

2022 SCC OnLine Del 3447

In the High Court of Delhi at New Delhi

(BEFORE N.B. KRISHNA, J.)

Surjeet Kaur ... Plaintiff;

Versus

Sardar Raja Singh Oberoi and Others ... Defendants.

CS (OS) 280/2021^s

Decided on October 19, 2022, [Reserved on : 23rd August, 2022]
Advocates who appeared in this case:

Mr. Sacchin Puri, Sr. Advocate with Ms. Shweta Arora, Advocate with plaintiff in person.

Mr. Praveen K. Sharma, Advocate for D-1 & 3.

Mr. Sanjeev Singh, Ms. Ridhi Pahuja, Mr. Dhruv Chawla & Ms. Garima Saxena, Avdvocates for proposed defendant No. 5-Religare Finvest Ltd. in I.A. No. 17376/2021.

The Judgment of the Court was delivered by

N.B. KRISHNA, J.:—

I.A. 17375/2021 (U/O I Rule 10 of CPC, 1908 for impleadment of proposed defendant No. 5-Religare Finvest Limited)

1. The present application under Order I Rule 10 of the Civil Procedure Code, 1908 (*hereinafter referred to as "CPC"*) has been filed on behalf of the plaintiff seeking impleadment Religare Finvest Limited as defendant No. 5 in the array of parties.

2. It is submitted in the application that the plaintiff has filed the Suit for Partition and Possession of 50% of the residential property comprising House No. B-47, Greater Kailash-I, New Delhi-110048 *admeasuring* 896 sq. mts. (*hereinafter referred to as "suit property"*) belonging to Late Sardarni Mohinder Kaur besides other relief for permanent injunction for restraining the defendants from creating any third-party rights in the suit property; for Mesne Profit commensurate with her share in the suit property and also for Rendition of Accounts.

3. It is submitted that on 07th June, 2021, this Court directed the defendants to maintain the *status quo* in respect of the suit property and they were given 30 days for filing the Written Statement, but the defendants failed to do so. Finally, the defendants have filed their Written Statement belatedly along with the application for condonation of delay on 03rd December, 2021.

4. It is stated that the defendants had deliberately not filed the

Written Statement earlier as they had unauthorizedly mortgaged the entire suit property, which is now at the stage of auction by the proposed defendant No. 5. It is asserted that the suit property could not have been mortgaged as plaintiff's mother was the owner of 50% of the suit property and she never signed any mortgage papers.

5. Furthermore, the Written Statement has been filed only by defendant Nos. 1 and 3 and defendant Nos. 2 and 4 have chosen not to file the Written Statement which itself establishes that the veracity of the documents filed on record by the defendant Nos. 1 and 3 is not acknowledged by the defendant Nos. 2 and 4.

6. It is asserted that the plaintiff has now come to know that proposed defendant No. 5 has filed a petition under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*hereinafter referred to as "SARFAESI Act"*) which was listed before the learned Chief Metropolitan Magistrate, Saket District Court, South-East Delhi on 06th December, 2021. It is asserted that the suit property has been secured against the defendants by this Court by granting *status quo* on 07th June, 2021. The suit property also needs to be secured vis-à-vis proposed defendant No. 5 and hence, proposed defendant No. 5 may be impleaded as a party.

7. The application is contested by the proposed defendant No. 5 which has explained that the borrowers, namely, the SPG Properties Pvt. Ltd., L B Electronics Limited, Oberoi Cars Pvt. Ltd., Inderjeet Singh Oberoi (defendant No. 3) and Kawaljit Kaur Oberoi, Sardar Raja Singh Oberoi (Gurantor/defendant No. 1) approached the proposed defendant and sought financial assistance in the form of loan against property. On completion of the requisite formalities and compliances, the defendant has sanctioned Rs. 9,45,98,691/- to the borrowers as against the suit property *vide* Sanction Letter dated 10th January, 2012. In order secure the financial assistance, the security interest was created by deposit of the original Title Deeds by the borrowers in favour of the proposed defendant No. 5.

8. Pursuant to the request from the borrowers, the proposed defendant No. 5 agreed to modify/vary the structure of loan and entered into a Supplementary Agreement dated 27th January, 2014. After availing the financial assistance, the borrowers failed to comply with the payment schedule and committed default in the repayment of the EMIs as undertaken by them. Resultantly, the proposed defendant No. 5 approached the Sole Arbitrator to adjudicate upon the disputes of claim made by it against the borrowers. The Sole Arbitrator passed the Award dated 09th June, 2015 in favour of the Claimant i.e., the proposed defendant No. 5.

9. Post the Arbitral Award, the borrowers made some payments intermittently, but eventually, they completely stopped making any payments towards the repayment of the loan facility. Consequently, the accounts of the borrowers were classified as NPA on 30th June, 2021 in accordance with the Master Direction issued by the Reserve Bank of India. Thereafter, in exercise of its statutory rights, the proposed defendant by virtue of being a Secured Creditor under the provisions of the SARFAESI Act, 2002, served the Demand Notice dated 12th July, 2021 under Section 13(2) of the SARFAESI Act, 2002 calling upon the borrowers to pay Rs. 5,72,24,893.47/-. In response to Demand Notice dated 12th July, 2021, objections were filed by the borrowers under Section 13(3A) of the SARFAESI Act, 2002. However, objections being found non-satisfactory, were rejected by the proposed defendant No. 5.

10. Thereafter, Notice dated 22nd September, 2021 under Section 13 (4) of the SARFAESI Act, 2002 was served upon the borrowers and symbolic possession of the suit property was taken. However, the plaintiff approached this Court in W.P.(C) No. 13043/2021 against the proceedings as initiated by the proposed defendant No. 5 under the SARFAESI Act, 2002 for setting aside the Notice under Section 13(2) dated 12th July, 2021 and Notice under Section 13(4) dated 22nd September, 2021. The borrowers specifically admitted in the Writ Petition (Civil) that they have no remedy except moving an application under Section 17 of the SARFAESI Act, 2002 and since, there was no Presiding Officer in the Debt Recovery Tribunal (*hereinafter referred to as "DRT"*), and there was no alternative remedy available with them, they had approached this Court. Considering all the facts, the Writ Petition (Civil) was finally disposed of by this Court on 18th November, 2021.

11. Since, the borrowers did not repay the entire outstanding amount, the proposed defendant No. 5 was constrained to file the application under Section 14 of the SARFAESI Act, 2002 before the Chief Metropolitan Magistrate, Saket District Court, South-East Delhi who *vide* Order dated 06th December, 2021 allowed the application and appointed Mr. Raj Kumar Gupta, Advocate to take physical possession of the suit property.

12. Thereafter, counsel for the borrowers served upon the proposed defendant No. 5 Notice for Invocation of Arbitration dated 08th November, 2021 which was replied to by the proposed defendant *vide* Reply dated 06th December, 2021. It is asserted that till date, the borrowers have neither filed any objections nor preferred any appeal against the Award dated 09th June, 2015 and the said Award dated 09th

June, 2015 has attained finality and by virtue of Section 36 of the SARFAESI Act, 2002, it has an effect of a Decree of the Court and has to be enforced in the same manner.

13. It is asserted that while proceedings are pending under the SARFAESI Act, 2002, the plaintiff has filed the present Suit for Partition which is not maintainable.

14. It is asserted that the suit property is owned by the SPG Properties Pvt. Ltd., a fact which is clear from the Memorandum of Entry First Time Mortgage by Deposit of Title Deeds dated 31st January, 2012, but the Company which is the owner, has not been made a party in the present Suit for Partition by the plaintiff. The Suit itself is, therefore, not maintainable.

15. Reliance has been placed by the proposed defendant on the decisions of the Hon'ble Supreme Court in *United Bank of India v. Satyawati Tandon*, (2010) 8 SCC 110, *Authorized Officer, State Bank of Travancore v. Mathew K.C.*, (2018) 3 SCC 85 and *C. Bright v. District Collector*, (2021) 2 SCC 392 to argue that that in financial matters, the grant of *ex parte* interim orders can have a deleterious effect and, therefore, the High Court should be extremely carefully and circumspect in exercising its discretion to grant stay in such matter.

16. It is further asserted that under Section 34 of the SARFAESI Act, 2002, the jurisdiction of the Civil Court is completely barred and the only right which an Objector may have is under Section 17 of the SARFAESI Act, 2002 which deals with the right to Appeal for this reliance has been placed by the defendant No. 5 on the decisions of the Hon'ble Supreme Court in *Jagdish Singh v. Heeralal*, (2014) 1 SCC 479, *Sree Anandhakumar Mills Ltd. v. Indian Overseas Bank*, (2019) 14 SCC 788, and *Electrosteel Castings Limited v. UV Asset Reconstruction Company Limited*, (2022) 2 SCC 573, wherein it has been observed that any suit for challenging the proceedings under the SARFAESI Act, 2002 is completely barred under Section 34 of the SARFAESI Act, 2002 and has to be rejected.

17. It is further asserted that the present application is clearly a counterblast to the proceedings initiated by the proposed defendant under the SARFAESI Act, 2002. The plaintiff is neither the owner of the suit property nor she is one of the borrowers, of the defendant No. 5. The sole motive of the plaintiff in collusion with the borrowers is to evade payment of the outstanding loan dues to the proposed defendant No. 5. Hence, they have been engaging in repeated litigation before various courts. The proposed defendant has initiated a lawful proceeding for recovery of its dues under the SARFAESI Act, 2002 against the borrowers. The borrowers have filed a Securitization Application bearing SA No. 423/2021 under Section 17 of the

SARFAESI Act, 2002 before the DRT-I, Delhi. Additionally, the plaintiff has also filed a similar application bearing SA No. 429/2021 before the DRT-I, Delhi, wherein similar relief has been sought against the proposed defendant No. 5 from disturbing possession in respect of the suit property. It is pertinent to mention that both the Securitization Applications bearing SA No. 423/2021 and SA No. 429/2021 are pending adjudication before the DRT.

18. It is, therefore, submitted that the present application is without any merit and is liable to be dismissed.

19. The plaintiff in her Rejoinder has explained that the SPG Properties Pvt. Ltd. never became the owner of the suit property and was not entitled to create any mortgage in the suit property in which the mother of the plaintiff was an owner to the extent of 50%.

20. It is further asserted that the deceased Mohinder Kaur, mother of the plaintiff, never entered into the alleged Arbitration Agreement dated 02nd December, 2002 for referring the dispute to arbitration, nor does it bear the signatures of the deceased Mohinder Kaur. The Arbitration Agreement is a bogus and sham document which has been forged and fabricated by the defendant No. 3 in order to claim exclusive rights in the suit property through the agency of Companies owned and controlled by his family members.

21. In respect of Arbitral Award dated 21st May, 2003, it is claimed that the deceased Mohinder Kaur was not a signatory to the Arbitral Award and she never participated in the proceedings and the alleged signatures of Mr. Inderjeet Singh Oberoi, defendant No. 3, on the Arbitral Award on behalf of the mother of the plaintiff was without any authority and was fraudulent. It is denied that pursuant to the Arbitral Award, a partnership firm by the name of SPG Properties was created *vide* Partnership Deed dated 29th October, 2003, wherein the suit property was in the partnership Firm. It is further denied that the partnership Firm was converted into a Private Limited Company or that the suit property belongs to the Company. All other contentions as made in the Reply are denied by the plaintiff.

22. Submissions heard.

23. Before getting into the merit of the case, a reference may be made to the decision of the Hon'ble Supreme Court in *United Bank of India v. Satyawati Tandon*, (2010) 8 SCC 110, wherein it has been observed that in cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the Court would have serious adverse impact on the financial health of such bodies/institutions, which ultimately prove detrimental to the economy of the nation. Therefore, the Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters.

24. In the facts of the case, now, it needs to be examined whether the case is made out for impleadment of proposed defendant No. 5. The plaintiff, who is the daughter of Late Mohinder Kaur, has filed the present Suit for Partition in respect of the suit property against the defendants who are the family members. The first aspect for consideration is that by virtue of Arbitral Award dated 21st May, 2003, the property was divided in certain share to the family members of Mohinder Kaur. The shares have been clearly defined in the Arbitral Award. It is case of the defendants that all the family members then had put their property in the partnership Firm which was subsequently converted into the Private Limited Company.

25. It has also been asserted that the plaintiff being already married and settled with her family in the year 2002, was not considered for being given any share in the suit property. *Prima facie*, there stands an Arbitral Award demarcating the shares of the family members of Late Mohinder Kaur.

26. The second aspect of significance for consideration is that the SPG Private Limited which is *prima facie* claiming itself to be the owner of the suit property, had taken a loan from the proposed defendant No. 5. Certain defaults occurred. Various proceedings under the SARFAESI Act, 2002 have been initiated. The application under Section 39 of the SARFAESI Act, 2002 was filed by the proposed defendant No. 5 which was allowed and Mr. Raj Kumar Gupta, Advocate was appointed to take physical possession of the suit property on behalf of the proposed defendant No. 5. The objections under Section 17 of the SARFAESI Act, 2002 have already been preferred by the plaintiff as well some of the defendants before DRT. The question which now arises is whether in this Partition Suit, the proposed defendant No. 5, which is a Financial Institution from whom some loan was taken by the defendants, is a necessary and proper party for adjudication of the Suit for Partition. In this context, it may be noted that any Suit for Partition, the parties which are proper and necessary, are those who have a right, share and interest in the suit property. Admittedly, the defendant No. 5 is only a Financial Institution having no independent right, interest and share in the suit property; the only right which has accrued on the proposed defendant is by virtue of loan taken by some of the defendants from the plaintiff. The proposed defendant is neither necessary nor a proper party to the present Suit which is for appropriate adjudication of the alleged shares in the suit property amongst the plaintiff and the defendants.

27. The only ground on which the impleadment of proposed defendant No. 5 is sought is to seek protection of the suit property from being attached/sold by proposed defendant No. 5. The proceedings which have been initiated by the proposed defendant No. 5 are

independent proceedings under the SARFAESI Act, 2002. The remedy available to the plaintiff and the defendants is also defined in the SARFAESI Act, 2002; rather both the plaintiff and the defendants have filed their Appeal under Section 17 of the SARFAESI Act, 2002 before the DRT.

28. The SARFAESI Act proceedings being independent proceedings initiated in respect of the loan taken by the defendants against the suit property, cannot be considered in any way to be connected to the controversy in hand. The proceedings under the SARFAESI Act are independent and exclusive; the proposed defendant No. 5 is, therefore, neither a necessary nor a proper party to the present suit.

29. Accordingly, the present application is hereby dismissed in the above terms.

CS (OS) 280/2021 & I.As. 7475/2021, 17376/2021, 1463/2022

30. List before the Joint Registrar for completion of pleadings on 12th December, 2022.

31. In the interim, the proposed issues may also be filed by both the parties.

§ 2022:DHC:4362

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