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IN THE HIGH COURT OF DELHI

+ CIVIL REVISION PETITION NO.242 of 2004

Judgment Reserved on : February 7, 2005

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Date of Decision: April 8, 2005

State Bank of India

...Petitioner
Through:
Mr. Narender Pal,
Advocate.

Versus

\$ Sh. Mukesh Jain & Anr.

...Respondents
Through:
Mr. H. S. Arora,
Advocate
for respondent No.2.
None for respondent No.1.

CORAM:

*HON'BLE MR.JUSTICE C.K.MAHAJAN

1. Whether reporters of local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be referred in the Digest?

C.K.MAHAJAN, J.

The present petition is directed against the order dated 9.2.2004 passed by Civil Judge, Delhi dismissing the application of the petitioner under

C.R.P. No.242/2004

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the digital data is as per the physical
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Order VII Rule 11 CPC.

The respondent No.1 filed a suit for permanent injunction against the petitioner and respondent No.2 from dispossessing him from property No.C-8/298, Yamuna Vihar, Delhi. It was stated by respondent No.1 that he purchased the aforesaid property from the previous owner Smt. Pushpa Jain for Rs.1.00 lakh by virtue of general power of attorney, agreement to sell, Will, etc. and that he apprehended dispossession by the petitioner and respondent No.2. The petitioner in its written statement alleged that Smt. Pushpa Jain sold the first and second floors with terrace rights of the said property to her husband Shri Shree Chand Jain by registered Sale Deed dated 23.10.2001. The said Shri Shree Chand Jain had applied for loan of Rs.8,00,000/- against the said property by offering equitable mortgage thereof in favour of the petitioner. He failed to pay the loan amount. The petitioner issued a notice dated 21.7.2003 under Section 13 (2) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest (Second) Ordinance, 2002. It was therefore pleaded that in view of the notice, the jurisdiction of the Civil Court was barred under Section 34 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereafter referred to as "the Act"). Accordingly, the petitioner and the respondent No.2 filed applications under Order 7 Rule 11 CPC for rejection of the plaint. However, the said applications were dismissed by the Civil Judge holding that since the amounts sought to be recovered by the petitioner is less than Rs.10.00 lakhs, the bar of Section 34 of

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the Act on the jurisdiction of the civil court will not apply in this case as the Debt Recovery Tribunal could entertain the matters only where the amount was above Rs.10.00 lakhs.

Learned counsel for the petitioner contends that jurisdiction of the Debt Recovery Tribunal to entertain the matters where the amount involved is above Rs.10.00 lakhs is only in respect of Original Applications for recovery under the Recovery of Debts due to Banks & Financial Institutions Act, 1993 (for short "the DRT Act"). Whereas under Section 17 of the Act, the Debt Recovery Tribunal has been vested with the powers of an appellate court hearing appeals against enforcement of security interest without the intervention of the court or tribunal under Section 13 of the Act which can be enforced in case of any security interest for securing repayment of any financial asset exceeding Rs.1.00 lakh. The jurisdiction of the Civil Court to grant injunction has been barred under Section 34 of the Act.

There is no appearance on behalf of respondent No.1 despite service. Learned counsel for respondent No.2 supports the contentions raised by the petitioner and states that the impugned order is liable to be set aside.

I have heard learned counsel for the petitioner and respondent No.2 and also perused the documents on record.

In Harshavardhan Chokkani Vs. Bhupendra N. Patel, AIR 2002 SC 1373, the Supreme Court held as under :-

".....Nonetheless, the High Court is exercising the revisional power which in its very nature is a truncated power. The width of the

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powers of the revisional Court cannot be equated with the powers of the appellate Court. In examining the legality and propriety of the order under challenge, what is required to be seen by the High Court is whether it is in violation of any statutory provision or a binding precedent or suffers from misreading of the evidence or omission to consider relevant clinching evidence or where the inference drawn from the facts proved is such that no reasonable person could arrive at or the like. It is only in such situations that interference by the High Court in revision in a finding of fact will be justified. Mere possibility of a different view is no ground to interfere in exercise of revisional power...."

The learned Civil Judge in the impugned order has observed that the bar of Section 34 of the Act extends to matters covered by DRT and Appellate Tribunal empowered by the DRT Act. The Securitisation Act would apply to only those cases where the DRT and the Appellate Tribunal derive their powers from the DRT Act. It was also observed that in view of sub-section (4) of Section 1 of the DRT Act, where the amount sought to be recovered is less than Rs.10.00 lakhs, the bar of Section 34 of the Securitisation Act would not apply. The security interest of the petitioner involved in the present case is to the tune of Rs.8.00 lakhs whereas the security interest of respondent No.2 is to the tune of Rs.4,90,000/-. Furthermore, the petitioner and respondent No.2 have also not shown whether they were a consortium claiming the amount above Rs.10.00 lakhs. The petitioner and respondent No.2 had filed separate applications in respect of their separate claims.

Sec.34 of the Securitisation Act provides as under :-

"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 this Act to determine and no injunction shall be granted by any court or

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other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)." (Emphasis supplied)

Thus Section 34 of the Act puts a bar on Civil Courts in respect of those matters over which Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Section 17 of the Act provides that any person (including borrower) aggrieved by any of the measures referred to in subsection (4) of Section 13 taken by the secured creditor may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter. The Securitisation Act is silent about the jurisdiction of the Debts Recovery Tribunal over matters covered under the Securitisation Act. Therefore, to determine the jurisdiction of the Debts Recovery Tribunal, one has to look into the provisions of the DRT Act. Section 1(4) of the DRT Act provides that DRT shall have jurisdiction over matters where the amount involved is more than Rs.10.00 lakhs. Admittedly, in the present case, the security interest of the petitioner bank involved is Rs.8.00 lakhs and that of respondent No.2 is Rs.4,90,000/-, i.e., below Rs.10.00 lakhs. Therefore, the Debts Recovery Tribunal would not have jurisdiction to entertain the matter and the bar of Section 34 of the Securitisation Act would also not apply. In such a case, only the Civil Courts would have jurisdiction to entertain the matter and hence the injunction granted by the Trial Court is maintainable.

The scope of revisional jurisdiction under Section 115 CPC is restricted and it is only where there is a jurisdictional error or illegality or

material irregularity in the exercise of jurisdiction that this Court can interfere.
It is well settled that in exercise of jurisdiction, the finding of fact recorded by
the courts below cannot be reversed.

In view of the aforesaid discussion, I do not find any merit in the
petition.

Dismissed.

April 8, 2005
OPN.

C.K. Mahajan
(C.K. MAHAJAN)
JUDGE