

HIGH COURT OF PUNJAB AND HARYANA
Bench: Justice Vikram Aggarwal
Date of Decision: 28.11.2023

CR-7563-2019

Kunal Sharma ...Petitioner

VERSUS

Hero Fincorp Ltd. and others ...Respondents

Legislation & Rules Involved:

Article 227 of the Constitution of India
Order 7 Rule 11 of the Code of Civil Procedure (CPC)
Sections 13, 17, 34 of the SARFAESI Act
Sections 420, 467, 468, 471, 120B of the IPC

Subject: Challenge to the order rejecting the plaint under Order 7 Rule 11 CPC in a dispute involving alleged forgery and fraud in executing guarantee deeds and mortgage documents.

Headnotes:

Civil Procedure – Rejection of Plaint – Jurisdiction of Civil Court in Matters Involving SARFAESI Act – Petition challenging rejection of plaint by lower courts under Order 7 Rule 11 CPC – Civil Court's jurisdiction barred under Section 34 of the SARFAESI Act – Exceptions to the bar limited – Debts Recovery Tribunal as the appropriate forum for disputes related to secured assets under SARFAESI Act. [Para 1-9(ii)]

Fraud Allegation in Loan Transactions – Role of Civil Court – Petitioner's claim of forged documents in a loan transaction – Civil Court's limited jurisdiction in cases alleging fraud by secured creditors – Matters primarily for the Debts Recovery Tribunal under SARFAESI Act – Exception when the claim of fraud is patently absurd or untenable. [Para 9(ii)-9(iii)]

Dismissal of Revision Petition – Jurisdictional Bar under SARFAESI Act – Petitioner's revision petition against dismissal of suit involving loan transaction dismissed – Jurisdiction of Civil Court barred by SARFAESI Act – Debts Recovery Tribunal identified as the competent authority for such disputes. [Para 9(ii)-9(iii)]

Decision – Orders of lower courts upheld – Civil Court's jurisdiction barred under SARFAESI Act in disputes related to enforcement of security interests – Revision petition dismissed as devoid of merit. [Para 9(iii)]

Referred Cases:

- HDFC Bank Limited vs. Gee Kay International (SLP No.31343 of 2012)
- Golf Technologies (P) Ltd. & Anr. vs. Axis Bank Ltd. & Ors.

- Mardia Chemicals Ltd. etc. vs. Union of India and ors. etc.
- Other relevant judgments as per the facts and law

Representing Advocates:

Petitioner: Mr. Naresh Jain, Mr. Rajinder Pal Singh Babbar

Respondent No.1: Mr. Sanjeev Singh, Mr. Harsh Chopra

Respondents No.4 and 5: Mr. R.P.S.Bara

VIKRAM AGGARWAL , J

1. The present revision petition, filed under Article 227 of the Constitution of India, assails the order dated 01.02.2019, passed by the Court of Civil Judge (Senior Division), Ludhiana vide which the application filed by respondent No.1 under Order 7 Rule 11 CPC for rejection of plaint was allowed and the order dated 03.05.2019, passed by the Additional District Judge, Ludhiana, vide which the appeal filed by the petitioner plaintiff against the said order was dismissed.
2. The facts, as emanating from the paper book, are that the present petitioner instituted a suit for declaration against the respondents defendants to the effect that the deeds of guarantee dated 30.01.2016, 12.02.2016 and 10.03.2016 purportedly executed by the petitioner in favour of respondent-defendant No.1 for `33,00,000/-, `11,28,000/- and `58,23,000/- respectively were the result of impersonation, fraud and cheating committed by the respondents-defendants No.1 to 6. A decree of mandatory injunction directing the respondent-defendant No.1 to return the original sale deed pertaining to portion measuring 100 square yards out of the total property bearing House bearing MC No.704/8-B Old, No.B-XX- 2960 (new), situated at Taraf Karabara, Gurdev Nagar, Ludhiana (hereinafter referred to as 'the disputed property') to the petitioner-plaintiff was also sought. A decree for permanent injunction was also sought.
3. The case set up was that some financial assistance had been availed by respondents-defendants No.2 to 6 from respondent-defendant No.1 and as a

security, they had executed guarantee deeds referred to above in favour of respondent-defendant No.1 which were purportedly executed by the petitioner-plaintiff but were infact forged and fabricated and were the result of a fraud. Detailed averments with regard to the strained relations between the parties were made in the plaint. It would be relevant to note here that the petitioner Kunal Sharma is the son of respondent No.5 Vijay Sharma and respondent No.4 Smt. Vandana Sharma and brother of respondent No.3 Nitin Sharma. Respondent No.6 is the wife of respondent No.3 and sister-in-law (brother's wife) of the petitioner. It was described how right since the marriage of the petitioner, the respondents-defendants No.2 to 6 had ill-treated him and his wife. Details of action initiated by him against his family members were also given and reference was made to FIR No.79 dated 20.03.2019, registered under Sections 420, 467, 468, 471, 120-B IPC, at Police Station Division No.5, Ludhiana (Annexure P-4).

3(ii) Proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') were initiated for taking over the possession of the disputed property.

3(iii) During the pendency of the suit, an application Under Order 7 Rule 11 CPC was preferred by respondent-defendant No.1 in which it was stated that since proceedings under the SARFAESI Act had been initiated, the Civil Court did not have the jurisdiction to deal with the matter. Reliance was placed upon the provisions of Section 34 of the SARFAESI Act. It was pleaded that infact, a loan of Rs.3,50,00,000/- had been sought by the petitioner-plaintiff and respondents-defendants No.2 to 6 from respondent-defendant No.1. It was represented that they were serving a loan from a company by the name of Capital First and the said company had also a charge upon their property. They offered the respondent-defendant No.1 to take over the loan from

Capital First and if it did so, the petitioner-plaintiff and the respondents-defendants No.3 and 4 would create a charge in respect of the mortgaged property in favour of respondent-defendant No.1. Accordingly, respondent-defendant No.1 sanctioned a credit facility of Rs.3,00,00,000/- to respondent-defendant No.2. Respondents-defendants No.3 to 6 stood as guarantors and title documents of the mortgaged property were received from Capital First. The loan agreements were also received from Capital First so were the guarantee deeds. Since a default was committed in repayment of the amount, proceedings under the SARFAESI Act were initiated. It was also averred that an appeal could have been filed

by the petitioner-plaintiff under Section 17 of the SARFAESI Act.

3(iv).The application was opposed. In the reply filed by the petitioner-plaintiff, it was averred that the jurisdiction of the Civil Court was not barred and that the provisions of Section 34 of the SARFAESI Act would not apply. It was averred that where the question of fraud was pleaded, only the civil Court would be the competent Court to decide the issue. The factum of the loan having been obtained was admitted but it was denied that the mortgage deeds had been executed by the petitioner-plaintiff.

3(v)The trial Court accepted the application vide order dated 01.02.2019 and rejected the plaint. The appeal filed against the said order was also dismissed. Both the Courts were of the view that the jurisdiction of the Civil Court would be barred in view of the provisions of Section 34 of the SARFAESI Act.

4. I have heard learned counsel for the parties and have perused the paper book.

5. Learned counsel for the petitioner-plaintiff submitted that both the Courts have erred in rejecting the plaint. Reference was made to the averments in the plaint as also to the provisions of Section 34 of the SARFAESI Act. Learned counsel also made reference to the FIR dated 20.03.2019 (Annexure P-4) and submitted that as per the report of the FSL, signatures of the petitioner-plaintiff on the mortgage deeds were forged.

Learned counsel submitted that these issues could have been decided by the Civil Court only and the Debts Recovery Tribunal would not be the competent

Forum to decide these issues. In support of his contentions, learned counsel placed reliance upon the judgments of Hon'ble Supreme Court of India in Central Bureau of Investigation versus Hari Singh Ranka and others 2018 (1) R.C.R. (Criminal) 336 and Mardia Chemicals Ltd. etc. etc. versus Union of India and ors. etc. etc. 2004 (2) R.C.R. (Civil) 665, judgments of Coordinate Benches of this Court in Punjab National Bank versus Ram Kishan 2014 (1) PLJ 225 and Udaibir Singh Versus Punjab National Bank and others in Civil Revision No.4598 of 2016, decided on

13.12.2017, Indian Overseas Bank versus M/s Crescent Engineering Corporation and Ors., in RSA No.1545 of 2015, decided on 14.12.2017, judgment of Calcutta High Court in Housing Development Finance Corporation Limited (HDFC Ltd.) and another versus Dorjee Dolma Bhutia and others 2015 (45) R.C.R. (Civil) 394, judgments of Madras High Court in Indiabulls Housing Finance Ltd. Versus Uma Maheswari 2014 (57) R.C.R. (Civil) 543, M/s Cambridge Solutions Ltd., Bangalore Versus Global Software Ltd. and Ors.2008 (12) R.C.R. (Civil) 853, judgments of Delhi High Court in Ritu Gupta & Anr. Versus Usha Dhand & Ors. 2013 (46) R.C.R. (Civil) 490, Deepa Tracy Versus State (NCT of Delhi) 2003 (68) DRJ 70, judgments of Gauhati High Court in Bhopal Thapa Versus Bina Boro and Others 2014 (23) R.C.R. (Civil) 875, Saraf Projects Private Ltd. Versus Indian Overseas Bank & Others 2017 (4) GauLJ 7.

6. On the other hand, learned counsel for the respondents submitted that there is no illegality in the orders passed by both the Courts below. Reference was again made to Sections 17 and 34 of the SARFAESI Act. It was contended that a disputed property had been earlier mortgaged to the Company Capital First and after the loan was transferred to respondent No.1, the title deeds and mortgage deeds came to them from Capital First. Learned counsel submitted that as per the provisions of Section 34 of the SARFAESI Act, the Civil Court would not have the jurisdiction in such cases. It was also submitted that in so far as the FIR is concerned, investigation in the same has not yet been completed and no challan has been presented till today meaning thereby that there was no merit in the case and that the FIR had been falsely got registered by the petitioner. In support of his contentions, learned counsel placed reliance upon the judgments of Hon'ble Supreme Court of India in

Jagdish Singh Versus Heeralal and Ors., passed in Civil Appeal No.9771 of 2013, decided on 30.10.2013, Sree Anandhakumar Mills Ltd. Versus Indian Overseas Bank and Ors., in Civil Appeal Nos.7214-7216 and 7213 of 2012, decided on 03.05.2018, Authorised Officer, State Bank of India versus Allwyn Alloys Private Limited and others (2018) 8 Supreme Court Cases 120, M/s GEE,

Golf Technologies (P) Ltd. & Anr. versus Axis Bank Ltd. & Ors. AIR 2015

Del 143, Industrial Credit and Investment Corporation of India Ltd. Versus Grapco Industries Ltd. And others (1999) 4 Supreme Court Cases 710, Canara Bank versus P.Selathal and Ors., in Civil Appeal Nos.1863-1864 of 2020, decided on 28.02.2020, Assistant Commissioner (CT) LTU, Kakinada and Ors. Versus Glaxo Smith Kline Consumer Health Care, in Civil Appeal No.2413/2020, decided on 06.05.2020, Kunhayammed and others versus State of Kerala and another (2000) 6 Supreme Court Cases 359, Allahabad Bank, Calcutta versus Radha Krishna Maity and Ors., in C.A. No.4999/99, decided on 10.09.1999, Tripower Enterprises (Private) Limited versus State Bank of India and Ors., in Civil Appeal No.2373/2020, decided on 24.04.2020, Mardia Chemicals Ltd. And others versus Union of India and others versus Union of India and others (2004) 4 Supreme Court Cases 311, N.N.Global Mercantile Pvt. Ltd. Versus Indo Unique Flame Ltd. And Others, in Civil Appeal Nos.3802-3803/2020, decided on 11.01.2021, Assistant Commissioner (CT) LTU, Kakinada and Ors. Versus Glaxo Smith Kline Consumer Health Care Limited, in Civil Appeal No.2413/2020, decided on 06.05.2020, judgments of Coordinate Bench of this Court in HDFC Bank Limited versus Gee Kay International and Ors., in Civil Revision No.4845 of 2011, decided on 01.06.2012, Iffco-Tokia General Insurance Company Ltd. Versus Rekha Mehta and others, in FAO No.7775 of 2017, decided on 19.02.2018, M/s United India Insurance Company Limited versus Mehar Singh and others, in FAO No.2259 of 2006, decided on 09.12.2019, The Oriental Insurance Company Limited versus Jitender Kumar and others, FAO No.3325 of 2012, decided on 13.12.2019, HDFC ERGO General Insurance

Company Ltd. Versus Mahipal and others, in FAO No.5869 of 2017, decided on 11.09.2017, Magma HDI General Insurance Company Ltd. Versus Karamjit Singh and others, in FAO No.6320 of 2018, decided on 22.11.2018,
judgment of Madras High Court in Thulasi versus Indian Overseas Bank, in OSA No.59 of 2007 and M.P. No.1 of 2007, decided on 05.05.2011.

7. I have given my thoughtful consideration to the submissions made by learned counsel for the parties. 8 (i). Before adverting to the merits of the case, it would be essential to notice the statutory provisions being relied upon. Section 17 of the

SARFAESI Act reads as under:-

17. Right to appeal.—

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(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, 1[may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:—(1) Any person (including borrower), aggrieved by any of the measures referred to in subsection (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, 1[may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:" 2[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.] 3[Explanation.—For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.]3[Explanation.— For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the

Debts Recovery Tribunal under sub-section (1) of section 17.]" (2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application: Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for

expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]”

8(ii) Section 34 of the SARFAESI Act bars the jurisdiction of the Civil Court and lays down as under:-

“Civil court not to have jurisdiction.—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 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)”

8(iii) Coming to the law on the subject, it would be essential to refer to the judgment of Hon'ble Apex Court in the case of **Mardia Chemicals Limited etc. versus Union of India and others etc. 2004 (4) SCC 311** in which the Hon'ble Apex Court examined the validity of SARFAESI Act. Specific challenge was laid to the provisions of Sections 13, 15, 17 and 34 of the SARFAESI Act. In this case, the Hon'ble Apex Court held that in view of the provisions of Section 34 of the SARFAESI Act, the jurisdiction of the Civil Court would be barred. However, an exception was carved out and it was held that to a very limited extent, the jurisdiction of the Civil Court could also be invoked in certain cases. It was held by the Hon'ble Apex Court as under:-

“51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is

permissible to bring an action in the civil court in the cases of English mortgages. We find such a scope having been recognized in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely V.Narasimhachariar, AIR at pp. 141 and 144, a judgment of the learned Single Judge where it is observed as follows in para 22: “22. The remedies of a mortgagor against the mortgagee who is action in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the court before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee must clearly disclose a fraud not irregularity on the basis of which relief is sought : Adams v. Scott. I need not point out that this restraint on the exercise of the power of sale will be exercised by courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely. (see Ghose, Rashbehary : Law of Morgages, Vol. II, 4th Edn., P.784)”

8(iv) Apart from the aforesaid judgment, there are a number of judgments on both sides since judgments are rendered depending upon the facts of each case.

9. Reverting to the facts of the present case, the first thing to be noticed is that the petitioner was also one of the borrowers and was not simply a guarantor. Once he was a borrower, it would be a very common objection that the deeds purportedly executed by him were forged and fabricated and were the result of a fraud. If this contention was to be accepted and the Civil Court was to be permitted to continue with the proceedings, in all cases of loans, the borrowers/guarantors would take up such pleas and would be successful in defeating the provisions of the SARFAESI Act. It is now well settled that such questions need not be referred to the Civil Court and can very well be decided by the Debts Recovery Tribunal. In the case of HDFC

Bank Limited versus Gee Kay International and Ors (supra), a similar issue arose before a Coordinate Bench of this Court. After considering the provisions of Sections 17 and 34 of the SARFAESI Act and the law on the subject, the Bench held that even though there was a plea of fraud, there would be no triable cause of action to file a suit. In that case, it was found that documents had duly been signed by the respondent therein. In the present case, though the documents had allegedly not been signed by the petitioner-plaintiff, the petitioner-plaintiff was a borrower and was not merely a guarantor. Another thing which has to be borne in mind is that the parties are closely related as has been noticed in the earlier part of the judgment. While deciding the case of HDFC Bank Limited versus Gee Kay International and Ors (supra), the Coordinate Bench held as under:-

9. Heard learned counsel for the parties and perused the relevant referred record.

10. Before proceeding further to deal with the respective contentions raised by learned counsel for the parties, it would be appropriate to refer to the relevant provisions. The same are reproduced as under:

"Section 18 of the 1993 Act

18. Bar of jurisdiction. - On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17. Section 34 of the 2002 Act

34. Civil court not to have jurisdiction.- 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 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.

Order 6, Rule 4 Civil Procedure Code ORDER VI PLEADINGS GENERALLY

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4. Particulars to be given where necessary.- In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.
11. Further before the case of the parties is considered on merits, this court deems it appropriate to refer to the enunciation of law on the issues, on which contentions have been raised by learned counsel for the parties.
12. Hon'ble the Supreme Court in Mardia Chemicals Ltd.'s case (supra) dealt with the issue regarding jurisdiction by framing the following question:
"(ii) Whether provisions as contained under Sections 13 and 17 of the Act provide adequate and efficacious mechanism to consider and decide the objections/disputes raised by a borrower against the recovery, particularly in view of bar to approach the civil court under Section 34 of the Act ?"
It was answered in paragraphs 50 and 51 thereof. An exception was carved out by Hon'ble the Supreme Court while opining that jurisdiction of the civil court can be invoked to a limited extent, where for example the action of the secured creditor is alleged to be fraudulent and where the claim may be absurd and untenable.
13. In Nahar Industrial Enterprises Ltd.'s case (supra), the issue under consideration was whether this court can transfer a suit from civil court to DRT. The answer was in negative. "108. Although some arguments have been advanced before us whether having regard to the provisions of Sections 17 and 18 of the Act the civil court jurisdiction is completely ousted, we are of the view that the jurisdiction of the civil court would be ousted only in respect of the matters contained in Section 18 which has a direct co-relation with Section 17 thereof, that is to say that the matter must relate to a debt payable to a bank or a financial institution. The application before the Tribunal would lie only at the instance of the bank or the financial institution for the recovery of its debt. It must further be noted in this respect that had the jurisdiction of the civil courts been barred in respect of counterclaim also, the statute would have said so and Sections 17 and 18 would have been amended to introduce the provision of counterclaim.

109. We may in this context place on record the following observations from Indian Bank (supra):

"14. Section 9 of the Code of Civil Procedure provides that the courts shall have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred.

15. It is evident from Sections 17 and 18 of the Debts Recovery Act that civil court's jurisdiction is barred only in regard to applications by a bank or a financial institution for recovery of its debts. The jurisdiction of civil courts is not barred in regard to any suit filed by a borrower or any other person against a bank for any relief.[]

16. []What is significant is that Sections 17 and 18 have not been amended. Jurisdiction has not been conferred on the Tribunal, even after amendment, to try independent suits or proceedings initiated by borrowers or others against banks/financial institutions, nor the jurisdiction of civil courts barred in regard to such suits or proceedings. 117. The Act, although, was enacted for a specific purpose but having regard to the exclusion of jurisdiction expressly provided for in Sections 17 and 18 of the Act, it is difficult to hold that a civil courts jurisdiction is completely ousted. Indisputably the banks and the financial institutions for the purpose of enforcement of their claim for a sum below L 10 lakhs would have to file civil suits before the civil courts. It is only for the claims of the banks and the financial institutions above the aforementioned sum that they have to approach the Debt Recovery Tribunal. It is also without any cavil that the banks and the financial institutions, keeping in view the provisions of Sections 17 and 18 of the Act, are necessarily required to file their claim petitions before the Tribunal. The converse is not true. Debtors can file their claims of set off or counter-claims only when a claim application is filed and not otherwise. Even in a given situation the banks and/or the financial institutions can ask the Tribunal to pass an appropriate order for getting the claims of set-off or the counter claims, determined by a civil court. The Tribunal is not a high powered tribunal. It is a one man Tribunal. Unlike some Special Acts, as for example Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 it does not contain a deeming provision that the Tribunal would be deemed to be a civil court.

118. The liabilities and rights of the parties have not been created under the Act. Only a new forum has been created. The banks and the financial institutions cannot approach the Tribunal unless the debt has become due. In such a contingency, indisputably a civil suit would lie. There is a possibility that the debtor may file preemptive suits and obtain orders of injunction, but the same alone, in our opinion, by itself cannot be held to be a ground to

completely oust the jurisdiction of the civil court in the teeth of Section 9 of the Code. Recourse to the other provisions of the Code will have to be resorted to for redressal of his individual grievances."

14. In Sudhir G. Angur's case (supra), Hon'ble the Supreme Court opined that where there are serious allegations of forgery, fraud, diversion of trust properties, the same cannot be enquired into in a summary manner and the matter can only be gone into by a court. Application under Order 7 Rule 11 Civil Procedure Code for rejection of plaint on the ground of lack of jurisdiction of the court was dismissed.

15. In Ram Prakash Gupta's case (supra), Hon'ble the Supreme Court opined that while deciding an application under Order 7 Rule 11 Civil Procedure Code, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import.

16. In ***D. Ramachandran v. R.V. Janakiraman and others, 1999(2) RCR (Civil) 272 : (1999) 3 SCC 267, Hon'ble the Supreme Court opined that under Order 7 Rule 11 (a) Civil Procedure Code, the court cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. There cannot be partial rejection of plaint or petition.***

17. In Bishundeo Narain's case (supra), Hon'ble the Supreme Court opined that in case of fraud, undue influence and coercion, the parties must set forth full particulars and the case can be decided on the particulars so laid. General allegations are insufficient. The aforesaid judgment was followed in Varanaseya Sanskrit Vishwavidyalaya and another's case (supra).

18. In I.T.C. Limited's case (supra), Hon'ble the Supreme Court opined that a plaint can be rejected under Order 7 Rule 11 Civil Procedure Code even after framing of issues when the matter is posted for evidence. It was also considered as to whether real cause of action has been set out in the plaint or something purely illusory has been made with a view to get out of Order 7 Rule 11 Civil Procedure Code. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. 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) Civil Procedure Code. Shelter cannot be taken under the words 'fraud' or

'misrepresentation' used in the plaint. In the aforesaid case, the plaint was rejected as the plea of fraud was not made out.

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28. Considering the aforesaid facts and the law laid down by Hon'ble the Supreme Court in I.T.C. Limited's case (supra), where it has been opined that an illusion in the plaint can certainly be unravelled and exposed by the court while dealing with an application under Order 7 Rule 11 Civil Procedure Code, in my opinion, considering the documents which were admittedly signed by the respondent and the period and number of transactions in the account maintained with the petitionerbank, there is no triable cause of action to the respondent to file a suit even if the plea of fraud is to be considered.”

9(i) Infact, this judgment was upheld by the Hon’ble Apex Court and the SLP No.31343 of 2012 preferred against the judgment of this Court was dismissed on 16.02.2016.

9(ii)A similar view was taken by the Delhi High Court in the case of **Golf Technologies (P) Ltd. & Anr. versus Axis Bank Ltd. & Ors.** (supra) wherein also a similar objection had been raised. The Delhi High Court observed that this was a standard classic defence and that the grievances could well be agitated before the Debts Recovery Tribunal in proceedings under Section 17 of the SARFAESI Act. It was also held that the case did not fall in the exception carved out in **Mardia Chemicals Ltd. etc. Versus Union of India and ors. etc.'s case** (supra). A number of other judgments were relied upon by learned counsel representing the parties but there would be no need to discuss the said judgments in view of the facts of the present case as also keeping in view the judgments in **Mardia Chemicals Ltd. etc. Versus Union of India and ors. etc.'s case (supra)**, **HDFC Bank Limited versus Gee Kay International and Ors's case** (supra) and **Golf Technologies (P) Ltd. & Anr. versus Axis Bank Ltd. & Ors.'s case** s (supra).

9(iii) I have perused the judgments relied upon by learned counsel representing the petitioner. The judgment in the case of **Udaibir Singh Versus Punjab National Bank and others** (supra), reliance upon which was placed even at the time of issuance of notice of motion would not be

applicable to the present case as in that case, the petitioner was not the borrower but was only a guarantor and under the circumstances, a Coordinate Bench of this Court held that the Civil Court would have the jurisdiction to deal with the plea of fraud. For the same reasons, the judgment in the case of Punjab National Bank versus Ram Kishan (supra) would not be applicable. Individual reference to the other judgments relied upon by learned counsel for the petitioner is not being made since the judgments had been rendered in the facts of those cases and hence would not be applicable to the present case.

In view of the aforementioned facts and circumstances, I do not find any illegality in the orders under challenge warranting interference. Accordingly, finding the present revision petition to be devoid of merit, the same is dismissed.

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