

(i) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), Section 34 — Civil Procedure Code, 1908, Section 9 — Ouster of civil court jurisdiction — Scope — Jurisdiction of the Civil Court is ousted only in respect of those proceedings which are exclusively triable by the Debts Recovery Tribunal under Section 17 of the SARFAESI Act — In other aspects, the Civil Court has jurisdiction to try the case — In the process, as a consequential relief, the Civil Court can always adjudicate as to whether the mortgage done in favour of a Bank is valid or not — Jurisdiction of civil court is plenary in nature; unless the same is ousted, expressly or by necessary implication, it will have jurisdiction to try all types of suits. **[Paras 15, 22]**

(ii) SARFAESI Act, 2002, Section 17 — Jurisdiction of Debts Recovery Tribunal — Limited scope — As per Section 17, the DRT can adjudicate matters pertaining to whether measures referred to in sub-section (4) of Section 13 taken by the secured creditor are in accordance with law or not, and claims of tenancy or leasehold rights upon the secured asset — It is not empowered to adjudicate on other matters — It cannot adjudicate as to whether the mortgagor played any fraud on his vendor and got the suit schedule property registered in his name much prior to the mortgage in favour of the Bank — Such disputes are triable only by the Civil Court. **[Para 16]**

(iii) SARFAESI Act, 2002, Section 34 — “Any person” under Section 17 — Challenge to pre-mortgage transaction — Though “any person” aggrieved by action under Section 13(4) may approach the DRT and need not be a borrower or guarantor, where the challenge is mainly to an action or transaction not covered under the provisions of the SARFAESI Act, the jurisdiction of Civil Court is not ousted — Where the main relief sought is a declaration that the sale deed executed by the plaintiff in favour of defendant No.1 is an act of fraud, illegal and not binding, and the challenge to the mortgage and bank action is only consequential, the DRT cannot try such a dispute and the proper forum is the Civil Court. **[Paras 7, 20]**

(iv) CPC, 1908, Order VII Rule 11 — SARFAESI Act, Section 34 — Rejection of plaint — Word of caution to Civil Courts — Where civil rights of persons other than borrower(s) or guarantor(s) are involved and the relief claimed is incapable of being decided by the DRT, the Civil Court has jurisdiction; however, Civil Courts have to be extremely cautious while granting any interim order or judgment against the Bank and must remain awake to the possibility that plaintiff and defendants may have filed the suit collusively to defeat the interest of the Bank — Possibility of defendants not appearing or conducting themselves to support the plaintiff’s case must be kept in mind while appreciating evidence of alleged fraud — Where the trial court did not examine limitation and undervaluation, the Bank is at liberty to urge those contentions afresh before the trial court. **[Paras 21, 22]**

Cases Referred to :

1. (2017) 1 SCC 622, *Robust Hotels (P) Ltd. v. EIH Ltd.* — Jurisdiction of civil court is

plenary; unless ousted expressly or by necessary implication, civil court has jurisdiction to try all types of suits. (Para 14)

2. 2021 SCC OnLine Bom 466, *Bank of Baroda v. Gopal Shriram Panda* — Where civil rights of persons other than borrower/guarantor are involved and relief is incapable of being decided by DRT, civil court has jurisdiction. (Para 13)

Sri M. Srikanth and Sri H.K. Paramesh Kumar, for the appellant.

Sri K.B. Monesh Kumar, for respondent No.4.

M.I. Arun, J. – (16-07-2021) –

Facts : The plaintiff-appellant filed O.S. No.3780/2017 against the vendee (defendant No.1) and others seeking declaration that the registered sale deed dated 27.11.2009 executed by her in favour of defendant No.1 in respect of 900 sq. ft. property at Kamakshipalya, Bengaluru, and the subsequent mortgages dated 20.08.2013 (in favour of defendant No.5-Bank) and another mortgage (in favour of defendant No.4-Bank) created by defendant No.1, were acts of fraud, illegal, null and void, and for consequential permanent injunction restraining the Banks from interfering with her possession. Defendant No.4-Bank, having invoked its powers under Section 13(4) of the SARFAESI Act, filed I.A. No.5 under Order VII Rule 11(b) and (d) CPC seeking rejection of the plaint on grounds of Section 34 SARFAESI bar, Article 54 Limitation Act, and undervaluation. The trial court, by order dated 23.04.2019, rejected the plaint solely on the ground of Section 34 SARFAESI bar, without examining limitation or valuation. The High Court allowed the appeal, holding that since the main relief was the setting aside of a pre-mortgage sale deed on grounds of fraud — a matter the DRT could not adjudicate — the civil court's jurisdiction was not ousted; the matter was remanded with liberty to the Bank to urge limitation, valuation and other contentions before the trial court.

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