

T.S.45 of 12.

Present:- Sri K. Dohotia,
Civil Judge, Jorhat.

ORDER.

05.12.13. The suit is fixed for necessary order on the petition No.3939/13, dtd.18.09.13 U/O.7, R.11 (d) of C.P.C filed by the defendant No.1 and 2 and objection filed to the said petition.

By filing the said petition, the defendants have stated that the suit of the plaintiff is not tenable in the eye of law as the jurisdiction of the Civil court is barred U/S.34 of the SARFAESI Act, 2002. The content of the plaint in the instant suit specifically referred about the service of notice U/S.13(2) of SARFAESI Act on the borrower, i.e., the plaintiff and other concerned parties and from such averments, it is well established that the provisions under the parameters of the SARFAESI Act are already invoked. Hence, this court has no jurisdiction to interfere with the action initiated under the provisions of the said Act for speedy recovery of the defaulted amount from the borrowers , i.e., the plaintiff and other concerned, the specific aim for which such Act had come into existence.

It is also stated in the petition that the SARFAESI Act also included the provisions for appeal in case , the borrower is aggrieved and his interest is jeopardized. In the present pretext, during the subsistence of the provisions of SARFAESI Act, the plaintiff should have explored the provisions of the Act for his redressal instead of filing the present suit for adjudication of his claim. They have stated that, this court has no jurisdiction to entertain the present suit for onward adjudication of the claim of the plaintiff. Therefore, they have submitted that the suit of the plaintiff be dismissed.

Plaintiff, in his written objection has stated that the petition filed by the defendant is not baseless, misconceived and liable

to be rejected. The petitioner-defendants wrongly interpreted that “by stating the illegal activities of defendants-petitioner, brings the entire suit under the parameter of SARFAESI Act. The O.P/plaintiff by stating the above acts of defendants through the averments in the plaint merely states/explains how the defendants try to bring an unsecured Credit illegally under the provisions of the Act. Hence, it is not the matter that suit is under the SARFAESI Act. For getting justice, plaintiff must explain the illegal acts of the defendants in connection with the suit matter.” Since the SARFAESI Act is not applicable in the subject matter of the suit, under the above situation the appeal under the above act does not arise at all. The plaintiff has also stated that the defendants wrongly interprets the contents of the suit , hence, the petition U/O.VII, R.11 (d) of C.P.C is not maintainable in the eye of law.

I have heard the submission advanced by the Ld.Counsel for the plaintiff and the defendant Nos.1 and 2.

The plaintiff filed the instant suit for declaration and for injunction. His case is that he is an employee of ONGC. He purchased the suit land taking house building advance (HB) from his employer ONGC with a condition that the suit land be mortgage to the ONGC. The suit land was purchased by the plaintiff on 31.5.2003. The plaintiff submitted all the papers creating title over the suit property to the ONGC at the time of taking the House Building Advance from the ONGC. The defendant No.1 and 2 sanctioned a loan of Rs.03 lakhs on 8.01.03. against personal guarantee after examining the plaintiff's Pay Slip etc and also took a additional personal guarantee who happened to be an Officer of ONGC. The plaintiff has stated that the suit land is claimed by the defendant as mortgaged property to them against the said loan of Rs.3

lakhs. But in no point of time, the plaintiff ever intended to mortgage any property against the loan to the defendants. The defendants claimed that the suit land was mortgaged to the defendants on 13.3.2003. The plaintiff has submitted that on 13.3.2003, he had no title over the suit land as he acquired title on 31.5.2003 over the suit land by the right of purchase. The defendants have served notice upon the plaintiff U/S.13(2) of SARFAESI Act, 2002 on 13.7.12 vide letter No.HIDCO/GRD/RF/1343/2012/428. The plaintiff has submitted that all the original papers were with ONGC to make it impossible to create equity mortgage to any other financial institution except by registered deed. Against the said loan, he deposited as many as forty numbers of post dated cheques. The defendants have admitted that the loan was sanctioned against personal guarantee. In the letter No.HUDCO/RO/PF/1343/2012/1390 dtd.22.3.12 addressed to the plaintiff wherein the defendants threatened the personal guarantor to take action through Court. But, suddenly, the defendant invented a story of mortgage and are going to recover loan without help of court under SARFAESI Act, 2002. On 13.7.12, the defendants served the notice U/S.13(2) of SARFAESI Act, 2002 and the notice was duly replied on 9.8.12. The statutory notice was received on 27.7.12. The reply to statutory notice is not yet replied as required by the SARFAESI Act, 2002 and the period of reply has already been expired.

I have also perused the written statement filed by the defendant Nos. 1 and 2. In their written statement also, they have submitted that the suit is not maintainable in the eye of law as well as on facts, the facts narrated in the plaint are vague, redundant and untenable in legal parlance. The suit is

bad for non-joinder of necessary parties and the suit may be dismissed on that count alone. The instant suit cannot be filed in the present form where there is specific provisions under the SARFAESI Act, 2002 for seeking redressal by anybody who is aggrieved. The suit is bad for acquiescence, estoppels and waiver. The defendants have submitted that the suit land was purchased by the plaintiff vide Registered sale deed No.4824 dtd.11.9.2001 which was executed and registered in the office of the Sub-Registrar, Jorhat, by the seller Bipin Kalita in presence of attesting witnesses. In the sale deed, it was mentioned that the valuable considerations was passed as sale consideration from the plaintiff in his capacity as purchaser to the seller and it was further seen that the right, title, interest and possession was duly transferred in favour of the plaintiff. The transfer of right, title and interest as well as the possession was transferred with legal sanctity under a subsisting sale deed. The plaintiff created an equitable mortgage in respect of the land in favour of the defendants to obtain a loan to the tune of Rs.3,00,000/- and the loan was sanctioned to the plaintiff on 8.1.2003. The defendants have denied that the loan was granted only against personal guarantee of the plaintiff and the guarantor Dilip kr. Das. The residual contents mentioning about the death of the guarantor Dilip kr. Das is not admitted by the defendants for want of knowledge, but even if the said information of death of Dilip kr. Das is correct, his heirs cannot escape their responsibilities in respect of liquidation of the loan amount as per the terms of the letter of guarantee executed by said Dilip kr. Das. The defendants also denied that the plaintiff duly created a charge in the form of equitable mortgage in respect of the land for obtaining the loan. Under no fit of imagination, it can be taken into consideration that the

defendants could lay their hands at their own instance on the registered sale deed in which the plaintiff was the purchaser, for retention of the same in the subsisting mortgage, in respect of grant of an admitted loan where the plaintiff is the sole beneficiary. In reply to para 9 of the plaint, the defendants have stated that it is not the claim of the defendants but in reality the land of the schedule of the plaint was mortgaged in favour of the defendants on 12.3.2003 for obtaining the loan. They have also denied that the plaintiff in fact acquired the title over the land of the schedule of the plaint on 11.9.2001, not on 31.3.2005. The defendants have further denied that they have given reply to all the contents of the letters which were served on them subsequent to the service of notice U/S.13(2) of the SARFAESI Act, 2001. The fact of maligning the plaintiff's employer and oral threatening are denied by the defendants. They have stated that the Court has got no jurisdiction to try this suit, in view of the initiation of the provisions of SARFAESI Act, 2002 by the defendants. In fact, if aggrieved the plaintiff should have invoked the jurisdiction of the authorities as per law laid down under SARFAESI Act. The defendants have stated that the suit is filed vexatiously and the suit of the plaintiff should be dismissed in limine.

From the documents enclosed with the plaint by the plaintiff, it is seen that HUDCO , has sanctioned the loan amounting to Rs.3 lakhs to the plaintiff on 08.01.2003 on the basis of his repayment capacity which was determined on the basis of his salary received from his employer. The plaintiff has also submitted a copy of the House Building Advance sanctioned to him by the ONGCL on 8.1.01 . Though the loan was sanctioned to the plaintiff by the defendant No.1 and 2 on

the basis of his salary certificate, but he submitted the certified copy of the sale deed Nos.1562/ 1119 dtd.3.8.12

The Notice dtd.13.07.12 was issued U/S.13(2) of the SARFAESI Act, Sec.34 of the SARFAESI Act debars the Civil Court for exercising jurisdiction over the matters covered by the Act. This is a statutory notice and plaintiff can make necessary representation to the authority entrusted to look into such grievance, in order to have his grievance redressed.

A careful perusal of Sec.17, particularly Sec.17(3) of the SARFAESI Act, it is clear that the Tribunal constituted under the Act, has all the where without not only to adjudication upon disputes before it but also to grant all the reliefs, sought for, by the plaintiff on the suit in question provided, plaintiff is found successful in establishing his claim therein. Any matter in respect of which an action may be taken even later, the Civil Court shall have no jurisdiction to entertain any proceeding thereof. In **Mardia Chemical Ltd. etc. etc. versus Union of India, AIR 2004 SC 2371**, the Hon'ble Apex Court held that "***The bar of Civil Court, there applies to all such matter which may be taken cognizance of by the Debt Recovery Tribunal, apart from those matters in which measure have already been taken under sub sec.(4) of Sec.13.therefore, it is incorrect to say that before any action or measure is taken under sub sec(4) of Sec.13 there would be no bar to approach the Civil Court.***"

Sec.34 of the said Act deals with the ouster of the jurisdiction of the Civil Court and it is titled as "Civil Court not to have jurisdiction". It states that 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 the said Act to determine. The Apex Court in Mardia Chemical's case, cited supra, has considered the provisions of the said Act in para 50 of its Judgment , which are reproduced below:-

“50.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 latter on, the Civil Court shall have no jurisdiction to entertain any proceedings 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 Sec.13.”

I have heard the Ld.counsel for the parties. Perused the decision of our own Hon'ble High court reported in **2012 (2) GLT 562 PANNA LAL BHANSALI versus AXIS BANK LTD.(M/S) & ORS.**

Upon hearing both sides and the argument advanced by the Ld.counsel for the parties and also perusal of the decisions cited above, I am of the opinion that the suit in question is not maintainable in view of the provisions of Sec.34 of the SARFAESI Act. ***Accordingly, this suit is dismissed.*** Parties should bear their own costs.

Civil Judge, Jorhat.