A CANARA BANK

v.

P. SELATHAL AND ORS. ETC.ETC.

(Civil Appeal Nos. 1863-1864 of 2020)

B FEBRUARY 28, 2020

[UDAY UMESH LALIT, INDIRA BANERJEE AND M. R. SHAH, JJ.]

Code of Civil Procedure, 1908 – Or.7, r.11 – Rejection of Plaint – The appellant-bank sanctioned and granted a term loan to a partnership firm – The said loan was secured by mortgage of immovable property belonging to the said firm and land of a Guarantor – The land of the guarantor are subject matter of dispute – A Guarantor had signed Guarantee Deed and created a equitable mortgage by deposit of title deeds – The original borrower failed to repay the loan amount – The DRT proceeded ex- parte against the Guarnator and directed the principal borrower, its partners and the Guarantor pay the sum of the term loan with interest – The Guarantor filed an I.A. in 2008 against the order of the DRT, for setting aside the ex-parte decree dated 27.8.2003, however, the same was dismissed – After seven years from the date of the decree dated 27.8.2003 passed by the DRT, the respondents-plaintiffs filed two suits to declare the order dated 27.8.2003 as non- est, ultra-vires, null and void and not binding on the suit property – In the said suits, the bank filed application u/Or. 7, r.11 to reject the respective plaints – The bank contended that as per s.20(1) of Recovery of Debts due to Banks and Financial Institutions Act, 1993 the appeal is provided to DRAT against the order of DRT and therefore, the Civil Court had no jurisdiction to entertain the suits – The respondents-plaintiffs opposed the applications stating that they have purchased the suit property from the original owner and that they are in possession and enjoyment of the suit property – The applications u/Or.7,r.11(d) were dismissed by the Trial Court – The High Court confirmed the orders passed by the Trial Court – On appeal, held: The decree passed by the DRT and even the order passed by the Recovery Officer are appealable u/s. 20 of the RDDBFI Act – The averments in suits, allege fraud with respect to the partnership deed and there are no allegations at all with respect

to mortgage created by the guarantor – The suits are vexatious and are filed with malafide intention to get out of the judgment and decree passed by the DRT – The plaintiffs are claiming right, title on the basis of the sale deeds executed by the guarantor as power of attorney holder of the original vendor/original owner – According to the averments in the plaints that they have purchased the suit property from their vendor/original owner is factually incorrect – Before, the execution of sale deeds, the lands were already put as a security by way of mortgage – Further, the guarantor had filed I.A. in 2008 against the judgment and decree by the DRT, he did not disclose that he had already sold the property in favour of plaintiffs – Thus, considering the overall facts and circumstances of the case the suits filed by the plaintiffs are vexatious, frivolous and an abuse of process of law and Court – Therefore, considering the law laid down by the Supreme Court, the plaints are rejected u/Or. 7, r. 11 – Both the Courts below, materially erred in not rejecting the plaints in exercise of powers u/or. 7, r. 11(d) of the CPC.

Allowing the appeals, the Court

HELD:1. The short question which is posed for consideration of this Court is, whether the suits filed by the plaintiffs were liable to be rejected in exercise of powers under Order 7 Rule 11(d) of the CPC or not? [Para 7.1][957 D-E]

2. Applying the law laid down by this Court on exercise of powers under Order 7 Rule 11 of the CPC to the facts of the case on hand and the averments in the plaints, this Court is of the opinion that both the courts below have materially erred in not rejecting the plaints in exercise of powers under Order 7 Rule 11 of the CPC. As observed, the main prayer in the suits is challenging the decree passed by the DRT. The decree passed by the DRT and even the order passed by the Recovery Officer are appealable under Section 20 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. In the case of *O.C. Krishnan and others*, this Court has observed and held that in view of the alternate remedy of preferring the appeal before the DRAT, the petition under Article 227 challenging the order passed by the DRT shall not be maintainable, without exhaustion of such remedy. In the case of *O.C. Krishnan and others*, decree passed

by the DRT was challenged in a petition under Article 227 of the Constitution of India. The High Court allowed the petition. While allowing the appeal of the bank – Punjab National Bank, this Court has observed that without exhaustion of the remedies under the RDDBFI Act, the High Court ought not to have exercised its jurisdiction under Article 227. [Para 8][960 D-G]

3. Having considered the pleadings and the averments in the suits, more particularly the allegations of fraud, this Court finds that the allegations of fraud are with respect to the partnership deed and there are no allegations at all with respect to mortgage created by the Guarantor and that too with respect to the deed of guarantee executed by the Guarantor. Much reliance is placed upon the judgment and order passed by the Magistrate holding the partners of the firm guilty. However, it is required to be noted that even in the said judgment passed by the Magistrate there is no reference to the deed of guarantee and/or the mortgage created by the Guarantor. Even the bank is not a party to the said proceedings. It is reported that against the judgment and order passed by the learned Magistrate, further appeal is pending. Be that as it may, considering the pleadings/ averments in the suits and the allegations of fraud, this Court is of the opinion that the allegations of fraud are illusory and only with a view to get out of the judgment and decree passed by the DRT. This Court is of the opinion that therefore the suits are vexatious and are filed with a mala fide intention to get out of the judgment and decree passed by the DRT. As observed hereinabove, the plaintiffs are claiming right, title on the basis of the sale deeds dated 30.01.1996 and 10.03.1997 respectively executed by the guarantor as power of attorney holder of the original owner. However, according to the averments in the plaints, they have purchased the suit property from their vendor which is factually incorrect. On a bare reading of the sale deeds, it appears that the sale deeds are executed by the guarantor as power of attorney holder of the original vendor. As observed hereinabove, even in the year 2008, when the guarantor filed interlocutory application before the DRT to quash and set aside the ex-parte judgment and decree passed by the DRT, he did not disclose that he has already sold the property in favour of the

original plaintiffs. As observed, even the sale consideration is alleged to have been paid in cash. Before the execution of the sale deeds dated 30.01.1996 and 10.03.1997, the lands were already put as a security by way of mortgage with the appellant-bank by the guarantor. Thus, considering the overall facts and circumstances of the case, the suits filed by the original plaintiffs are vexatious, frivolous and nothing but an abuse of process of law and court. Therefore, considering the law laid down by this Court in the aforesaid decisions, more particularly in the case of *T. Arivandandam*, the suits being vexatious and frivolous, the plaints are required to be rejected in exercise of powers under Order 7 Rule 11 of the CPC. As pointed out by Krishna Iyer, J. in *T. Arivandandam*, the ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the court while dealing with an application under Order 7 Rule 11(a). As observed by this Court, such proceedings are required to be nipped in the bud. Even otherwise as observed hereinabove, without exhausting the remedy of appeal provided under the RDDBFI Act, the suits with the basic relief of challenging the decree passed by the DRT were liable to be dismissed, as observed and held by this Court in the case of *O.C. Krishnan and others*. [Para 10][961 F-H; 962 A-G]

4. At this stage, it is also required to be noted that the suits have been filed after a period of 15 years from the date of mortgage and after a period of 7 years from the date of passing of the decree by the DRT. In the plaints, it is averred that the plaintiffs came to know about the mortgage and the judgment and decree passed by the DRT only six months back. However, the said averments can be said to be too vague. Nothing has been averred when and how the plaintiffs came to know about the judgment and decree passed by the DRT and the mortgage of the property. Only with a view to get out of the law of limitation and only with a view to bring the suits within the period of limitation, such vague averments are made. On such vague averments, plaintiffs cannot get out of the law of limitation. There must be specific pleadings and averments in the plaints on limitation. Thus, on this ground also, the plaints were liable to be rejected. As observed hereinabove, the plaints are vexatious, frivolous, meritless and nothing but an abuse of process of law and court. Therefore, this

is a fit case to exercise the powers under Order 7 Rule 11 (d) of the CPC. Both the courts below have materially erred in not rejecting the plaints in exercise of powers under Order 7 Rule 11(d) of the CPC. Both the courts below have materially erred in not exercising the jurisdiction vested in them. [Para 11][962 G-H; 963 A-D]

Sopan Sukhdeo Sable v. Assistant Charity Commissioner **(2004) 3 SCC 137 : [2004] 1 SCR 1004;** *T. Arivandandam v. T.V. Satyapal* **(1977) 4 SCC 467 : [1978] 1 SCR 742;** *Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust* **(2012) 8 SCC 706 : [2012] 6 SCR 404;** *Punjab National Bank v. O.C. Krishnan and Ors.* **(2001) 6 SCC 569 : [2001] 1 Suppl. SCR 466 – relied on.**

M/s. Cambridge Solutions Limited, Bangalore v. Global software Limited, Chennai **2016-5-L.W. 45; A.B.C.** *Laminart Pvt. Ltd. v. A.P. Agencies* **(1989) 2 SCC 163;** *Madanuri Sri Rama Chandra Murthy v. Syed Jalal* **(2017) 13 SCC 174 : [2017] 5 SCR 294;** *Ram Singh v. Gram Panchayat Mehal Kalan* **(1986) 4 SCC 364 – referred to.**

Case Law Reference

[2001] 1 Suppl. SCR 466	**relied on**	**Para 4.1**
(1989) 2 SCC 163	**referred to**	**Para 4.3**
[2017] 5 SCR 294	**referred to**	**Para 4.3**
[1978] 1 SCR 742	**relied on**	**Para 7.3**
[2012] 6 SCR 404	**relied on**	**Para 7.4**
[2004] 1 SCR 1004	**relied on**	**Para 7.6**
(1986) 4 SCC 364	**referred to**	**Para 7.8**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1863-1864 of 2020.

From the Judgment and Order dated 09.11.2017 of the High Court of Madras in CRP (PD) Nos. 2586 and 2587 of 2013.

Rajesh Kumar-I, Anant Gautam, Ms. Sakshi Gaur, Sorabh Dahiya, Vibhu Sharma, Nipun Sharma, Ms. Garvita, Anmol Mehta, Advs. for the Appellant.

Robin R. David, Febin V. Mathew, Dhiraj A. Philip, Samuel David, M/s. Dua Associates, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 09.11.2017 passed by the High Court of Judicature at Madras in C.R.P.(PD) No. 2586/2013 and C.R.P.(PD) No. 2587/2013, by which the High Court has dismissed the said revision applications preferred by the appellant herein – Canara Bank and has confirmed the orders passed by the learned trial Court dismissing the applications preferred by the appellant herein to reject the respective plaints in exercise of powers under Order 7 Rule 11 of the CPC, original defendant no.5 – Canara Bank in O.S. No. 1269/2010, who is original defendant no.6 in O.S. No.233/2011, has preferred the present appeals.

3. The facts leading to the present appeals in nutshell are as under:

That the appellant – bank sanctioned and granted a term loan of Rs.49,50,000/- to M/s Coimbatore Hatcheries, a partnership firm in which one Shri Ravichandran and G. Suresh Babu were the partners, in the year 1995. That the said loan was secured by mortgage of immovable property belonging to the said firm and the land situated at Survey Nos. 472 and 488 of Sanganur Village of one Shri M.C. Kallikutty – Guarantor. That the land bearing Survey Nos. 472 and 488 of Sanganur Village of one Shri M.C. Kallikutty – Guarantor is the subject matter of dispute. At this stage, it is required to be noted that the said Shri M.C. Kallikutty stood as a Guarantor. That the said Shri M.C. Kallikutty (hereinafter referred to as the 'Guarantor') signed Guarantee Deed dated 28.09.1995 and created equitable mortgage by deposit of Title Deeds of the disputed lands in question.

3.1 That as the original borrower failed to repay the loan amount due to the appellant-bank, the appellant-bank filed O.A. No. 489 of 2001 before the Debt Recovery Tribunal, Chennai in the month of October, 1997 against the principal borrower, its partners as well as against the

A Guarantor. That on 31.10.2001, DRT, Chennai passed an order in O.A. No. 489/2001 to proceed ex-parte against the Guarantor. That O.A. No. 489/2001 was transferred to DRT, Coimbatore and was re-numbered as T.A. No. 822/2002. That T.A. No. 822/2002 (previously O.A. No. 489/2001) filed by the appellant-bank came to be decreed by the DRT for Rs.57,35,770/- with 18% interest per annum in favour of the appellant-bank and against the principal borrower as well as Guarantor. That a Recovery Certificate dated 16.09.2003 was issued in favour of the appellant-bank for a sum of Rs.57,35,770/- with 18% interest per annum.

B

3.2 That Recovery Officer, DRT, Coimbatore issued a Demand Notice dated 11.11.2003 in R.P. No. 141/2003 to the principal borrower, its partners and the Guarantor directing them to pay the sum of Rs.1,55,75,443/- as decreed in T.A. No. 822/2002. That the Guarantor filed a writ petition before the High Court of Madras denying his guarantee and creation of EMT and sought direction to the Crime Branch-CID to register an FIR and investigate into the matter. That on directions of the High Court of Madras, FIR No. 152/2010 came to be registered on 2.11.2005. The CB-CID, Coimbatore filed a final report under Section 173(2) of Cr.P.C. for the offences under Sections 120B read with 465, 466, 467, 468, 471, 420 and 419 of the IPC against the partners of the principal borrower and also against one K.V. Roshan Babu, Agricultural Extension Officer of the appellant – bank. It appears that thereafter the criminal proceedings against the officer of the bank – Roshan Babu came to be quashed by the High Court vide judgment and order dated 28.06.2011.

C

D

E

3.3 That in the year 2007 and in pursuance of the Recovery Certificate in favour of the appellant-bank, the bank auctioned and sold the properties of the partnership firm and recovered Rs.38 lacs. That thereafter after a period of five years from the date of the order passed by the DRT dated 27.08.2003, the Guarantor filed I.A. No. 1821 of 2008 in the year 2008 for setting aside the ex-parte decree dated 27.08.2003 before the DRT, Coimbatore. That vide order dated 12.06.2009, DRT, Coimbatore dismissed the said I.A filed by the Guarantor and refused to condone the delay of 1337 days in challenging the ex-parte decree dated 27.08.2003 and for condonation of delay of 2392 days in filing the petition to set aside the ex-parte order dated 31.10.2001.

F

G

3.4 That thereafter after a period of 15 years from the date of mortgage and after seven years from the date of the decree dated

H

27.08.2003 passed by the DRT, the respondents herein filed O.S. No. 1269/2010 and O.S. No. 233/2011 respectively in the Court of learned Second Additional Subordinate Court, Coimbatore against the Guarantor, principal borrower and its partners and the appellant-bank for a declaration to declare the order dated 27.08.2003 passed by the DRT in T.A. No. 822/2002 as non-est, ultra vires, null and void and not binding on the suit property and also for a consequential permanent injunction restraining the Recovery Officer from interfering with their peaceful possession and enjoyment of the suit property by taking any action as against the suit property by way of attachment, sale or otherwise. That in the aforesaid two suits, the appellant-bank was joined as defendant no.5 in O.S. No. 1269/2010 and defendant no.6 in O.S. No. 233/2011 and was served with the summons/notices of the suits. That the appellant-bank filed I.A. No.431/2011 in O.S. No. 1269/2010 and I.A. No. 122/2012 in O.S. No. 233/2011 to reject the respective plaints in exercise of powers under Order 7 Rule 11(d) of the CPC. It was the case on behalf of the appellant-bank that in view of the specific bar of jurisdiction under Sections 18 and 20(1) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short 'RDDBFI Act'), the suits are not maintainable and the civil court has no jurisdiction. It was the case on behalf of the appellant-bank that as per Section 20(1) of the RDDBFI Act, the appeal is provided to Debt Recovery Appellate Tribunal against the order of DRT and therefore the civil court has no jurisdiction to entertain the suits challenging the decree passed by the DRT.

3.5 That the said applications were opposed by the original plaintiffs submitting inter alia that they have purchased the suit property from the original owner and that they are in possession and enjoyment of the suit property. It was the case on behalf of the original plaintiffs that the vendor did not create any equitable mortgage in favour of the bank and the officials of the bank in collusion with the promoters of the principal borrower created and fabricated equitable mortgage, as though the original owner, their vendor created a mortgage. It was submitted that on a complaint given by the Guarantor – Shri M.C. Kallikutty, the original owner of the suit property, an FIR was registered on 02.11.2005 and a charge sheet dated 18.08.,2007 has been filed which is pending. It was alleged that the bank and promoters of the principal borrower played fraud and obtained decree in the DRT. It was submitted that the fraud played by the bank and others can be proved only by the civil forum and the same cannot be decided by the DRT. It was also submitted that the

A plaintiffs are third parties and therefore they cannot approach the DRT and the DRAT. Therefore, it was prayed to dismiss the said applications.

3.6 That the learned trial Court dismissed the said applications and refused to reject the respective plaints in exercise of powers under Order 7 Rule 11(d) of the CPC.

B

3.7 Feeling aggrieved and dissatisfied with the orders passed by the learned trial Court dismissing the aforesaid applications and refusing to reject the respective plaints under Order 7 Rule 11(d) of the CPC, the appellant-bank preferred two separate revision applications before the High Court. By the impugned common judgment and order, the High C Court has dismissed the said revision applications and has confirmed the orders passed by the learned trial Court rejecting the applications to reject the respective plaints in exercise of powers under Order 7 Rule 11 CPC by observing that the issue of either fraud or impersonation or whether mortgage created by the Guarantor, vendor of the original plaintiffs, in favour of the bank is legal or not is a matter to be adjudicated D in the civil suits and in criminal case.

3.8 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court in refusing to reject the respective plaints in exercise of powers under Order 7 Rule 11 CPC, the appellant-bank – original defendant no. 5 in O.S. No. 1269/2010 and E original defendant no.6 in O.S. No. 233/2011 has preferred the present appeals.

4. Shri Rajesh Kumar, learned Advocate appearing on behalf of the appellant-bank has vehemently submitted that in the facts and circumstances of the case, the High Court has materially erred in rejecting F the respective applications and confirming the orders passed by the learned trial Court rejecting the applications preferred by the appellant-bank and refusing to reject the respective plaints in exercise of powers under Order 7 Rule 11(d) of the CPC. It is vehemently submitted by the learned Advocate that both, the High Court as well as the learned trial G Court have not properly appreciated and/or considered the relevant provisions of RDDBFI Act, more particularly Sections 18, 19 and 20 of the said Act.

4.1 It is further submitted by the learned Advocate appearing on behalf of the appellant-bank that in substance the original plaintiffs are challenging the decree passed by the DRT, Coimbatore dated 27.08.2003 H

passed in T.A. No. 822/2002. It is submitted that under the RDDBFI Act against the decree passed by the DRT, the remedy of appeal is available under Section 20 of the said Act before the DRAT. It is submitted that therefore RDDBFI Act being a Special Act, the procedure provided under the said Act has to be followed. It is submitted that therefore the civil suit challenging the decree passed by the DRT shall not be maintainable and therefore the case squarely falls within Order 7 Rule 11(d) of the CPC and therefore the learned trial Court as well as the High Court ought to have rejected the respective plaints in exercise of powers under Order 7 Rule 11(d) of the CPC. In support of the above submission, learned Advocate appearing on behalf of the appellant – bank has heavily relied upon the decision of this Court in the case of *Punjab National Bank v. O.C. Krishnan and others, (2001) 6 SCC 569*. It is submitted that even in the said decision, as held by this Court, even the petitions under Articles 226 and 227 of the Constitution of India are held to be not maintainable.

4.2 Learned Advocate appearing on behalf of the appellant-bank has also heavily relied upon the decision of the Division Bench of the Madras High Court in the case of *M/s Cambridge Solutions Limited, Bangalore v. Global Software Limited, Chennai, 2016-5-L.W. 45*. It is submitted that in the said case also the plaintiff filed a suit alleging fraud while challenging the order passed by the Recovery Officer and despite the allegation of fraud the suit challenging the order passed by the Recovery Officer is held to be not maintainable. It is submitted that in the aforesaid decision, the Division Bench of the High Court has found the allegation of fraud to be illusory. It is submitted that special leave petition against the said decision has been dismissed by this Court.

4.3 It is further submitted by the learned Advocate appearing on behalf of the appellant-bank that in the present case also the allegation of fraud is not with respect to the Guarantee Deed executed by the Guarantor – Shri M.C. Kallikutty, but with respect to Partnership Deed. It is submitted that therefore the suits filed by the original plaintiffs are frivolous and abuse of a process of law and therefore the plaints are liable to be rejected on that ground also and in exercise of powers under Order 7 Rule 11(d) of the CPC. In support of his above submission, learned Advocate appearing on behalf of the appellant – bank has heavily relied upon the decisions of this Court in the cases of *T. Arivandandam v. T.V. Satyapal (1977) 4 SCC 467; A.B.C. Laminart Pvt. Ltd. v. A.P.*

Agencies (1989) 2 SCC 163; Sopan Sukhdeo Sable v. Assistant Charity Commissioner (2004) 3 SCC 137 and Madanuri Sri Rama Chandra Murthy v. Syed Jalal (2017) 13 SCC 174.

4.4 Making the above submissions and relying upon the above decisions, it is prayed to allow the present appeals.

5. The present appeals are vehemently opposed by Shri Robin R. David, learned Advocate appearing on behalf of the original plaintiffs. It is vehemently submitted that in the facts and circumstances of the case, more particularly when there are specific allegations of fraud in the respective suits which can be decided only by the civil court, both, the learned trial Court as well as the High Court have rightly refused to reject the plaints in exercise of powers under Order 7 Rule 11(d) of the CPC.

5.1 It is further submitted by the learned Advocate appearing on behalf of the original plaintiffs that as such they are the bona fide purchasers of the suit properties which were alleged to have been mortgaged by their vendor – Shri M.C. Kallikutty. It is submitted that in the criminal proceedings initiated by the said Shri Kallikutty, there are specific allegations of fraud and in fact charge-sheets have been filed in the criminal proceedings initiated by the said Shri M.C. Kallikutty. It is submitted that in fact thereafter in the criminal proceedings the trial Court has convicted the partners of the partnership firm – G Suresh Babu and Ravi Chandran for the offences under Sections 120B read with 465, 466, 468, 471, 419 and 420 of the IPC. It is submitted that the learned Magistrate has specifically observed and held that accused entered into a criminal conspiracy and created a forged Partition Deed of Shri M.C. Kallikutty by forging the signatures and thumb impressions of witnesses and obtained the loan from the bank. It is submitted that the learned trial Court as well as the High Court have rightly refused to reject the respective plaints under Order 7 Rule 11 (d) of the CPC.

5.2 Making the above submissions, it is prayed to dismiss the present appeals.

6. In reply, learned Advocate appearing on behalf of the appellant-bank has submitted that so far as the criminal proceedings are concerned, the bank is not a party to the said criminal proceedings and therefore any observations/finding of the Magistrate shall not bind the bank.

6.1 It is further submitted by the learned Advocate appearing on behalf of the appellant – bank that even the criminal proceedings were with respect to the partnership deed and not with respect to the guarantee deed executed by Shri M.C. Kallikutty – Guarantor. It is submitted that even the guarantee deed executed by Shri M.C. Kallikutty – Guarantor was not even before the learned Magistrate. It is submitted that therefore the plaintiffs cannot rely upon the said criminal proceedings and/or cannot take the shelter under the word "fraud" used in the plaints. It is submitted that therefore the allegations of fraud in the plaints are illusory and the suits are vexatious and have been filed with mala fide intention and therefore this is a fit case to exercise powers under Order 7 Rule 11(d) of the CPC.

7. We have heard the learned Advocates appearing on behalf of the respective parties at length.

7.1 At the outset, it is required to be noted that there is already an order passed by the DRT against the principal borrower and the Guarantor and the recovery certificate issued by the Recovery Officer. That the appellant-bank sanctioned the term loan in favour of the principal borrower – partnership firm and its partners. The partners of the partnership firm – principal borrower executed a Memorandum of Agreement for Agricultural Loans, thereby agreeing to abide by the terms and conditions depicted therein. The Guarantor – Shri M.C. Kallikutty, who was defendant no.4 in the application before the DRT, also signed the said agreement as co-obligant, making himself jointly and severally liable to pay the loan amount due to the bank in respect of the said term loan. The term loan was further secured by the partners of the partnership firm – principal borrower by mortgaging the lands of the firm and also by the Guarantor – Shri M.C. Kallikutty by mortgaging the lands owned by him. That the judgment and decree came to be passed by the DRT as far back as on 27.08.2003 and even the recovery certificate was issued in favour of the bank on 16.09.2003. That after a period of 5 years the said Shri Kallikutty filed an interlocutory application before the DRT to set aside the ex-parte decree dated 27.08.2003, which came to be dismissed by the DRT on 12.06.2009. However, in the meantime, the said Kallikutty initiated the criminal proceedings against the partners of the partnership firm – principal borrower alleging forgery with respect to the partnership deed. That thereafter after a period of 15 years from the date of mortgage and after seven years from the date of decree

A passed by the DRT, the original plaintiffs filed the present suits basically challenging the decree passed by the DRT dated 27.08.2003 alleging fraud. That in the said suits, it is the case on behalf of the original plaintiffs that they have purchased the suit property, which have been mortgaged while taking the term loan, from their vendor vide sale deeds dated 30.01.1996 and 10.03.1997 respectively and as the suit lands purchased B by them vide sale deeds dated 30.01.1996 and 10.03.1997 respectively were put to mortgage by fraud by the principal borrower – partners of the partnership firm and therefore the decree passed by the DRT shall not bind them. In the suits, the original plaintiffs have prayed inter alia for the following reliefs:

C

> "a) declaring that the alleged order dated 27.8.03 passed by the Debt Recovery Tribunal, Coimbatore in T.A. No. 822/2002 is non-est, ultra vires, null and void, and not binding on the suit property and for a consequential permanent injunction restraining the 6th defendant from interfering with the plaintiff peaceful possession D and enjoyment of the suit property by taking any action as against the suit property by way of attachment or sale or otherwise;
>
> b) declaring the alleged mortgage said to have been created by the first defendant was the 5th defendant in respect of the suit property is non est, null and void and binding on the same and for E a consequent permanent injunction restraining the 5th defendant from interfering with the plaintiff's possession and enjoyment of the suit property by taking any action as against the suit property by way of sale or otherwise."

Thus, basically the plaintiffs are challenging the decree passed by F the DRT being purchasers. At this stage, it is required to be noted that in fact the suit property was mortgaged in the month of September, 1995 and the original plaintiffs have claimed that they have purchased the suit property on 30.01.1996 and 10.03.1997 respectively. It is also required to be noted at this stage that at no point of time and even when the Guarantor – Shri Kallikutty filed an interlocutory application before the G learned DRT in the year 2008 for quashing and setting aside the ex-parte decree passed by the DRT, he did not disclose that he had already sold the suit properties to the plaintiffs. It is also required to be noted at this stage that even the sale deeds dated 30.01.1996 and 10.03.1997 respectively, as per the averments in the sale deeds, were executed by H Shri Kallikutty as power of attorney holder of the original owners and

even the sale consideration was paid in cash. As observed hereinabove and as mentioned in the judgment and decree passed by the learned DRT dated 27.08.2003, not only Kallikutty – Guarantor signed the Memorandum of Agreement of Agricultural Loans dated 28.09.1995 by which the partners of the firm agreed to make themselves jointly and severally liable to pay the loan and became co-obligant, even the said Kallikutty also mortgaged the lands owned by him. On considering the averments in the plaints there are allegations of fraud with respect to partnership deed and that too by the partners of the partnership firm – principal borrower. However, there is no reference at all in the plaints with respect to properties mortgaged by Shri Kallikutty even after the period of 15 years from the date of the mortgage and after 7 years from the date of decree passed by the DRT, basically challenging the decree passed by the DRT. As the suits were filed challenging the decree passed by the DRT, the appellant-bank – one of the defendants filed applications to reject the plaints in exercise of powers under Order 7 Rule 11(d) of the CPC on the ground that considering the provisions of RDDBFI Act, more particularly Sections 18, 19 and 20 of the Act, the suits are not maintainable. Both the applications are dismissed by the learned trial Court and which are further confirmed by the High Court. Therefore, the short question which is posed for consideration of this Court is, whether the suits filed by the plaintiffs were liable to be rejected in exercise of powers under Order 7 Rule 11(d) of the CPC or not?

7.2 While considering the aforesaid issue/question, few decisions of this Court on exercise of powers under Order 7 Rule 11(d) of the CPC are required to be referred to and considered.

7.3 In the case of ***T.Arivandandam(supra)***,while considering the very same provision i.e. Order 7 Rule 11 of the CPC and the decree of the trial Court in considering such application, this Court in para 5 has observed and held as under:

> "5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and

A meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits…."

B

7.4 In the case of **Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust (2012) 8 SCC 706**, this Court in paras 13 has observed and held as under:

C

"13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the Defendant since in the absence of such an act no cause of action can possible accrue."

D

E

7.5 In A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem (supra), this Court explained the meaning of "cause of action" as follows:

"12.A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which is not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant

F

G

H

nor does it depend upon the character of the relief prayed for by the plaintiff." A

7.6 In the case of **Sopan Sukhdeo Sable (supra)** in paras 11 and 12, this Court has observed as under:

"11. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal [(1998)2SCC70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code. B

12. The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam (supra)." C D

7.7 In the case of Madanuri Sri Rama Chandra Murthy (supra), this Court has observed and held as under:

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written E F G H

A statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be B entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

C 7.8 In the case of **Ram Singh v. Gram Panchayat Mehal Kalan (1986) 4 SCC 364**, this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.

D 8. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 of the CPC to the facts of the case on hand and the averments in the plaints, we are of the opinion that both the courts below have materially erred in not rejecting the plaints in exercise of powers under Order 7 Rule 11 of the CPC. As observed hereinabove, the main prayer in the suits is challenging the E decree passed by the DRT. The decree passed by the learned DRT and even the order passed by the Recovery Officer are appealable under Section 20 of the RDDBFI Act. In the case of ***O.C. Krishnan and others (supra)***, this Court has observed and held that in view of the alternate remedy of preferring the appeal before the DRAT, the petition under Article 227 challenging the order passed by the DRT shall not be F maintainable, without exhaustion of such remedy. In the case of ***O.C. Krishnan and others (supra)***, decree passed by the DRT was challenged in a petition under Article 227 of the Constitution of India. The High Court allowed the petition. While allowing the appeal of the bank – Punjab National Bank, this Court has observed that without exhaustion of the G remedies under the RDDBFI Act, the High Court ought not to have exercised its jurisdiction under Article 227. While holding so, in paragraph 6, this Court has observed and held as under:

"6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial H institutions. There is a hierarchy of appeal provided in the Act,

namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

9. Relying upon and following the decision of this Court in the case of ***O.C. Krishnan and others (supra)***, thereafter the Division Bench of the Madras High Court in the case of ***M/s Cambridge Solutions Limited (supra)***, has rejected the plaint in which the order passed by the DRT was challenged, in exercise of powers under Order 7 Rule 11 (d) of the CPC. It is required to be noted that in the said case also there were allegations of fraud in the plaint and considering the averments in the plaint, it was found that the allegations of fraud are illusory. It is observed by the Division Bench in the said decision that specific instances and acts of fraud with evidence have to be pleaded in the plaint. It is further observed that mere statements are not enough. It is further observed that it is not sufficient if just fraud is pleaded and there must be material to show that the fraud is committed.

10. Having considered the pleadings and the averments in the suits, more particularly the allegations of fraud, we find that the allegations of fraud are with respect to the partnership deed and there are no allegations at all with respect to mortgage created by the Guarantor – Shri Kallikutty and that too with respect to the deed of guarantee executed by the Guarantor. Much reliance is placed upon the judgment and order passed by the learned Magistrate holding the partners of the firm guilty. However, it is required to be noted that even in the said judgment passed by the learned Magistrate there is no reference to the deed of guarantee and/or the mortgage created by the Guarantor. Even the bank is not a party to the said proceedings. It is reported that against the judgment and order passed by the learned Magistrate, further appeal is pending.

A Be that as it may, considering the pleadings/averments in the suits and the allegations of fraud, we are of the opinion that the allegations of fraud are illusory and only with a view to get out of the judgment and decree passed by the DRT. We are of the opinion that therefore the suits are vexatious and are filed with a mala fide intention to get out of the judgment and decree passed by the DRT. As observed hereinabove, B the plaintiffs are claiming right, title on the basis of the sale deeds dated 30.01.1996 and 10.03.1997 respectively executed by Shri Kallikutty as power of attorney holder of the original owner. However, according to the averments in the plaints, they have purchased the suit property from their vendor which is factually incorrect. On a bare reading of the sale C deeds, it appears that the sale deeds are executed by Shri Kallikutty as power of attorney holder of the original vendor. As observed hereinabove, even in the year 2008, when the said Kallikutty filed interlocutory application before the DRT to quash and set aside the ex-parte judgment and decree passed by the DRT, he did not disclose that he has already D sold the property in favour of the original plaintiffs. As observed hereinabove, even the sale consideration is alleged to have been paid in cash. Before the execution of the sale deeds dated 30.01.1996 and 10.03.1997, the lands were already put as a security by way of mortgage with the appellant-bank by Shri Kallikutty. Thus, considering the overall facts and circumstances of the case, the suits filed by the original plaintiffs E are vexatious, frivolous and nothing but an abuse of process of law and court. Therefore, considering the law laid down by this Court in the aforesaid decisions, more particularly in the case of ***T. Arivandandam (supra)***, the suits being vexatious and frivolous, the plaints are required to be rejected in exercise of powers under Order 7 Rule 11 of the CPC. As pointed out by Krishna Iyer, J. in ***T. Arivandandam (supra)***, the F ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the court while dealing with an application under Order 7 Rule 11(a). As observed by this Court, such proceedings are required to be nipped in the bud. Even otherwise as observed hereinabove, without exhausting the remedy of appeal provided G under the RDDBFI Act, the suits with the basic relief of challenging the decree passed by the DRT were liable to be dismissed, as observed and held by this Court in the case of ***O.C. Krishnan and others (supra)***.

11. At this stage, it is also required to be noted that the suits have been filed after a period of 15 years from the date of mortgage and after H a period of 7 years from the date of passing of the decree by the DRT.

In the plaints, it is averred that the plaintiffs came to know about the mortgage and the judgment and decree passed by the DRT only six months back. However, the said averments can be said to be too vague. Nothing has been averred when and how the plaintiffs came to know about the judgment and decree passed by the DRT and the mortgage of the property. Only with a view to get out of the law of limitation and only with a view to bring the suits within the period of limitation, such vague averments are made. On such vague averments, plaintiffs cannot get out of the law of limitation. There must be specific pleadings and averments in the plaints on limitation. Thus, on this ground also, the plaints were liable to be rejected. As observed hereinabove, the plaints are vexatious, frivolous, meritless and nothing but an abuse of process of law and court. Therefore, this is a fit case to exercise the powers under Order 7 Rule 11 (d) of the CPC. Both the courts below have materially erred in not rejecting the plaints in exercise of powers under Order 7 Rule 11(d) of the CPC. Both the courts below have materially erred in not exercising the jurisdiction vested in them.

12. In view of the above and for the reasons stated above, both these appeals succeed. The impugned common judgment and order passed by the High Court in dismissing the revision applications and the orders passed by the learned trial Court rejecting the applications preferred by the appellant-bank to reject the respective plaints in exercise of powers under Order 7 Rule 11(d) of the CPC are hereby quashed and set aside. Consequently, the plaints filed by the original plaintiffs being O.S. No. 1269/2010 and O.S. No. 233/2011 pending in the Court of Additional Subordinate Court, Coimbatore are rejected. The instant appeals are allowed accordingly. No costs.

Ankit Gyan Appeals allowed.