

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S).7214-7216 OF 2012

**M/S SREE ANANDHAKUMAR MILLS
LTD. APPELLANT(S)**

VERSUS

**M/S INDIAN OVERSEAS BANK
& ORS. RESPONDENT(S)**

WITH
CIVIL APPEAL NO.7213 OF 2012
**[THE AUTHORISED OFFICER, INDIAN OVERSEAS
BANK VS. NANDINI AND ORS.]**

ORDER

C.A. NOS. 7214-7216 OF 2012

1. The appellant herein seeks to challenge the order of the High Court of Madras by which the suit filed by the second respondent - Nandini has been held to be maintainable in law, notwithstanding the provisions of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"). Accordingly, the injunction granted by the learned trial Court was held to be justified and the sale transaction that had taken place in favour of the appellant (during the period when the injunction order was stayed by the High Court) has been invalidated.

2. Though the case has a chequered history and the facts are long the matter lies within a short compass. The core question is one relating to the maintainability of the suit, viz., O.S. No.106 of 2009 filed by the second respondent - Nandini seeking partition wherein the order of injunction was passed.

3. The High Court by the order under challenge took the view that as the said suit (O.S. No.106 of 2009) was for

partition, Section 34 of the SARFAESI Act will not bar the same. Hence the order.

4. The matter need not engage the Court in any great detail as in view of the law laid down by this Court in Jagdish Singh vs. Heeralal and others¹ it would be clear and evident that the suit filed by the second respondent (i.e. O.S. No.106 of 2009) is not maintainable. In Jagdish Singh (supra) this Court after an elaborate consideration of the provisions of the SARFAESI Act, particularly, Section 2(zf), 2(zc), 13(1), 17, 18 and 34, took the view, on almost similar facts, that a suit for partition would not be maintainable in a situation where proceedings under the SARFAESI Act had been initiated. It was also held that the remedy of any person aggrieved by the initiation of proceedings under the SARFAESI Act lies under Section

17 which provides for an efficacious and adequate remedy to a party aggrieved. Paragraph 24 of the report in Jagdish Singh (supra) which make the above position clear may be usefully extracted below:

"24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have the jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression "in respect of any matter" referred to in Section 34 would

take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently, if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well."

5. Beyond the above, we do not consider it expedient and prudent to record any findings in view of the final direction that we propose to pass. But for the purpose of the present controversy it would suffice to say that our view as recorded above with regard to the issue of

maintainability of the suit would be an adequate reason to set aside the order of the High Court and maintain the sale and possession of the appellant - auction purchaser.

6. As we have held that under the provisions of Section 17 of the SARFAESI Act and thereafter under Section 18 of the SARFAESI Act the respondent No.2 has an adequate and efficacious remedy we are inclined to permit the respondent No.2 to have recourse to the said remedies and agitate before the learned Debts Recovery Tribunal all issues that may be open in law. All objections as may be available to the appellant may also be raised before the learned Debts Recovery Tribunal. The learned Debts Recovery Tribunal and thereafter the learned Debts Recovery Appellate Tribunal, if required to be

approached by the respondent No.2, will decide the matter with utmost expedition. Untill the aforesaid proceedings are complete while confirming the auction sale in favour of the appellant we direct the appellant not to encumber the property in question or to transfer it to any third party.

7. We also make it clear that if the second respondent approaches the jurisdictional Debts Recovery Tribunal within a period of 45 days from today the said application will be entertained and adjudicated on merits. We make it clear that we have expressed no opinion on the merits of the rival contentions of the parties which we leave open for adjudication by the learned Debts Recovery Tribunal.

8. Consequently O.S. No. 1243 of 2009

and O.S. No.106 of 2009 filed by the second respondent shall stand closed with liberty to the second respondent as above. The order of the High Court is set aside subject to above conditions and the appeals are allowed. The deposit of Rs.5 crore (Rupees Five crore) made in the Registry of this Court in terms of the order of this Court dated 28th September, 2012, along with interest, if any, shall be returned to the second respondent forthwith on proper identification.

9. The appeals as also all pending applications are disposed of in terms of the above.

C.A. NO.7213 OF 2012

1. In view of the order of this Court passed today i.e. 3rd May, 2018 in Civil Appeal Nos.7214-7216 of 2012, this appeal

as also all pending applications therein
are disposed of in terms of the said order
of this Court dated 3rd May, 2018 passed in
Civil Appeal Nos.7214-7216 of 2012.

....., J.
(RANJAN GOGOI)

....., J.
(R. BANUMATHI)

NEW DELHI
MAY 03, 2018

ITEM NO.101

COURT NO.3

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(S). 7214-7216/2012

M/S. SREE ANANDHAKUMAR MILLS LTD.

APPELLANT(S)

VERSUS

M/S. INDIAN OVERSEAS BANK AND ORS.
(REGULAR HEARING)

RESPONDENT(S)

WITH

C.A. NO. 7213/2012 (XII)

Date : 03-05-2018 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MRS. JUSTICE R. BANUMATHI

For parties :

Mr. Dhruv Mehta, Sr. Adv.
Mr. P.B. Suresh, Adv.
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Mr. Abhay Pratap Singh, Adv.
Mr. Karthik Jayshankar, Adv.

Mr. M. A. Chinnasamy, AOR
Ms. C. Rubawathi, Adv.
Mr. P. Raja Ram, Adv.
Mr. V. Senthil Kumar, Adv.

Mr. Ram Sankar, Adv.
Mr. R. V. Kameshwaran, AOR

Mr. Senthil Jagadeesan, AOR

Mr. Rajeev Maheshwaranand Roy, AOR
Mr. P. Srinivasan, Adv.
Mr. A.R. Aditya, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

**The appeals as also all pending applications are
disposed of in terms of the signed order.**

**[VINOD LAKHINA]
AR-cum-PS**

**[ASHA SONI]
BRANCH OFFICER**

[SIGNED ORDER IS PLACED ON THE FILE]