

Misc. 69/2013

12/5/2014

Today is fixed for passing order on petition No.2945/13 filed by petitioner/defendant , U/S 151 of CPC praying to stay the further proceeding of T. S- 76/09,in view of O.A. 24/2010 filed by the Axis Bank, Mortgagor against petitioner, The Puranimati Plantations Pvt. Ltd., Mortgagee , before the Debts Recovery Tribunal, Guwahati,Assam.

Petitioner/defendant's case in brief is that plaintiff has instituted the suit against it for eviction, khas possession, recovery of arrear rent, compensation and permanent injunction. The petitioner on receiving summon had appeared and filed written statement. That during the pendency of the suit the mortgagor bank i.e. the Axis Bank instituted a recovery suit against the petitioner/defendant before the Debt Recovery Tribunal for realization of the loan amount which is numbered as O.A. 89/2013. The present petitioner had already appeared before the DRT in the said O.A. It is further stated that U/S 34 of Debt Recovery Act, there is a bar on the Civil Court to proceed with the matter if any proceeding is going on in the Tribunal. It is stated that the subject matter of the instant suit is under mortgage to the bank and as such if the proceeding of instant suit is to go on, then it would create multiplicity of the cases as the subject matter of the suit and the mortgage property are the same.

Situated thus, prayer has been made to stay the proceeding of the instant suit till disposal of O.A. 89/2013. It is also stated that in the event the Mortgagee bank succeed in the O.A., then the mortgage property would be put in auction and as such result of T.S. would be of no use. In view of the aforesaid facts situation prayer has been made to stay the further proceeding of the instant title suit bearing T.S.76/2009 till disposal of O.A. No.89/13 pending before the Debt Recovery Tribunal.

O.P. filed written objection wherein it was stated that it appears from the documents submitted by the petitioner that the said O.A. No.89/2013 has not been contested by the present petitioner i.e. Puranimati Plantations Pvt. Ltd. and its two Directors viz. Lily Hazarika and Dhruvajyoti Hazarika. Further Subir Chatterjee /Subir Chattopadhyay who has filed written statement in the instant suit had appeared before the Debt Recovery Tribunal wherein he stated that he had retired from the company and as such he has no any liability as personal guarantor. Situated thus, it is stated that the filing of O.A. No. 89/2013 is a collusive act between the bank and the present petitioner and its directors. It is also stated that subject matter of T.S.76/2009 of this court and O.A. 89/2013 of Debt Recovery Tribunal are different and as such prayer has been made for dismissal of the petition.

I have already heard Ld counsels of both the parties .Perused the certified copies of the O.A instituted before the Debt Recovery Tribunal. Perusal of the plaint reveals that the suit was filed for decree of eviction of the defendant from the lease property , for recovery of arrear rent, future compensation and injunction. In the instant case petitioner has submitted that this court has no

jurisdiction to continue with the suit due to pendency of the O.A, filed by the Axis bank against the present defendant for recovery of debt and as such suit is liable to be stayed till the disposal of the O.A.

To decide whether this court will have jurisdiction it will be useful to consider some of the sections from **Recovery of Debts Due To Bank and Financial Insts. Act, 1993**.

Section 2 (g) of the Recovery of Debts Act defines what is a “debt”. Section 17 is the section which confers jurisdiction on the Tribunal and the Appellate Tribunal. It will be worthwhile reproducing Section 17 (1), which reads as under: **“17 (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.”**

Section 18 pertains to exclusion of jurisdiction. The said section reads as under:

“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.”

A conjoint reading of these sections, indicates that in respect of recovery of debts it is the Tribunal alone which would have jurisdiction.

In the instant case perusal of the prayer portion reveals that none of the relief claimed is related to the debt of the defendant. The sole relief claimed is the eviction of the defendant, which obviously is not the issue in the O.A. pending before the Debt Recovery Tribunal. The ouster by virtue of Section 18, sets out that no court or other authority can try matters for recovery of debts. In so far as the reliefs which do not pertain to debts on a plain reading of Section 17 of the Debt Recovery Act, are concerned, there can be no doubt that the civil court will retain jurisdiction.

That apart the cause of action of the suit, arose due to violation of the terms of the lease agreement by the defendant and cause of action of The O.A has arose due to non-payment of bank loan, i.e. the cause of action for initiation of both the proceedings are entirely different.

Situated thus, I am of the considered opinion that the civil courts jurisdiction is not barred to try the instant suit i.e. T.S-76/09. Moreover the relief claimed in both the suits are also different and as such I am not inclined to stay the proceeding of the instant suit under section 151 of C.P.C.

Misc(j) case is accordingly disposed off.

Munsiff No 1, Jorhat