

T.S.32/12.

25.4.13. Ld.counsel for the plaintiff is present.

The suit is taken up for hearing ex-parte.

The case of the plaintiff in brief is that, he obtained a loan of Rs.4,00,000/- from the defendant bank (State Bank of India, Borpool Branch) on 27.10.08 vide loan account No.30545740442.

At the time of obtaining loan from the defendant bank, the plaintiff kept the land measuring 1 katha 2 lochas covered by P.P.No.746/750, Dag No.1478/2939 and 1480 situated at No.1 Bamun gaon, Charigaon Mouza under district of Jorhat, under equitable mortgage with the defendant bank. The suit land was a vacant land, but, subsequently, the plaintiff built up a Assam Type House over the suit land and is residing over the land with his wife and his minor son. Even though the plaintiff is irregular in payment of loan amount to the defendant bank, but the plaintiff had paid an amount of Rs.25,000/- on 10.11.08, Rs.15,000/- on 24.11.2008, Rs.12,000/- on 26.11.08, Rs.21,000/- on 23.12.08, Rs.6000/- on 31.12.0, Rs.12,000 on 12.1.09, Rs.10,000/- on 31.3.09, Rs.25,000/- on 3.7.09, Rs.2000/- on 13.7.09, again a sum of Rs.12,042/- , Rs.30,000/- on 30.6.10, Rs.50,000/- on 12.7.10, Rs.1,80,000/- on 22.10.11 to the defendant bank for repayment of loan of the plaintiff's account.

After repayment of the said sum by the plaintiff to the defendant , the total outstanding amount was left to be paid by the plaintiff to the defendant along with interest stands at Rs.1,56,053/- as per the statement of Account of the defendant bank provided to the plaintiff. He has stated that he had taken loan from the defendant for the business of cane and bamboo furniture. But, unfortunately ,the entire business run into loss, he informed the defendant and the defendant had the knowledge of the plaintiff's matter. In spite of knowledge of the pathetic condition of the plaintiff by the defendant bank, the defendant had instituted a Title Suit before this court (Civil Judge,Jorhat) bearing T.S.No.43/2011 against the plaintiff for recovery of a sum of Rs.2,35,445.42 along with interest and the suit is

pending for disposal. Before receiving the notice of T.S.No.43/11 by the plaintiff, the defendant directed some of his official/ non-official staffs to take over possession of moveable properties of the plaintiff and accordingly, the official/ non-official staffs of the defendant had entered into the house of the plaintiff in absence of the plaintiff and had taken over possession of moveable properties, on 2.2.12. The wife of the plaintiff had requested the office staff of the defendant to provide her an inventory in that respect, the officials of the defendant bank had threatened her of dire consequences of life. The defendant bank illegally and fraudulently under the colour of SARFAESI Act, 2002, is illegally trying to grab the suit land by serving notice to the plaintiff on 21.6.12 for recovery of a sum of Rs.4,23,802/- from the plaintiff upon his loan account No.30545740442. The fraudulent act of the defendant can easily be found out from their own acts and deeds wherein the defendant bank had filed T.S.43/2011 before this court claiming a sum of Rs.2,35,445.42 to be recovered from the plaintiff and the statement of Account provided to the plaintiff by the defendant bank to show the amount to be paid by the plaintiff to the defendant amounting to Rs.1,56,053/- and the notice under SARFAESI Act, 2002 issued by the defendant shows the amount to be recovered from the plaintiff amounting to Rs.4,23,802/- upon the same and the loan account of the plaintiff and hence, the claim of the defendant bank is absurd and untenable. The plaintiff is always ready to pay the balance amount to the defendant bank. After receiving notice dtd.21.6.12, the plaintiff and his wife visited the defendant bank and asked the bank why they are acting maliciously and is also playing fraud against them, but the defendant bank threatened them with dire consequences by the bank officials and had also asked them to vacate the suit land within 9th day of July,2012 or else they would be thrown away from their house. Having no any option, the plaintiff compelled to file the instant suit along with a separate petition for temporary injunction restraining the defendant bank from fraudulently and illegally grab the suit land till disposal of the main suit.

Notice was issued to the defendant bank, but they did not turn up. Hence, this suit proceeded ex-parte against the defendant.

Plaintiff filed his evidence on affidavit wherein he has reiterated the averments made in the plaint. He has stated that Ext.1 is the statement of account of loan account No.30545740442, Ext.2 is the copy of the plaint, Ext.3 is the copy of the Panchnama issued by the defendant bank dtd.2.2.12 and Ext.4 is the Notice dtd.21.6.12 along with enclosure.

I have perused the evidence on affidavit and the exhibits. From the statement of Account (Ext.1), it appears that on 22.10.11, amount to be paid by the plaintiff to the defendant was Rs.1,56,053/-, from the copy of the plaint of T.S.43/11, I find that defendant filed the suit for realization of Rs.2,35,445.42 as on 24.10.11 with interest, costs and charges up to 24.10.11, but in the notice with enclosures, it reveals that notice was issued to recover Rs.4,23,802/- together with interest till the date of realization.

Ld.counsel for the plaintiff, at the time of hearing has submitted that the plaintiff has already liquidated the loan amount and statement of loan account dtd.22.10.12 in respect of loan account No. 30545740442 shows that the balance is Nil and account closed on 22.10.12.

Ld.counsel for the plaintiff has very fairly submitted that generally a suit is not maintainable in the Civil court in view of the prohibition imposed by Sec.34 of the SARFAESI Act,2002. He has submitted that when action of secured creditor found to be fraudulent or his claim found to be absurd and untenable, Civil court has jurisdiction to look into the Issue. In support of his contention, he has relied upon a decision of Hon'ble Gujrat High court reported in **2012(1)Civil LJ 790 (Sree Bharat Co-operative Bank Ltd. & Ors versus Vilasben Lalchand Kothari & Ors.**

I have perused the decision relied upon by the Ld.counsel for the plaintiff and also the decision of our own Hon'ble High court reported in **2012(2)GLT 562 (PANNALAL BHANSALI vs AXIS BANK LTD(M/S) & ORS.**

In the case before our own Hon'ble High court, the appellant as plaintiff instituted suit before the Civil court, Guwahati. In that case, the appellant-plaintiff purchased the suit land by registered sale deed on 15.5.07. In due course, the appellant-plaintiff also got his name mutated in the relevant record of rights showing him as owner of the suit property falling which he also started to pay land revenue in respect of the property in question. A katcha patta was also issued in his name. But on 3.3.09, the defendant No.1 (Axis Bank Ltd.) served the tenants under the plaintiff who are in occupation of the suit property with notices U/S.13(4) of the SARFAESI Act, 2002 whereby and whereunder, the defendant bank informed the tenants of the plaintiff that the bank had taken over possession of the property in question. On being questioned, the defendant bank had informed the plaintiff that the vendee took a loan from the defendant No.1 on creating a mortgage over the suit property in favour of the defendant No.1. The appellant-plaintiff is not a borrower. So, he instituted suit. Our Hon'ble High court rejected the submission of the Ld.counsel for the appellant-plaintiff that the appellant not being borrower cannot approach Tribunal under the Act for remedy and held that remedy U/S.17 can be had by any person.

In the case before the Hon'ble Gujrat High court, the fact of the case relied by the Ld.counsel for the plaintiff is that the respondent No.1 was an old lady and a widow was lured by the petitioner-bank to apply for loan. Respondent No.1 agreed to avail loan facility and for that purpose, executed a deed of mortgage and also signed few other documents necessary for availing the loan facility. Respondent No.1 was informed by the bank that the loan has been sanctioned in her favour. However, the fact remains that not a single penny was credited in the loan account of the respondent No.1 and she kept on inquiring about the same with the bank. It appears that at all times, an evasive reply was given by the bank in this regard. In the meantime, the bank, in spite of knowing that not a single penny has been paid to the widow, initiated proceedings under the SARFAESI Act, 2002 and enforced the equitable mortgage created by the respondent No.1, the widow. After that the

respondent No.1, widow instituted a regular suit in the in the court of Senior Civil Judge against the petitioner bank, its office-bearers and other defendants. The defendant bank preferred a petition for determining as to whether Civil court has the jurisdiction to adjudicate Civil suit. Ld. Civil Judge rejected the application against the impugned order. The defendant preferred an application before the Hon'ble High court.

On going through the Judgment, I find that the Hon'ble High court held that possession of the land is very clear. Civil court definitely possess jurisdiction to the extent that if the action of the secured credit is found to be fraudulent or the claim of the secured creditor is found to be absurd and untenable, then under such circumstances, civil court can definitely look into the Issue and upheld the order of the Civil court.

In the present case also from the plaint, evidence on affidavit as well as from the documents, I find that defendant instituted T.S.43/11 for realization of Rs.2,35,445.42 as on 24.10.11. As per the statement of Account on 22.10.11, amount to be realized from the plaintiff was Rs.1,56,053/-.

Considering the evidence of the plaintiff both oral and documentary, it appears that the defendant bank issued notice dtd.21.6.12 to recover Rs.4,23,802/-, is mala fide and fraudulent. Relying the decision of the Hon'ble Gujrat High court, I am of the opinion that the suit is maintainable.

Going through the evidence of the plaintiff, both orally and documentary and hearing Ld.counsel for the plaintiff, I am of the view that the plaintiff has able to prove his case. Hence, the plaintiff is entitled to a decree as prayed for.

In the result, the suit of the plaintiff is decreed with costs. It is declared that the defendant has no any right to take possession of the suit land and make auction sale. Notice dtd.21.6.12 is absurd and untenable.

Plaintiff is never entitled to pay any amount as shown in the notice dtd.21.6.12, by the defendant. Permanent injunction is granted restraining the

defendant or anybody else for and on behalf of the defendant bank, from entering into the suit land and disturbing peaceful possession of the plaintiff therefrom.

Decree be prepared accordingly.

Civil Judge, Jorhat.