

S.V. Subramaniam Vs. Cypress Semiconductor Technology India Private Limited Rep. by Its Director, Mr. K. Viswanath,

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SooperKanoon Citation : sooperkanoon.com/786008

Court : Chennai

Decided On : Jan-22-2008

Reported in : (2008)2MLJ169

Judge : S.J. Mukhopadhyaya and ;M. Venugopal, JJ.

Acts : Payment of Gratuity Act; [Recovery of Debts due to Banks and Financial Institutions Act, 1993](#) - Sections 17, 18, 19(6) to 19(8), 19(22), 20, 20(2) and 29; [Income Tax Act, 1961](#); Code of Civil Procedure (CPC) - Sections 9 - Order 2, Rule 2 - Order 7, Rule 11; [Constitution of India](#) - Articles 226 and 227; Debts Recovery Tribunal (Procedure) Rules, 1993; Income Tax (Certificate Proceedings) Rules, 1962 - Rule 9

Appeal No. : O.S.A. Nos. 211 to 214 of 2007

Appellant : S.V. Subramaniam

Respondent : Cypress Semiconductor Technology India Private Limited Rep. by Its Director, Mr. K. Viswanath, ;mg B

Advocate for Def. : P.S. Raman, Sr. Counsel for ;Sivam Sivanandraj, Adv. for respondent-1 and ;G. Masilamani, Sr. Counsel for ;V. Girish Kumar, Adv. for respondent-4

Advocate for Pet/Ap. : N.R. Chandran, Sr. Counsel and ;Vijay Narayan, Sr. Counsel for ;R. Kannan, Adv.

Disposition : Appeal dismissed

Judgement :

S.J. Mukhopadhaya, J.

1. As all these appeals have been preferred by the common appellant (S.V. Subramaniam) (who is the fourth defendant in the suit in C.S. No. 517 of 2007) against the common order dated 17.7.2007 passed in Application Nos. 4144, 4145 and 4349 of 2007 and O.A. No. 729 of 2007 in C.S. No. 517 of 2007, they were heard together and disposed of by this common judgment.

2. The suit in C.S. No. 517 of 2007 was preferred by the plaintiff (the first respondent herein) for the following relief:

(a) Declaration that order dated 10.8.2006 modified by order dated 30.8.2006 and 31.8.2006 in I.A. No. 336 of 2006 in T.A. No. 1 of 2004 passed by the Debt Recovery Tribunal-2, Chennai, is null and void and not binding on the plaintiff's property described in Schedule A.

(b) Declaration that Sale Certificate No. 53 of 2006, dated 31.8.2006 issued by the Debt Recovery Tribunal-2, Chennai, is null and void and not binding on the plaintiff's property described in Schedule A and

(c) Permanent injunction restraining the fourth defendant, his men, agents, servants or assigns, from in any manner directly or indirectly acting upon the Sale Certificate No. 53 of 2006, dated 31.8.2006 issued by the Debt Recovery Tribunal-2, Chennai, and dealing with the said property described in Schedule A, in any manner whatsoever.

3. In the aforesaid suit, the first respondent-plaintiff preferred the following applications:

(i) Original Application No. 729 of 2007: preferred for interim injunction restraining the fourth respondent/fourth defendant, his men, agents, servants or assigns, from in any manner directly or indirectly acting upon the Sale Certificate No. 53 of 2006, dated 31.8.2006 issued by the Debt Recovery Tribunal-2, Chennai, developing and dealing with the property described in Schedule A to the Judge's Summons in the Application, in any manner whatsoever, pending disposal of the suit.

(ii) Application No. 4144 of 2007 : preferred for stay of the operation of the Sale Certificate No. 53 of 2006, dated 31.8.2006, issued by the Debt Recovery Tribunal-2, Chennai, pertaining to Schedule A property, mentioned in Judge's Summons to the Application, pending disposal of the suit.

(iii) Application No. 4145 of 2007 : preferred under Order 2 Rule 2 of the Civil Procedure Code for grant of leave for reserving its right to claim further consequential relief.

A Separate application in Original Application No. 4349 of 2007 was preferred by the appellant/fourth defendant under Order 7 Rule 11, CPC to reject the plaint, as the Court having no jurisdiction.

All the four applications were heard together and by the impugned common order dated 17.7.2007, the learned single Judge while allowing the applications in Appln. Nos. 4144 and 4145 of 2007 and O.A. No. 729 of 2007. preferred by the first respondent-plaintiff, rejected the applications in Appln. No. 4349 of 2007 preferred by the appellant-fourth defendant, which has given rise to the present four Original Side Appeals.

4. Before noticing the rival contentions and the issues involved in the present appeals, it is desirable to notice the relevant facts as mentioned hereunder:

(i) One M/s. M.G.M. Brothers, a Partnership firm, on 28.2.1964, purchased the property under Document No. 1457/64, S.R.O. Bangalore North, land in S. No. 43/3, Hebbal Village (Kasabu), Bangalore Taluk, measuring 2 acres 3-1/2 guntas having boundary: East: Bellary Road, West: K. Nanjappa lands in S. No. 43/2, North: small part of land measuring 3.5 guntas sold to Nanjappa and M.G.

Brothers jointly, and South: Military Dairy Farms in S. No. 42.

According to the first respondent-plaintiff, on the same date, i.e. on 28.2.1964, another small part of the land measuring 3.5 guntas in S. No. 43/3, Hebbal Village (Kasabu), Bangalore Taluk, was also sold, which has been shown in the North side of the other sale deed dated 28.2.1964, as earlier referred to.

(ii) On 16.2.1987, an agreement was reached between M/s. M.G. Brothers, represented by partner and power agent of other partners, namely M.P. Narasappa, with M/s. Dhanalakshmi Consolidates Transport Private Limited, by which it was agreed to sell and transfer the assets, both movable and immovable properties of the firm and acknowledged receipt of advance money. The possession of the property was also handed over and M/s. M.G. Brothers agreed to execute necessary conveyance deed as and when required by M/s. Dhanalakshmi Consolidates Transport Private Limited. Subsequently, the entire sale consideration was given, but no sale deed in favour of M/s. Dhanalakshmi Consolidates Transport Private Limited was executed. The original title deeds were handed over to the said Company by M/s. M.G. Brothers. Schedule B to the agreement refers to various immovable properties.

(iii) On 27.11.1987, M/s. Dhanalakshmi Consolidates Transport Private Limited obtained loan from M/s. New Bank of India (subsequently merged with M/s. Punjab National Bank) for carrying on business as transporters. The various properties including the property at Bangalore, were mortgaged by M/s. Dhanalakshmi Consolidates Transport Private Limited, which also handed over the original title deeds to the Bank on 11.2.1988.

(iv) M/s. New Bank of India filed a suit on 1st March, 1990 at Bombay High Court, namely C.S. No. 650 of 1990 against the borrower for Rs. 1,31,65,122.09 in respect of the term loan and Rs. 1,81,56,351.67 towards cash credit hypothecation and for further interest.

(v) A case under the Payment of Gratuity Act, was instituted against M/s. M.G. Brothers and the Controlling Authority under the Payment of Gratuity Act and Assistant Commissioner (Central), Bellary passed an order on 31.8.1990

impleading M/s. Dhanalakshmi Consolidates, since M/s. M.G. Brothers sold the properties to it.

(vi) On 16.7.1991, Mr. M.P. Narasappa, Partner of M/s. M.G. Brothers, appeared before the Industrial Tribunal-cum-Labour Court, Anantapur, in M.P. No. 7 of 1990, wherein during his examination, he admitted that the agreement of sale dated 16.2.1987 with M/s. Dhanalakshmi Consolidates Transports Private Limited, was executed and the original documents were handed over to the said Company.

(vii) According to the plaintiff, M/s. M.G. Brothers Lorry Service, on 22.8.1994 executed nine sale deeds.

By one of the sale deeds, it sold to T.N. Chandra 8 guntas of land in S. No. 43/3, Kaneshamari, Hebbal Village (Kasaba), Hobli, Bangalore North Taluk with three square meters of house with AC sheet building, boundaries by East: Bellary Road, West: Private property, North: portion of land sold to T. Barathi and South: portion of land in S. No. 43/3 sold to T.N. Ramesh, Document No. 4686/94.

The second sale deed was executed on the same day by M/s. M.G. Brothers Lorry Service in favour of one Smt. Rukmani. Manoharlal, 8-1/2 guntas of land in S. No. 43/3, Kaneshamari portion of 502 Hebbal Village (Kasaba) Hobli, Bangalore North Taluk with three Sq.Mts. of house with AC Sheet bounded by East: Bellary Road, West: private property, North: portion of land sold to Manoharlal K. Narang in S. No. 43/3, South: lands in S. No. 43/3, sold to Ravi in Document No. 3222/94.

The third sale deed was executed by M/s. M.G. Brothers Lorry Service on the same day in favour of N. Ravi and sold 8-1/2 guntas of land in S. No. 43/3, Kaneshamari portion of 502, Hebbal Village (Kasaba) Hobli, Bangalore North Taluk, with three Sq.Mts. of AC Sheet house, bounded by East: Bellary Road, West: private property, North: portion of land sold to Rukmani Manoharlal in S. No. 43/3, South: lands sold to Neelakanta Nadar - vide Document No. 4680/94.

The fourth sale deed was executed by M/s. M.G. Brothers Lorry Service in favour of T.N. Chandra in respect of eight guntas of land on the same day in S. No. 43/3, Kaneshamari portion of 502 Hebbal Village, (Kasaba) Hobli, Bangalore North

Taluk, with three Sq.Mts. of AC sheet house, bounded by East: Bellary Road, West: private property, North: portion of land sold to Susheelamma and South: portion of land in S. No. 43/3, Document No. 4692/94. The fifth sale deed was executed by M/s. M.G. Brothers Lorry Service in favour of T.N. Bramresh, in respect of eight guntas of land on the same day in S. No. 43/3, Kaneshamari portion of 502 Hebbal Village, (Kasaba) Hobli, Bangalore North Taluk, with three Sq.Mts. of AC sheet house, bounded by East: Bellary Road, West: private property, North: portion of land sold to T.N. Chandra in S. No. 43/3, and South: portion of land in S. No. 43/3 sold to T.M. Thirumalesh - Document No. 4684/94.

The sixth sale deed was executed by M/s. M.G. Brothers Lorry Service in favour of T.N. Thirumalesh (plaintiff's vendor's vendor) in respect of eight guntas of land on the same day, with 3 Sq.Mts. AC sheet house in S. No. 43/3, Kaneshamari portion of 502 Hebbal Village, (Kasaba) Hobli, Bangalore North Taluk, bounded by East: Bellary Road, West: private property, North: portion of land sold to T.N. Bramresh and South: by Village Road - Document No. 4682/94.

The seventh sale deed was executed by M/s. M.G. Brothers Lorry Service in favour of Susheelamma, in respect of 8-1/2 guntas of land with 3 Sq.Mts. AC sheet house, on the same day in S. No. 43/3, Kaneshamari portion of 502 Hebbal Village, (Kasaba) Hobli, Bangalore North Taluk, bounded by East: Bellary Road, West: private property, North: portion of land sold to Neelakanda Naidu and South: portion of land in S. No. 43/3 sold to Bharathi, Document No. 5944/94.

The eighth sale deed was executed by M/s. M.G. Brothers Lorry Service in favour of Manoharlal K. Narang, in respect of eight guntas of land with 3 Sq.Mts. AC sheet house, on the same day in S. No. 43/3, Kaneshamari portion of 502 Hebbal Village, (Kasaba) Hobli, Bangalore North Taluk, bounded by East: Bellary Road, West: private property, North: by Road and South: portion of land in S. No. 43/3 sold to Rukmani Manoharlal - Document No. 4688/94.

The ninth sale deed was executed by M/s. M.G. Brothers Lorry Service in favour of Susheelammal in respect of 8-1/2 guntas of land with 3 Sq.Mts. AC sheet house, on the same day in S. No. 43/3, Kaneshamari portion of 502 Hebbal Village, (Kasaba) Hobli, Bangalore North Taluk, bounded by East: Bellary Road, West:

private property, North: portion of land sold to N. Ravi in S. No. 43/3 and South: portion of land in S. No. 43/3, Document No. 5946/94 sold to Neelakanta Naidu.

(viii) Subsequently, the following properties (including the above said nine properties) were purchased by M/s. Arcus Technology (P) Limited in between June and August 1995, as detailed hereunder:

On 7.7.1995, T.N. Tirumalesh sold to M/s. Arcus Technology (P) Ltd., 8712 Sq.Ft. and 3 Sq.Mts. House in Kaneshamari bearing No. 710/801, Hebbal Village, bounded by: East: Bellary Road, West: private property, North: property belonging to T.N. Ramaresh and South: Village Road, Doc. No. 3702/95.

On 5.7.1995, T.N. Bramresh sold to M/s. Arcus Technology (P) Ltd., Doc. No. 3635/95-land bearing Kaneshamari No. 502 presently bearing No. 712/801, Hebbal Village, Kasaba Hobli, Bangalore North Taluk, measuring 8712 Sq.Ft. with 3 Sq.Mts., bounded by: East: Bellary Road, West: private property, North: property belonging to T.N. Chandran and South: property to TM. Thirumalesh, measuring 8712 Sq.Ft.

On 9.8.1995, T. Bharathi sold to M/s. Arcus Technology (P) Ltd., Doc. No. 4696/95-land bearing Kaneshamari No. 502 presently bearing No. 709/801, Hebbal Village, Kasaba Hobli, Bangalore North Taluk, measuring 8712 Sq.Ft. with 3 Sq.Mts. house, bounded by: East: Bellary Road, West: private property, North: property belonging to M/s. Arcus Technology (P) Ltd. and South: property belonging to Chandran.

On 19.7.1995, N. Ravi sold to M/s. Arcus Technology (P) Ltd., Doc. No. 4337/95-land bearing Kaneshamari No. 502 presently bearing No. 715/801, Hebbal Village, Kasaba Hobli, Bangalore North Taluk, measuring 9256 Sq.Ft. with 3 Sq.Mts. house, bounded by: East: Bellary Road, West: private property, North: property belonging to Rukmani Manoharlal and South: property belonging to Neelakanta Naidu.

On 16.8.1995, Smt. Rukmani Manoharlal sold to M/s. Arcus Technology (P) Ltd., Doc. No. 4832/95-land bearing Kaneshamari No. 502 presently bearing No.

717/801, Hebbal Village, Kasaba Hobli, Bangalore North Taluk, measuring 9256 Sq.Ft. with 3 Sq.Mts. house, bounded by: East: Bellary Road, West: private property, North: property belonging to Manoharlal K. Narang and South: property belonging to N. Ravi.

On 9.8.1995, T.N. Chandra sold to M/s. Arcus Technology (P) Ltd., Doc. No. 4695/95-land bearing Kaneshamari No. 502 presently bearing No. 713/801, Hebbal Village, Kasaba Hobli, Bangalore North Taluk, measuring 8712 Sq.Ft. with 3 Sq.Mts. house, bounded by: East: Bellary Road, West: private property, North: property belonging to Smt. T.Bharathi and South: property belonging to T.N. Bhramaresh.

On 14.6.1995, Sushamma sold to M/s. Arcus Technology (P) Ltd., land bearing S. No. 47/3, Kaneshamari portion of 502, presently bearing No. 716/801, Hebbal Village, Kasaba Hobli, Bangalore North Taluk, measuring 9256 Sq.Ft. with 3 Sq.Mts. house, bounded by: East: Bellary Road, West: private property, North: property belonging to N. Neelakanta Naidu and South: property belonging to T. Bharathi--Doc. No. 2896/95.

On 17.7.1995, Manoharlal K. Narang sold to M/s. Arcus Technology (P) Ltd., Doc. No. 4969/95, land bearing Kaneshamari No. 502, presently bearing No. 711/801, Hebbal Village, Kasaba Hobli, Bangalore North Taluk, measuring 8712 Sq.Ft. with 3 Sq.Mts. house, bounded by: East: Bellary Road, West: private property, North: Road and South: property belonging to Rukmani Manoharlal.

On 16.8.1995, M. Neelakanta Naidu sold to M/s. Arcus Technology (P) Ltd., Doc. No. 4831/95, land bearing Kaneshamari No. 502, presently bearing No. 714/801, Hebbal Village, Kasaba Hobli, Bangalore North Taluk, measuring 4644 Sq.Ft. with 3 Sq.Mts. house, bounded by: East: Bellary Road, West: private property, North: property of Ravi and South: property belonging to M/s. Arcus Technology (P) Ltd.

On 17.8.1995, M. Neelakanta Naidu sold to M/s. Arcus Technology (P) Ltd., Doc. No. 4870/95, land bearing Kaneshamari No. 502, presently bearing No. 709/801, Hebbal Village, Kasaba Hobli, Bangalore North Taluk, measuring 4612 Sq.Ft. with 3 Sq.Mts. house, bounded by: East: Bellary Road, West: private property, North:

property of Ravi and South: property of M/s. Arcus Technology (P) Ltd.

(ix) Pursuant to an earlier agreement of sale executed between M/s. Arcus Technology (P) Ltd. with M/s. Cypress Semiconductor Technology India Pvt. Ltd. on 30.12.1999, the sale deed was executed on 5.7.2000 for consideration of Rs. 1 crore and 55 lakhs. The further case of the first respondent-plaintiff is that on 5.7.2000, M/s. Arcus Technology (P) Limited sold to the first respondent-plaintiff by Document No. 4065/2000, the land bearing house list No. 58/709/801/502, being a portion of Kaneshamari No. 502, Hebbal Village, Kasaba Hobli, Bangalore North Taluk at CMC Bhataryanaaura ad-measuring 370 feet x 182.5 feet + 253 feet equivalent to 80567.5 Sq.ft. bounded on the East: Bellary Road, West: private property; North: private property and South: private property.

(x) In the meantime, a Company Petition in C.P. No. 139 of 1991 was preferred, in which, this Court, on 18.10.1997, passed an order to wind up M/s. Dhanalakshmi Consolidates Transport Private Limited and the suit pending in Bombay High Court was ordered to be transferred to this Court and on transfer of the suit pending in Bombay High Court in C.S. No. 650 of 1990, it was re-numbered as C.S. No. 276 of 1998 before this Court. In the said suit C.S. No. 276 of 1998, in the end of 2002, the Bank (now on its merger with Punjab National Bank) filed an application in Appln. No. 4602 of 2002 to transfer the suit C.S. No. 276 of 1998 pending in this Court to the Debt Recovery Tribunal, Chennai, which was ordered by this Court on 19.11.2002. Pursuant to the same, the case was transferred to Debt Recovery Tribunal-II, Chennai and re-numbered as T.A. No. 1 of 2004.

(xi) In the suit before the Bombay High Court which was subsequently transferred to this Court and then to Debt Recovery Tribunal-II, Chennai as T.A. No. 1 of 2004, according to the first respondent-plaintiff, it was not impleaded as a party. In the said case, the Bank filed I.A. No. 336 of 2006 on 30.6.2006 to sell the properties of different places including the properties situated at Bombay, Bangalore, Andhra Pradesh, etc. including the properties in question, for Rs. 2 crores to S.V. Subramaniam (the appellant herein). One Devendra, a partner of M/s. M.G. Brothers appeared on 1.8.2006 and stated that they were aware of the mortgage and expressed 'no objection' for the sale.

(xii) In view of the agreement reached between the parties, the Debt Recovery Tribunal-II, Chennai, passed an order on 10.8.2006 for sale of all the said properties situated at different places in India, for a sum of Rs. 2 crores and directed to issue the Sale Certificate on payment of Rs. 2 crores.

(xiii) On 29.8.2006, a Memo was filed by the Bank stating that S.V. Subramaniam (the appellant herein) was aware that the original documents with regard to the properties, were misplaced by the Bank and that he should not insist on the production of the original documents.

On 30.8.2006, the Debt Recovery Tribunal-II, Chennai recorded the Memo of the Bank and directed to handover the possession to S.V. Subramaniam (the appellant herein) and the amount of Rs. 2 crores deposited by the appellant was directed to be kept in short deposit for three months for the purpose of satisfying the claim of the workmen, if any.

(xiv) On the next date, i.e. on 31.8.2006, the DRT-II, Chennai directed that a sum of Rs. 20 lakhs to be deposited being the value of two properties belonging to Dhanalakshmi Company for settlement of workmen dues. The Recovery Officer issued the Sale Certificate on 31.8.2006 and by force, the possession of the property which was claimed to have been purchased by the plaintiff, vide sale deed dated 5.7.2000, was taken on 4.9.2006.

(xv) The first respondent-plaintiff initially filed a Writ Petition in W.P. No. 40073 of 2006 before this Court on 16.10.2006, wherein, initially, interim order was passed on 19.10.2006, restraining the respondents therein from dealing with the property. In the said Writ Petition, a petition was filed by S.V. Subramaniam (the appellant herein) on 26.10.2006 to vacate the interim order and the interim order having been vacated on 19.12.2006, the first respondent-plaintiff preferred Writ Appeal No. 62 of 2007, but both the Writ Petition and the Writ Appeal were heard and dismissed on 6.6.2007 with the following observation:

36. In view of our findings...holding the writ petition, not maintainable, we left open all other points agitated by both the parties before this Court so as to be decided by an appropriate forum. Thereafter, after the dismissal of the aforesaid Writ

Petition and Writ Appeal, the first respondent-plaintiff instead of moving before the Debts Recovery Tribunal (for short, 'DRT') or the Debts Recovery Appellate Tribunal (for short, 'DRAT'), preferred the suit in question, namely C.S. No. 517 of 2007 before this Court, for the relief as noticed above and in the suit, already interim order had been passed and a petition under Order 7 Rule 11 CPC which was preferred by the fourth defendant (the appellant herein), was rejected, giving rise to all these Original Side Appeals.

5. Mr. N.R. Chandran, learned Senior Counsel appearing for the appellant-fourth defendant, mainly took the plea that the suit was not maintainable in the Original Side of this Court under Clause 12 of the Letters Patent, as it is 'suit for land' and all the suit properties are situated outside the jurisdiction of this Court.

6. Mr. G. Masilamani, learned Senior Counsel appearing for the fourth respondent-Bank (Punjab National Bank), in fact, made elaborate argument, which was adopted by the learned Senior Counsel appearing for the first respondent-plaintiff and the following plea was taken by Mr. G. Masilamani while he prayed to dismiss the present suit:

(i) There is an alternative remedy under Section 20 of the [Recovery of Debts due to Banks and Financial Institutions Act, 1993](#) (for short, '1993 Act') and not only the party to the case, but 'any person' aggrieved by the order passed by the Debt Recovery Tribunal, can prefer an appeal before the Debt Recovery Appellate Tribunal. It is not the case of the plaintiff that the appeal before the DRAT is not an efficacious remedy.

(ii) 'Doctrine of Election' is not permissible to the plaintiff in view of Section 18 of the 1993 Act. When a remedy is available, a person is supposed to resort to such a remedy, and he should do so. If it is allowed, it will give room for 'forum shopping', which is not permissible. It is a 'special provision' for 'special remedy', as a matter of policy to achieve the larger positive benefit with reference to Indian context of Banking business. The 1993 Act is a special Legislation made by the Legislature carving out a special proceeding, excluding the general or common law remedy.

The 1993 Act is a well-defined law upheld by the Supreme Court and if the law declares a particular thing to be done in a particular manner, it should be done in such a manner. The general law or civil suit, therefore is barred.

(iii) The power already with the civil Court, once divested with the civil Court by the 1993 Act, cannot be allowed to continue with more rigorous way, that too, to set aside an order passed by the Tribunal.

Nobody can work out the remedy to move before a civil Court which has been divested with powers.

Learned Senior Counsel appearing for the appellant and the fourth respondent-Bank, both while referring to Sections 17 and 18 of the 1993 Act and the dates/events, also submitted as follows:

(a) The list of events will show that the plaintiff is the purchaser 'pendete-lite'.

(b) The Bank has not played fraud. It cannot be imagined that the Bank itself played fraud.

Learned Senior Counsel appearing for the first respondent-plaintiff, while referring to the original plaint as was filed before the Bombay High Court, the amended plaint fled before the DRT, copies of one or other sale deed(s) dated 28.2.1964, the order passed by the DRT on one or other date(s), made the following submissions:

(a) The plaintiff having alleged fraud played by the parties before the DRT and the Recovery Officer to obtain one or other order, a suit against such order of the DRT/Recovery Officer is maintainable.

(b) The relief sought for in the suit cannot be termed to be the 'suit for land'. Therefore, this Court from its Original Side, has jurisdiction to decide the issue under Clause 12 of the Letters Patent.

(c) The appeal under Section 20 of the 1993 Act against a consent decree, is not maintainable, and therefore, the remedy of appeal under Section 20 of the 1993 Act is not available to the plaintiff.

(d) Section 18 of the 1993 Act does not bar a civil Court to give a declaration relating to the fraud, as the DRT is not required to determine such issue under Section 17 of the said Act.

(e) The DRT passed the order pursuant to which the properties having been sold, without auction-sale and without following the Debts Recovery Tribunal (Procedure) Rules, 1993, such order and sale is a nullity in the eye of law.

The learned Senior Counsel appearing for the first respondent-plaintiff, while highlighted the facts to allege fraud played by the Bank, also placed reliance on the decisions of the High Court(s) and the Supreme Court in support of his plea.

7. In a nut-shell, the following facts were highlighted:

(a) M/s. M.G. Brothers Lorry Service purchased the properties in S. No. 43/3, Hebbal Village (Kasabu), Bangalore Taluk, by two sale deeds, both dated 28.2.1964. One sale deed related to the land measuring 2 acres 3-1/2 guntas in S. No. 43/3 and the other sale deed related to 3-1/2 guntas in S. No. 43/3, reference of which, has been made in the northern boundary of sale deed dated 28.2.1964 in respect of the above said 2 acres and 3-1/2 guntas of land.

(b) In the suit C.S. No. 650 of 1990 preferred by M/s. New Bank of India (merged with Punjab and National Bank) on 1.3.1990 before the Bombay High Court, reference to different lands have been shown therein, including a piece of land measuring 3-1/2 guntas, out of which S. No. 43/3 is situated at Hebbal Village, (Kasaba), Hobli, Bangalore North Taluk. Reference of such 3-1/2 guntas of land out of S. No. 43/3 of the said village (Kasaba), has been made at the following places in the plaint in C.S. No. 650 of 1990 (in the respective paragraphs) filed before the Bombay High Court:

Paragraphs: 5(f), 29 (xi), 30(xi), 36(e)(viii), 36(g)(xi) and 36(h)(xi)

Description of the property as:

A piece of land ad-measuring 3-1/2 guntas out of Survey No. 43/3 situated at Hebbal Village, Kasaba Hubli, Bangalore (North) Taluk.No reference has been

made in respect of 2 acres 3-1/2 guntas of land of S. No. 43/2 at Hebbal Village, Kasaba Hubli, Bangalore North Taluk.

When the suit was transferred from Bombay High Court to this Court and registered as C.S. No. 276 of 1998, therein also, the area of 3-1/2 guntas in the respective Survey No. S. No. 43/3, has been shown and no reference has been made in respect of 2 acres of 3-1/2 guntas of land of S. No. 43/2 of the said village and no amendment to the plaint was brought for either before the Bombay High Court or before this Court, when the suits were pending.

In the valuation report of Karnataka, the land schedule shows that the land measures only 3-1/2 guntas of S. No. 43/3, situated at Hebbal Village, (Kasaba), Hubli, Bangalore North Taluk. When the suit in C.S. No. 276 of 1998 which was pending before this Court, was subsequently transferred to the DRT, vide order of this Court dated 19.11.2002, the Punjab National Bank filed the so-called amended plaint, without any order of the Court, therein, in all those six places, the area of the land was changed as 2 acres and 3-1/2 guntas in the place of 3-1/2 guntas only, showing the same survey No. 43/3 situated at Hebbal Village, Kasaba Hubli, Bangalore (North) Taluk. This is how the fraud was played by the Punjab National Bank before the Tribunal, which amended the plaint without the order of the Court.

It is only after the final order was passed by the DRT on 30.8.2006, a petition was filed for amendment of the plaint, which was not permissible.

(c) One Devendra, partner of M/s. M.G. Brothers, when notice was sent to him, it returned with a note that the addressee has 'left the place'. But the said Devendra, partner of M/s. M.G. Brothers suddenly appeared and filed a counter affidavit with the same postal address on 1.8.2006, stating that they are aware of the mortgage and expressed 'no objection' for the sale. Though Devendra, partner of M/s. M.G. Brothers, had no right over the properties, i.e. 2 acres and 3-1/2 guntas of Survey No. 43/3 situated at Hebbal Village, Kasaba Hubli, Bangalore (North) Taluk, purchased by the plaintiff by the sale deed dated 5.7.2000, they having sold the entire property in 1994 to others, re-purchased by M/s. Arcus Technology Private Limited, the vendor of the property, but he was made to appear to file a counter

affidavit showing 'no objection'. This is how the parties colluded and played fraud on the Tribunal to obtain the order.

(d) No auction-sale was made as required under law.

(e) No parties were intimated that the properties situated at different places, will be auction-sold. The Bank suddenly made S.V. Subramaniam (the appellant herein) to appear who agreed to purchase the properties in question for a sum of Rs. 2 crores, who agreed and deposited it on 31.8.2006, that is the total claim amount which the Bank wanted to recover.

(f) The Tribunal did not choose to see that the properties which are situated at Pune, Bombay, Bangalore, etc and at different parts of Andhra Pradesh, the cost of the same will not be less than Rs. 70 to 100 crores, but they colluded and playing fraud on the Tribunal, the total property was purchased without the auction by the appellant-S.V. Subramaniam for a petty sum of Rs. 2 crores. The Tribunal did not follow the procedure as stipulated under the Debts Recovery Tribunal (Procedure) Rules, 1993.

There are other facts which were also highlighted to show how the fraud was played by the Bank in collusion with one Devendra, the partner of M/s. M.G. Brothers and the appellant-S.V. Subramaniam to get an order from the DRT including the Sale Certificate. But we are not deliberating on those facts, which has been noticed by the learned single Judge, vide impugned order dated 17.7.2007. It is also not possible for us to give such a declaration at this stage, when the suit is already pending.

8. We have heard the learned Counsel appearing for the parties and noticed the rival contentions. The questions for determination in this case is whether the suit in question under Clause 12 of the Letters Patent, for the relief as sought for, is maintainable and whether the suit in question is barred by Section 18 of the 1993 Act.

9. For determination of such issues, it is necessary to notice the relevant provisions of law and decisions of High Courts and Supreme Court.

10. Maintainability of the suit under Clause 12 of the Letters Patent:

(a) Clause 12 of the Letters Patent (Madras) initially fell for consideration before a Full Bench of this Court in the decision reported in (*Vellappa Chettiar v. Saha Govinda Doss*). In that case, the suit was preferred for specific performance. A question was framed having regard to the Indian authorities, 'Is a suit by a purchaser of the land situate outside Madras for specific performance of a contract to sell made in Madras by parties resident therein, a suit for land within the meaning of Clause (12) of the Letters Patent, and so not cognizable by the High Court in its Ordinary Original Civil Jurisdiction?' Having noticed the relevant provision, the Court was of the view that in a suit for the acquisition of title to or control over land, if the plaintiff gets a decree for specific performance, he does not get any title to, but only a right to get a title to the land and it cannot be termed as a 'suit for land'.

(b) In the decision reported in 65 CWN 88 (*Sk. Moula Buksh v. Dharamchand*), the Calcutta High Court, while noticing similar Clause 12 of the Letters Patent (Calcutta) which deals with the meaning of 'suit for land', noticed the earlier judgment reported in AIR 1950 FC 83 (*Moolji Jaith & Co. v. The Khandesh Spinning & Weaving Mills Co. Ltd.*), wherein Fazal Ali, J. at page 96 observed as follows:

This question is said to be an important one since there has been considerable divergence of opinion in regard to it and if I had really felt that I was called upon to decide it I would have agreed with the line of cases in which it has been held that broadly speaking the expression 'suit for land' covers the following three classes of suits:

(1) Suits for determination of title to land;

(2) Suit for possession of land; and

(3) Other suits which the relief claimed if granted would directly affect title to or possession of land.

(c) Clause 12 of the Letters Patent of the High Court of Judicature at Bombay, which is similar to Clause 12 of the Letters Patent of the High Court of Judicature at Madras, fell for consideration before the Supreme Court in the decision reported in 2001 (4) CTC 39 (SC) , (Adcon Electronics Pvt. Ltd. v. Daluate), wherein, the Supreme Court held as follows:

15. From the above discussion it follows that a 'suit for land' is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a 'suit for land or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a 'suit for land'. We are in respectful agreement with the view expressed by Mahajan, J. in M/s. Moolji Jaitha's case (supra). (d) The decision in M/s. Moolji Jaitha's case reported in AIR 1950 FC 83 (cited supra) and the decision in the case of Adcon Electronics Pvt. Ltd. v. Daluate reported in 2001 (4) CTC 39 (cited supra) were also followed by a Division Bench of this Court reported in 2006 (1) CTC 270 (Thamiraparani Investments Pvt. Ltd. v. Meta Films Pvt. Ltd.).

(e) In the present case, the plaintiff has not preferred the suit for determination of the title of the land, nor is it a suit for possession of the land. It cannot be stated that if the relief is granted, it would directly affect the title or the possession of the land as no person can claim any right on the basis of a decree, if found to have been obtained by fraud. A declaration with regard to the order passed by the DRT having been sought for, which is alleged to have been obtained by playing fraud on the Tribunal, we hold that the suit is not covered by the expression 'suit for land' under Clause 12 of the Letters Patent (Madras) and the suit cannot be dismissed on that ground.

11. Bar of jurisdiction under Section 18 of the 1993 Act:

(a) In the case of Lala Ram Swarup and Ors. v. Shikar Chand and Anr. reported in : [1966]2SCR553 , the Supreme Court noticed the observation of the Privy Council in the case of Secretary of State v. Mask & Co. 67 I.A. 222, wherein, the Privy Council observed that even where jurisdiction is excluded, the civil Courts have

jurisdiction 'to examine into cases where the provisions of the Act have not been complied with, or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. In the said case of Lala Ram Swarup (cited supra), the Supreme Court observed that, 'in our opinion, the bar created by relevant provisions of the Act excluding the jurisdiction of the civil courts cannot operate in cases where the plea raised before the civil court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity.'

(b) In the case of State of A.P. v. Manjeti Laxmi Kantha Rao reported in : [2000]2SCR937 , the Supreme Court observed that, 'The normal rule of law is that the civil courts have jurisdiction to try all suits of civil nature except those of which cognisance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure...where a statute gives finality to the orders of the Special Tribunals, jurisdiction of the civil courts must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit and such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.'

(c) We have noticed the aforesaid observations, as in the present case, one of the grounds taken is that the DRT has not followed the procedure contemplated under the Debts Recovery Tribunal (Procedure) Rules, 1993 and the impugned orders were passed, which are nullity in the eye of law.

(d) Section 17 of the 1993 Act relates to 'jurisdiction, powers and authority of Tribunals, as quoted hereunder:

Section 17. Jurisdiction, powers and authority of Tribunals.--(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

On the other hand, Section 18 of the 1993 Act imposes a 'bar of jurisdiction', which reads as follows:

Section 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. From the aforesaid provisions, it would be evident that there is no total ouster of jurisdiction of the civil Court. The ouster is by virtue of Section 18 of the 1993 Act, which sets out that no Court or other authority can try matters of recovery of debts. Insofar as the reliefs which do not pertain to debts, on a plain reading of Section 17 of the 1993 Act, are concerned, there can be no doubt that the civil Court will still retain the jurisdiction (*Centurion Bank Ltd. v. Indian Lead Ltd.* (2000) 100 Comp. Cas. 537).

(e) In the case of *Allahabad Bank v. Canara Bank* reported in AIR 2000 SC 1535, having noticed Sections 17 and 18 of the 1993 Act, the Supreme Court while observing that, 'it is clear from Section 17 of the Act that the Tribunal is to decide the applications of the Banks and Financial Institutions for recovery of debts due to them', held as follows:

21. In our opinion, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to Banks or financial institutions. Once the Tribunal passes an order that the debt is due, the Tribunal has to issue a certificate under Section 19(22) (formerly under Section 19(7)) to the Recovery Officer for recovery of the debt specified in the certificate. The question arises as to the meaning of the word 'recovery' in Section 17 of the Act. It appears to us that basically the Tribunal is to adjudicate the liability of the defendant and then it has to issue a certificate under Section 19(22). Under Section 18, the jurisdiction of any other Court or authority which would otherwise have had jurisdiction but for the provisions of the Act, is

ousted and the power to adjudicate upon the liability is exclusively vested in the Tribunal. (This exclusion does not however apply to the jurisdiction of the Supreme Court or of a High Court exercising power under Article 226 or 227 of the Constitution). This is the effect of Sections 17 and 18 of the Act.

22. We hold that the provisions of Sections 17 and 18 of the RDB Act are exclusive so far as the question of adjudication of the liability of the defendant to the appellant Bank is concerned.

(f) Section 17 of the 1993 Act, again fell consideration before the Supreme Court in the decision reported in 2006 (5) SCC 72 (Indian Bank v. ABS Marine Products (P) Ltd.), wherein, the Supreme Court made the following observation:

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. The only change that has been made is to enable the defendants to claim set-off or make a counterclaim as provided in Sub-sections (6) to (8) of Section 19 in applications already filed by the banks or financial institutions for recovery of the amounts due to them. In other words, what is provided and permitted is a cross-action by a defendant in a pending application by the bank/financial institution, the intention being to have the claim of the bank/financial institution made in its application and the counterclaim or claim for set-off of the defendant, as a single unified proceeding, to be disposed of by a common order.

(g) While dealing with the question of grant of injunction restraining the enforcement of the orders passed by the Tribunal, in the case of Industrial

Investment Bank of India Ltd. v. Marshal's Power & Telecom (I) Ltd. reported in : (2007)1SCC106 , the Supreme Court observed as follows:

8. ...That apart, to grant an injunction restraining the enforcement of orders passed by the Tribunal having jurisdiction to pass such orders cannot normally be granted unless it is a case of fraud or the existence of some such vitiating factors is established or prima facie made out. Even then, the order of injunction as now granted could be granted only in exceptional cases.(h) In the present case, as the plaintiff is neither the Bank/financial institution nor the borrower, the provisions of Section 17 of the 1993 Act are not attracted. It is not the case of the Bank that they filed an application for recovery of its debt from the plaintiff. The plaintiff who is not a party before the DRT, has only alleged fraud played by the parties to obtain orders from the DRT and therefore, in view of the decisions of the Supreme Court, as referred to above, we hold that the present suit is not barred by the provisions of Section 18 of the 1993 Act.

12. Fraud on Court:

(a) Section 29 of the 1993 Act reads as follows:

Section 29: Application of certain provisions of Income-tax Act.--The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income-tax:

Provided that any reference under the said provisions and the rules to the 'assessee' shall be construed as a reference to the defendant under this Act.

Section 29 of the 1993 Act stipulates that the provisions of the Second and Third Schedules to the [Income Tax Act, 1961](#) (43 of 1961) and the Income Tax (Certificate Proceedings) Rules, 1962, will apply with necessary modifications, as if the said provisions and the Rules referred to the amount of debt due under the Act instead of the income tax. In view of Section 29 of the 1993 Act and Rule 9 of

Second Schedule to the [Income Tax Act, 1961](#), which is applicable, wherein, while jurisdiction of the civil Court has been barred, under proviso to the said Rule 9, it has been made clear that such bar is not applicable in respect of a suit which can be filed in civil Court if order has been obtained on fraud.

(b) In the case of *S.P. Chengalvaraya Naidu v. Jagannath* reported in : AIR 1994 SC853 , the Supreme Court observed that, 'it is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court, is a nullity and non-est in the eyes of law. Such a judgment/decre--by the first Court or by the highest Court--has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.

(c) In *State of Andhra Pradesh and Anr. v. T. Suryachandra Rao* reported in 2006 (1) L.W. 547 (SC) , the Supreme Court observed as follows:

10. 'Fraud' as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (See *Ram Chandra Singh v. Savitri Devi and Ors.* : (2003)8SCC319).(d) In the case of *A.V. Papayya Sastry v. Govt. of A.P.* reported in : AIR 2007 SC1546 , while dealing with the meaning of 'fraud', the Supreme Court observed as follows:

21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

Fraud avoids all judicial acts, ecclesiastical or temporal.²² It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order--by the first court or by the final court--has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

(e) In view of the authoritative pronouncement of the Supreme Court and referred to above, we find no ground to interfere with the impugned order passed by the learned single Judge.

13. Alternative Remedy:

It was argued by the learned Senior Counsel appearing for the appellant and the Bank as noticed above, that the plaintiff could have preferred appeal before the Debts Recovery Appellate Tribunal, under Section 20 of the 1993 Act. But in our view, such a submission is misconceived, in view of Sub-section (2) of Section 20 of the 1993 Act, which reads as follows:

Section 20: Appeal to the Appellate Tribunal:

(1) ...

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

In the present case, admittedly, the order passed by the DRT and the Recovery Order also have been passed by the Tribunal with the consent of the parties, and therefore, the plaintiff cannot prefer any appeal under Section 20 of the 1993 Act.

As the plaintiff cannot be made remedy-less, we are of the view that the learned single Judge has not committed any error while rejecting the application preferred by the appellant/fourth defendant under Order 7 Rule 11 C.P.C. to reject the plaint.

14. We find no merit in these appeals, which are accordingly dismissed. But there shall be no order as to costs.

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