

**HIGH COURT OF JAMMU AND KASHMIR & LADAKH
AT JAMMU**

MA No.10/2023 (O&M)

Reserved on: 24.05.2023
Pronounced on: 21.07.2023

Raj Kumar Gupta ...Appellant(s)

Through :- Mr. Parveen Kapahi, Adv.

v/s

Bank of India and anr.Respondent(s)

Through :- Mr. Jugal Kishore, Advocate

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

1. The instant appeal has been preferred by the appellant against order dated 09.05.2023 passed by learned 1st Additional District Judge, Jammu (Court below, for short) in file No. IA/01/2-23 titled Raj Kumar Gupta v. Bank of India and anr.
2. The parties hereinafter shall be referred by their rank and title of the suit i.e. plaintiff and defendants.

BRIEF FACTS

3. Plaintiff filed a suit in the Court below for declaration that the deed of further charge of mortgage of land cum additional mortgage dated 17.02.2014 and mortgage dated 06.02.2014 respectively executed by the plaintiff in favour of the defendant-Bank as null and void and not operative ineffective and not legally enforceable and cannot be acted upon by the defendants for alienation in any manner being nonest in the eyes of law.

4. Plaintiff while filing the aforesaid suit before the Court below has specifically pleaded that he was allotted state land and thereafter rights were vested in the land in him under Section 08 of the Land Revenue Act with a restriction under Section 8A that the land shall be vested in the occupant and shall not be alienated after such vesting without permission of committee or such authority as may be prescribed. The detail of the land which was vested upon the appellant is as under:

- a. Land measuring 11 kanals 03 marlas comprising in Khasra No. 126 Khata No. 41 Khewat No.04.*
- b. Land measuring 10 kanals 14 marlas comprising in Khasra No. 125.*
- c. Land measuring 04 kanals comprising in Khasra No. 126/1.*
- d. Land measuring 18 kanals 13 marlas comprising in Khasra No. 130.*
- e. Land measuring 33 kanals 07 marlas comprising in Khasra No.86 Khewat No. 06 in fact total land is 44 kanals 10 malas which has been wrongly calculated by the bank in the mortgage deed.”*

5. The specific case of the plaintiff before the Court below was that in terms of Section 8 of Agrarian Reforms Act, the plaintiff had no right to transfer the said land by sale, gift, exchange, will, mortgage or by any other means whatsoever and any transfer of such right made after 01.05.1973 shall be null void and such rights shall vest in State of Jammu and Kashmir and as per Section 28A of Agrarian Reforms Act, no person who is vested with right under Section 08 of Agrarian Reforms Act shall transfer such land or such right to any other person except the government or its agencies. It is averred that the plaintiff is promoter of M/s New Jammu Flour Mill Private Limited Adha Sarore District Samba and was running floor mill on the said land and the defendants had approached him for grant of certain loan facilities and impelled the plaintiff to raise loan facilities from their bank after taking over from Punjab and Sind Bank. The plaintiff was reluctant to shift his account from Punjab and Sind bank to

bank of defendant as the account of plaintiff was running satisfactory whereas the continuous persistent of the officers of the defendants to take over the accounts of the plaintiff from the said bank and also offered the enhancement of loan facilities which was availed of by the plaintiff from the Punjab and Sind Bank. The defendants (bank) on their own got verified the title of the property and also its valuation and forced and impelled the plaintiff to file application for taking over the loan from the Punjab and Sind Bank and legal opinion obtained by the defendants stated that the land in question had been allotted/vested upon plaintiff under Section 08 of Agrarian Reforms Act which was prohibited under law for not transferring the said property in any manner except to the Government. The defendants in order to increase their business profile took over the loan and also security of immovable property which was subject matter of suit and was vested upon the plaintiff under Section 08 of Agrarian Reforms Act which was not alienable in terms of Sections 26 and 26 A of Agrarian Reforms Act 1976. The defendants got executed on 06.02.2014 and subsequently on 17.02.2014 mortgages for security of certain loan facilities by creating mortgage without possession of the land mentioned above and got registered mortgages in the court of Sub Judge Jammu on 18.02.2014. These mortgaged also covered the other properties belonging to the plaintiff situated in Jammu.

6. It was specific plea of the plaintiff before the Court below that the documents which were executed with respect to the land were vested upon the plaintiff under Section 08 and were not transferrable in any manner despite legal embargo placed by Sections 26 and 26 A of the Agrarian Reforms Act. The account of the plaintiff became non performance assets in year 2016 and the defendants started threatening to enforce the said mortgages for realization of their alleged dues. These mortgages were void from the date of its inception

which was required to be declared, ineffective, non-existing and void and nonest in the eyes of law. It has been further pleaded that the defendants filed civil suits of recovery against the plaintiff and declared that the said property which has been registered by way of mortgage deeds dated 06.02.2014 subsequently on 17.02.2014 respectively would be enforced by selling the same which cannot be transferred/prohibited under law to be transferred even by the plaintiff because these mortgages with respect to the land in question vested upon plaintiff under Section 08 of Agrarian Reforms Act cannot be transferred in any manner much less mortgages of the property which is void ab initio.

7. Plaintiff contended that Court below vide order dated 09.02.2023 after hearing the learned counsel for the parties and after considering the material placed on record, directed the parties to maintain the status quo and respondent-bank was directed to file the written statement. The defendant-Bank has filed its written statement by taking the following pleas/defences:

- a. **The appellant/plaintiff who had voluntarily mortgaged the land in question, has no right to challenge the same and the appellant/plaintiff was estopped from challenging the Mortgage deeds and the nature of land in question which had been legally mortgaged by him in favour of the Bank.**
- b. **The court has no jurisdiction to entertain and decide the suit as the mortgaged property was admittedly situated in District Samba.**
- c. **The Suit was barred by limitation as the mortgage deeds were executed in the year 2014 and the suit has been filed after 09 years of the execution of the said mortgage deeds was hopelessly time barred.**
- d. **The appellant/plaintiff had not come to the court with clean hands and had concealed the material fact of having applied to the Government for according sanction for the conversion of land measuring 11 Kanals and 03 marlas under Khasra No. 126 and 33 Kanals and 07 marlas comprising under Khasra No. 125 (10 Kanals and 14 Marlas) Khasra No. 126/1 (04 Kanals) and Khasra No. 130 (18 Kanals) situated at Village Kartholi Tehsil and District Samba from agricultural use to non agricultural use on the ground that the industrial units are existing on the said land and said permission was granted by the Government. Vide No. Rev/S/262/2013 dated 25.09.2013 and the nature of said land in the revenue record has thus been shown as Gair Mumkin Karkhana. The appellant/plaintiff with malafide intentions has concealed this fact in the suit and therefore the suit is wholly misconceived and is liable to be dismissed with exemplary costs.**
- e. **The provisions of section 28 and 28-A of Agrarian Reforms Act are subject to the provisions contained in the said Acts where there is no complete bar**

of creating simple mortgage which however is subject to the provisions of Alienation of Land Act. The land in question has thus been legally mortgaged after grant of permission by the Govt./Revenue Minister for conversion of the land from agricultural use and non agricultural use. On spot, the industrial units are existing and the same are being used for commercial/non-agricultural purpose since long. There was no legal bar for the mortgage of land in favour of the bank when the said mortgage deeds were executed by the plaintiff. There is no violation of any provisions of the Agrarian Reforms Act in mortgaging the land in question in favour of the respondent Bank. The mortgage deeds thus executed by the plaintiff/appellant in favour of the respondent bank are legally enforceable.

- f. That the land in question was not being used as agricultural land but was a commercial land with industrial units of the appellant/plaintiff having been raised thereon and running since long. Therefore, the nature of the land stood already changed to a commercial land on spot much prior to the execution of the mortgage deeds. Accordingly the nature of the land in question has been shown as Gair Mumkin Karkhana and not agricultural land and thus there being no violation of any provision of the Agrarian Reforms Act, the present suit was not maintainable.
- g. That the accounts of the appellant/plaintiff had become NPA and the respondent bank was coerced to issue notices under the SARFAESI Act and which notices were challenged by the appellant/plaintiff before the Hon'ble High court and district Judge Samba but failed to succeed in the same.
- h. That the borrowers (appellant/plaintiff) by diverting the loan/limit amounts from their accounts to various accounts of their sister concerns and other related accounts has failed to utilize the sanctioned loan/limits for the purpose for which the same were sanctioned. The borrowers and their directors/partners even withdrew huge cash amounts from the sanctioned loan/limits. Four FIRs stand already registered by CBI against the Borrower firms and their directors/partners. The Enforcement Directorate on the basis of FIRS registered by CBI and the material/information received in the cases from the defendant bank has also proceeded against the plaintiff/ borrowers/directors/partners of the borrower firms under the provisions of Prevention of Money Laundering Act.”

8. It is contended that Court below, after hearing the parties and examining the record vide order dated 09.05.2023, dismissed the application seeking temporary injunction and vacated the interim direction passed on 09.02.2023 against which the present appeal has been preferred by the plaintiff.

9. It is specific stand of the appellant that order dated 09.05.2023 which is impugned in the present appeal has decided the application filed by the plaintiff in terms of order XXXIX Rules 1, 2 and 3 of Code of Civil Procedure (CPC, for short) for grant of temporary injunction wherein status quo order dated

09.02.2023 has been vacated by holding that the plaintiff has no prima facie case and also the balance of convenience does not lie in his favour nor the plaintiff shall suffer any loss or injury as compare to the defendants in case of vacation of injunction. Accordingly, the court below has dismissed the application being devoid of any merit and the interim direction dated 09.02.2023 stood vacated. However, court below has further observed that observation made in the order impugned dated 09.05.2023 are limited for the disposal of the application only and shall not influence the merit of the main suit which has yet to be decided.

SUBMISSION OF LEARNED COUNSEL FOR THE APPELLANT

10. Mr. Parveen Kapahi, learned counsel appearing for the plaintiff while addressing the arguments has reiterated the grounds taken in the appeal and has vehemently argued that the deed of further charge of mortgage of land cum additional mortgage dated 17.02.2014 and mortgage deed dated 06.02.2014 respectively executed by the plaintiff in favour of the Bank is null and void and not operative/ineffective and legally not enforceable and the same cannot be acted upon by the bank for alienation, in any manner, whatsoever being nonest in the eyes of law as the same is hit by Section 08 of Agrarian Reforms Act and Section 28A of the aforesaid Act. According to him, the land is not alienable to any person except the Government or its instrumentality as the same is hit by Sections 26 and 6A of the Agrarian Act 1976. Learned counsel has further submitted that since the plaintiff has a prima facie case which is deducible from the documents on record and the issues arise so, according to the learned counsel, trial is warranted and the balance of convenience also lies in his favour and thus, the plaintiff could not have been divested of his legal right to enjoy usufruct of his proprietary land. He further submits that the suit which has been filed before

the court below, the plaintiff had not challenged any of the action taken under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, **SARFAESI Act**) which was initiated way back in the year 2017 and had entered into compromise under One Time Settlement (OTS) Scheme which is under challenge before the Court below. Accordingly, as per Mr. Kapahi, learned court below has to decide the validity of the mortgage under challenge by way of suit for declaration simplicitor and the same can be declared only by the Civil Court. He further submits that court below had wrongly come to the conclusion that plaintiff has yet to prove his case by leading evidence to support his contention about the validity of the said documents under Section 08 of the Agrarian Reforms Act, whereas in the written statements and the documents placed on record, it was admitted by the defendant-Bank that the said land was allotted under Section 08 of the Agrarian Reforms Act. Thus, as per learned counsel, the prima facie case, balance of convenience and irreparable loss and injury was in favour of the plaintiff and the court below ought to have considered this aspect of the matter. He further submits that SARFAESI Act is not applicable where civil rights regarding mortgaged property in question between the parties is involved which flows from the said mortgage. Thus, as per the learned counsel, principle of estoppel was not applicable in the instant case as no estoppel applies against the statute because the mortgages in question have been executed against law. In support of his contention, he placed reliance on **Sri Raghavan S. v. Sri N. B. Rajeev [Regular First Appeal No. 1947 of 2016 decided on 22.01.2020]**.

SUBMISSION OF LEARNED COUNSEL FOR THE RESPONDENTS

11. Per contra, learned counsel appearing on behalf of the defendants, Mr. Jugal Kishore Gupta, while addressing his arguments and opposing the contention of the plaintiff, has vehemently argued that the suit filed by the plaintiff was not maintainable because the plaintiff who has executed the mortgage deeds in favour of the defendants is estopped from challenging the same and has also questioned the maintainability of the suit and the present appeal on legal grounds. Learned counsel has further raised the ground of territorial jurisdiction and limitation before the Court below by pleading that the plaintiff has not approached the court with clean hands and has suppressed the material facts. Learned counsel has further submitted that on spot the industrial units were existing though in the revenue record the nature of the land was mentioned as Agricultural land and after obtaining permission from the Government vide order dated 25.09.2013, mortgage was executed and the nature of the land been shown as Gair Mumkin Karkhana and not agricultural land. He further submits that unit of plaintiff has been classified as NPA and notices under Section 13(2) of the SARFAESI Act have been issued. Mr. Jugal Kishore Gupta further submits that plaintiff having failed to obtain any relief against the proceedings before this Court as well as learned Principal Sessions Judge, Samba has mischievously filed the suit which was not maintainable in the light of the fact that subject matter of the suit situated in the district Samba and thus, the court below lacks territorial jurisdiction to adjudicate the same. Learned counsel further submitted that relief under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 (for short, CPC) flows from the main relief and when the main relief cannot be granted, no relief under Order XXXIX Rules 1 and 2 of CPC can be granted as no prima facie case existed in favour of the plaintiff on the basis of

pleadings and the balance of convenience was also not in his favour and the court below has rightly passed order dated 09.05.2023, by virtue of which, the interim direction already passed by the court below was vacated. He further submits that had the interim injunction been confirmed, then it could have been caused serious injury to the defendants which could not have been compensated by any means and rightly so, the Court below has passed the order. To buttress his arguments, Learned counsel placed reliance on **Mardia Chemicals Ltd. v. Union of India [SCC 2004 (4) 311]**, **S. P. Chengalvaraya Naidu v. Jagannath [1994 (1) SCC 1]** and **Skyline Education Institute Pvt. Ltd. v. S. L. Vaswani [AIR 2010 SC 3221]**.

LEGAL ANALYSIS

12. Heard learned counsel for the parties at length and perused the record.

13. It is settled preposition of law that the prayer for grant of an interlocutory injunction is at a stage when the existence of legal rights asserted by the plaintiff and its alleged violation are both contested and remained uncertain till they are established at the trial by way of evidence. The Court, at this stage, while granting the temporary injunction, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The very object of granting interlocutory injunction is to protect the appellant against any injury by violation of his/her rights for which he/she could not be adequately compensated in damages recoverable in action if the uncertainty were resolved in his/her favour at the trial. The need for such protection must be weighed against the corresponding need of the defendants to be protected against injury resulting from his/her having been prevented from exercising his/her own legal rights for which he/she could not be adequately compensated. At this stage, a duty is cast upon the court below to weigh one need

against another and determine where the 'balance of convenience' lies. Thus, it can safely be concluded that interlocutory remedy is intended to preserve in status quo, the rights of the parties which may appear on a prima facie case.

14. I am fortified by the observation of Hon'ble Supreme Court in case titled **Gujarat Bottling Co. Ltd. v. Coca Cola Co. and anr.** reported as **AIR 1995 SC 2372**. It would be profitable to reproduce paragraph 43 of the aforesaid judgment.

“43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the 'balance of convenience' lies. [see: Wander Ltd.& Anr. v., Antox India (P) Ltd., 1990 (supp) SCC 727 at pp. 731-32].

15. Before proceeding further, it would be apt to reproduce below Rule 1 of Order XXXIX of CPC, for facility of reference.

“1. Cases in which temporary injunction may be granted. Where in any suit it is proved by affidavit or otherwise:

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or dispossession of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until till disposal of the suit or until further orders.”

16. From a bare perusal of the aforesaid Rule of Order XXXIX of CPC, it is manifestly clear that any property, which is in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in an execution of a decree or that the defendant threatens or intends to remove or dispose off his property with a view to defrauding his creditors or that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property, which is in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff or otherwise causing injury until disposal of the suit or until further orders. So grant of temporary injunction is not put an end to the litigation but it is commencement of the litigation and grant of temporary injunction is aiming at preserving the property, which is subject matter of the suit because if the temporary injunction is refused to be granted, it would pave a way for either of the parties before the court to alienate, sell, dispose of and/or change the nature of the property which is in dispute in the suit and, in that eventuality, the purpose of litigation would be futile. Thus, grant of temporary injunction is with the sole object to prevent damage or wastage of any property which is in dispute in the

suit. The basic principle of the grant of an order of injunction is to assess the right and the need of the plaintiff as against the defendant.

17. Although learned counsel for the defendants has raised the plea regarding the maintainability of the suit before the court below and the said issue has yet to be adjudicated by the court below and rightly so, the court below has held that while deciding the application under Order XXXIX Rules 1 and 2 of CPC cannot embark upon the maintainability of the suit and cannot decide the suit on question of maintainability. The Court below has to confine itself within the parameters as laid down under Order XXXIX Rules 1 and 2 of CPC to see whether the temporary relief of injunction can be granted during the pendency of the suit or not and while deciding the said application, the Court below has to be guided by the three essential ingredients i.e. **prime face case, balance of convenience and comparative loss or injury to claim relief of temporary injunction or not**. While granting the temporary injunction by way of interim relief, the same flows from main relief and cannot be granted if it had nexus with the main relief and at this stage, the court cannot touch the merits of the case.

18. I have gone through the order passed by the learned court below which is impugned in the present appeal and I do not find any illegality much less perversity in the same wherein learned court below after considering the material facts on the record and three cardinal principles i.e. prima facie case, balance of convenience and comparative loss and injury has vacated the injunction already granted in favour of the plaintiff. The reasons which have been spelt out in the order impugned are well founded and cannot be interfered with.

19. Having gone through the judgment relied upon by counsel for the plaintiff cannot be justifiably applicable to the facts and circumstances of the present case

whereas the judgments relied upon by the learned counsel for the defendants can be applied to the facts of the case.

20. From a bare perusal of the record, it is apparent that the plaintiff has applied to the Government for according sanction for conversion of the land in question from Agricultural use to non-agricultural use on the ground that industrial units are existing on the said land and the said permission was granted by the Government vide order dated 25.09.2013 and this aspect of the matter has been deliberately concealed by the plaintiff with malafide intention in the suit. The fact whether the provision of Agrarian Reforms Act applies to the mortgaged property or not, is a subject matter of the suit and has yet to be adjudicated by the court below. Plaintiff though claims to be owner in possession of the suit property and asserts that mortgage deeds executed by him are null and void abinitio because he was not legally competent to execute the aforesaid mortgage deeds and accordingly, the bank cannot proceed against him. However, the fact of the matter is that plaintiff is the mortgager of the suit property and by his own conduct, he has mortgaged the said property with the bank and has secured the loan and now the plaintiff is estopped under law from questioning the validity of the said mortgage deed by way of suit before the court below and this aspect of the matter has yet to be adjudicated by the court below.

21. Even the court below has observed that the plaintiff has suppressed the material facts from the said court to the extent that loan obtained by him from the bank was classified as NPA and notice under Section 13(2) of the SARFAESI Act was also issued to him which was challenged by him before the court of learned Principal District Judge Samba and also before this Court and the plaintiff has failed to seek any relief from both the courts and after having failed,

the plaintiff has very cleverly drafted and filed the suit before the court below with a view to challenge the mortgage deeds in question notwithstanding the proceedings under the SARFAESI Act set in motion against him. Record further reveals that suit land has been shown as Ghair Mumkin Kaskhana and not Agricultural land.

22. It is a classic case where the plaintiff who himself is a party to the execution of the mortgage deeds has subsequently questioned the execution thereof after drawing loan facility and on the basis thereof, the plaintiff cannot absolve him of his liability under the SARFAESI Act. Plaintiff after having failed to seek any relief against the proceedings initiated under the SARFAESI Act before the court of learned Principal District Judge, Samba has very cleverly and mischievously approached the court below with unclean hands by suppressing material facts and the court below, after adjudicating upon the material facts on record, has rightly vacated the interim direction already granted vide order dated 09.02.2023 by passing detailed order which is impugned in the present appeal dated 09.05.2023. It is settled preposition of law that one who seeks equitable relief must do equity also and demonstrate bonafides and a person guilty of suppression of material facts is not entitled to relief under Order XXXIX Rules 1 and 2 of CPC.

23. Section 34 of the SARFAESI Act creates a bar and provides that 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 the bank and Financial Institution Act, 1993. Since the account of the plaintiff has become NPA way back in the year 2016, and the defendant-Bank had threatened to enforce the said mortgages for realization of the alleged dues, the plaintiff with a view to stall the said process

has mischievously filed the suit before the court below challenging the mortgages so that bank cannot alienate the property. Thus, in the light of the bar created by Section 34 of the SARFAESI Act even otherwise also no injunction can be granted even for any action to be taken in pursuance of any power conferred under the aforesaid Act. The court below thus was totally justified in rejecting application of the plaintiff for temporary injunction in the light of the law laid down by the Hon'ble Supreme Court in case titled **Mardia Chemicals Ltd. and others v. Union of India and another along with connected matters** reported in **2004 (4) SCC 311**. The relevant para of the aforesaid judgment is reproduced as under:

“50. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under Sub-section (4) of Section 13.”

24. Order VII Rule 11 of CPC also provides that plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. For facility of reference, Order VII rule 11 of CPC is reproduced as under:

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;**
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;**
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;**
- (d) where the suit appears from the statement in the plaint to be barred by any law;**

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that

refusal to extend such time would cause grave injustice to the plaintiff.”

25. From a bare perusal of Section 34 of SARFAESI Act, it transpires that no injunction shall be granted by any court in respect of any action taken or to be taken in pursuance of any power conferred by or under the said Act and thus, the suit even otherwise also was not maintainable in the light of the specific bar as envisaged under Order VII Rule 11 and this aspect of the matter can also be considered by the court below, while adjudicating the aforesaid suit as a specific objection has been taken by the defendant-Bank in this regard while filing the written statement.

26. Since the court below has recorded a finding that the plaintiff has not come to the court with clean hands by concealing the material facts and rightly so, the plaintiff was not entitled to any relief of temporary injunction, therefore, the observation of the learned court below cannot be faulted in law in the light of the pleadings of the plaintiff and on the basis of record produced by him before the court below.

27. In the present case, plaintiff has tried to abuse the process of law by filing a suit with a view to restrain the bank to alienate the property which was mortgaged on the grounds which are not sustainable in the eyes of law. It goes without saying that one who comes to the court must come with clean hands and I have no hesitation in holding in the instant appeal that the plaintiff has tried to abuse the process of court by filing a suit mischievously and after having failed to get the interim protection has filed the present appeal on false and flimsy grounds which are not sustainable in the eyes of law. Thus, a party whose case is based on falsehood has no right to approach this court. In this regard, I am fortified by observation of the Hon'ble Supreme Court in case titled **S.P.**

Chengalvaraya Naidu v. Jagannath reported as **1994 (1) SCC 1**. The relevant paragraph is reproduced as under:

“5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

28. Needless to emphasize that the suit property stands mortgaged with the bank by the plaintiff and the said account has been declared as NPS and the bank has proceeded against the plaintiff under SARFAESI Act by issuing notice under Section 13(2) of the SARFAESI Act and the plaintiff has failed to obtain any relief against the aforesaid notice issued and after having failed to obtain any relief, has approached the court below and also this court with unclean hands. It is settled proposition of law that where the proceedings under SARFAESI Act has been initiated, the suit would not be maintainable and the remedy for the aggrieved person lies under Section 17 of the aforesaid Act which is more efficacious and adequate remedy to the party aggrieved. This aspect of the matter has been settled at naught by Hon’ble Supreme Court in **Jagdish Singh vs. Heeralal and ors.** reported as **2014 (1) SCC 479**. Relevant para is reproduced as under:

“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 borrowers 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 realizing 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 Debt Recovery Tribunal under Section 17. The opening portion of Section 34 clearly states that no civil court shall have 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 Securitization 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 Securitization Act. Consequently 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. 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 Securitization Act because those matters fall within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitization Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.”

29. Hon’ble Supreme Court in **Skyline Education Institute Pvt. Ltd. v. S. L.**

Vaswani reported as **AIR 2010 SC 3221** has also held that once the court of first instance exercises its jurisdiction to grant or refuse the relief of temporary injunction, the appellate Court should be loath to make any interference unless the discretion exercised by the court below in refusing to entertain the prayer for temporary injunction is vitiated by an error apparent or perversity and manifest injustice has been done, only then interference in such circumstances would warrant.

CONCLUSION

30. For the reasons stated hereinabove and in the light of the aforesaid settled legal position coupled with the facts and circumstances of the case, no fault can be found with the observation of learned court below on the cardinal principles of law and facts like prima facie case, balance of convenience and equity which are based on correct position of law and balanced consideration of various facets of the case. The appellant has failed to point out any illegality much less impropriety in the well reasoned order impugned in the present appeal.

Consequently, the present appeal, being bereft of any merit, is dismissed and the impugned order is upheld. The court below is at liberty to proceed with the suit and decide the same on its own merits and in accordance with law.

31. Appeal is, accordingly, dismissed.

**(WASIM SADIQ NARGAL)
JUDGE**

Jammu
21.07.2023
(Paramjeet)

*Whether the order is speaking?
Whether the order is reportable?*

*Yes/No
Yes/No*

