondent, i.e. the appellant herein in any manner dealing with and/or disposing of and/or encumbering any part or portion of the suit property has been sought.

9. By an ad-interim order dated 15th July 2013, the Single Judge, though permitted the steps to be taken for selling the premises in question, directed that the final orders of sale could not be passed for a period of 6 weeks. The said ad-interim order came to be continued from time to time. As such, the appellant was constrained to file G.A. No. 2352 of 2014 for vacating the said interim order. The same was ultimately vacated by the Single Judge vide order dated 2nd November 2016.

10. It would be relevant to note that the Single Judge has specifically referred to Section 34 of the SARFAESI Act while vacating the interim relief granted to the respondent.

11. The Division Bench, vide the impugned judgment

observed that, since the Bank has taken steps in terms of the purported settlement, it could not repudiate its obligations under the settlement. The Division Bench relied on the Doctrine of Promissory Estoppel for finding it necessary to restrain the Bank from selling the suit property until determination of the rights of the parties.

12. The issue as to the exclusion of the jurisdiction of a civil court is no more *res integra*. The provisions of Section 34 of the SARFAESI Act have been considered by a Bench of three Judges of this Court in the case of ***Mardia Chemicals Limited and Others v. Union of India and Others***[1]. It will be relevant to refer to the following observations of this Court in the said case:

> "**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

1 **(2004) 4 SCC 311**

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.

51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages. We find such a scope having been recognized in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely, *V. Narasimhachariar* [AIR 1955 Mad 135] , AIR at

pp. 141 and 144, a judgment of the learned Single Judge where it is observed as follows in para 22: (AIR p. 143)

> "*22*. The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the court before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee must clearly disclose a fraud or irregularity on the basis of which relief is sought: *Adams* v. *Scott* [(1859) 7 WR 213, 249] . I need not point out that this restraint on the exercise of the power of sale will be exercised by courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely. (See Ghose, Rashbehary: *Law of Mortgages*, Vol. II, 4th Edn., p. 784.)""

13. It could thus be seen that this Court has held that the jurisdiction of the civil court is barred in respect of matters which a DRT 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". The Court has held that the prohibition covers even matters which may be taken cognizance of by the DRT though no measure in that direction has so far been taken under sub-section (4) of Section 13 of the SARFAESI Act. It has been held that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. It has categorically been held that 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 Court held that the bar of civil court thus applies to all such matters which may be taken cognizance of by the DRT, apart from those matters in which measures have already been taken under sub-section (4) of Section 13 of the SARFAESI Act.

14. This Court has further held that, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say

precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages.

15. In the present case, it cannot be said that the action of the secured creditor, i.e. the appellant is either fraudulent or that its claim is so absurd or untenable which may not require any probe whatsoever. It is further to be noted that the SARFAESI Act itself provides remedies to an aggrieved party in view of the provisions of Sections 17 and 18.

16. We find that the present appeal deserves to be allowed on another ground also. Undisputedly, the jurisdiction which was exercised by the Division Bench was analogous to the one exercised under Order XLIII Rule 1 of the CPC. It will be relevant to refer to the following observations of this Court in the case of ***Wander Ltd. and Another v. Antox India P. Ltd.***[2]:

> "**14.** The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the

2 **1990 (Supp) SCC 727**

settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd.* v. *Pothan Joseph* [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)

> "... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co.* v. *Jhanaton* [1942 AC 130] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle."

17. It has been held by this Court that the Appellate Court would not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. It has been held that an appeal against exercise of discretion is said to be an appeal on principle. It has further been held that the Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. It has been held that if the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

18. Undisputedly, in the present case, while vacating the interim relief granted vide order dated 15th July 2013, the Single Judge had held that the relief claimed by the plaintiff could not have been granted in view of the provisions of

Section 34 of the SARFAESI Act. As such, the Single Judge had passed the said order on the basis of a statutory bar. As observed earlier, the scope in which a civil suit is maintainable as determined by this Court in the case of ***Mardia Chemicals Limited*** (supra) is very limited. The case of the respondent/plaintiff would not come within the said limited scope. As such, we are of the considered view that the Division Bench has grossly erred in interfering with the discretion exercised by the Single Judge.

19. In the result, the appeal is allowed. The judgment and order dated 30th January 2017 passed by the Division Bench of the High Court is quashed and set aside and the judgment and order passed by the learned Single Judge is upheld.

20. Pending application(s), if any, shall stand disposed of.

.....J.
[B.R. GAVAI]

.....J.
[ARAVIND KUMAR]

NEW DELHI;
APRIL 18, 2023