Rajkumar and Vs. Mahesh Kumar

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Court : Chennai

Decided On : Apr-28-2010

Judge : M. Jaichandren, J.

Acts : Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002 - Sections 13, 13(1), 13(2), 13(4), 13(13), 17, 17(4), 20, 34, 35 and 65A; ;Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - Sections 25 to 29; ;Income Tax Act, 1961; ;Income Tax Rule - Rule 65; ;Transfer of Property Act, 1882; ;Code of Civil Procedure (CPC) , 1908 - Sections 9 and 11 - Order 39, Rules 1, 2 and 3A - Order 43, Rule 1; ; Constitution of India - Articles 27, 226 and 227

Appeal No. : C.R.P. (PD) Nos. 2541 and 2542 of 2009 and M.P. Nos. 1 + 1 + 2 + 2 of 2009

Appellant : Rajkumar And; Tirupthikumar

Respondent : Mahesh Kumar

Advocate for Def. : A. Natarajan, Sr. Adv. for; N. Vivekanandan, Adv.

Advocate for Pet/Ap. : R. Shanmugham, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

M. Jaichandren, J.

1. Inasmuch as the issues arising for consideration in both these civil revision petitions are one and the same, a common order is being passed.

2. The Civil Revision Petition, in C.R.P. No. 2541 of 2009, has been filed against the order, dated 30.6.2009, made in I.A. No. 1366 of 2009, in O.S. No. 603 of 2009, on the file of the VIII Assistant Judge, City Civil Court, Chennai. The Civil Revision Petition, in C.R.P. No. 2542 of 2009, has been filed against the order, dated 30.6.2009, made in I.A. No. 1367 of 2009, in O.S. No. 603 of 2009, on the file of the VIII Assistant Judge, City Civil Court, Chennai.

3. The petitioners in the present civil revision petitions are the defendants in the suit, in O.S. No. 603 of 2009, pending on the file of the VIII Assistant Judge, City Civil Court, Chennai. The respondent herein had filed the suit, in O.S. No. 603 of 2009, on the file of the VIII Assistant Judge, City Civil Court, Chennai, praying for a decree of permanent injunction restraining the defendants therein, their men, agents and others acting on their behalf, from, in any way, interfering with the peaceful possession and enjoyment of the suit schedule property, by the plaintiff, except under the due process of law and for a permanent injunction restraining the defendants and the others from, alienating the suit schedule property.

4. The respondent had also filed two interlocutory applications, in I.A. Nos. 1366 and 1367 of 2009, in O.S. No. 603 of 2009. I A. No. 1366 of 2009 had been filed praying for an order of interim injunction restraining the petitioners in the present civil revision petition, their men, agents and others, acting on their behalf, from alienating the suit schedule property, pending disposal of the suit. I.A. No. 1367 of 2009 had been filed praying for an order of interim injunction restraining the petitioners in the present civil revision petition, their men, agents and others, acting on their behalf, from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property, pending disposal of the suit. By a common order, dated 30.6.2009, the trial Court had allowed the applications filed by the respondent.

5. In the interlocutory applications filed by the respondent, in I.A. Nos. 1366 and 1367 of 2009, it had been stated that the respondent is the joint owner of the land and the superstructure, in Plot No. Y-202 (Old No. 4518), Anna Nagar, Chennai, in R.S. No. 102/ Part 103/part Mullam Village, measuring an extent of 2 grounds and 640 Sq. Ft. It had been further stated that the said property had been purchased by the respondent's late father Surrender Kumar, jointly, along with three other brothers of his father, namely, Ravi Prakash, Shasi Prakash and Rattan Kumar, from and out of the joint family business income, in the year, 1982, from one R.S. Malia, by a registered sale deed, bearing Document No. 160 of 1982, registered in the office of the Sub Registrar, Anna Nagar, Chennai.

6. It has also been stated that, from the date of its purchase, the suit property has been in the possession of the respondent's father and his family members. After the death of the respondent's father, in the year, 1983, the respondent's mother and elder brother, Madhusudan, has been in continuous possession of the said property, as the legal heirs of the respondent's father, Surrender Kumar. During the life time of the respondent's father several businesses were being carried on, along with his three brothers. A number of properties had also been purchased, jointly. However, the possession of the properties were with the defendant's family members. During the course of the joint family business, several loans and credit facilities had been availed from the Punjab National Bank. Ravi Prakash the father of the petitioners was entrusted with the responsibility of taking care of the litigations. The respondent, his mother and his elder brother and the other family members, who are the legal heirs of Surrender Kumar were in possession of the suit schedule property, as joint owners. While so, on 16.1.2009, a notice had been served on the respondent and his brother, Madhusudan, from the petitioners, stating that the suit property had been purchased by the defendants and their family members, in an auction conducted by the Debts Recovery Tribunal, held in the month of October, 2006, based on which they had threatened to take possession of the suit property, on 23.1.2009.

7. It had also been stated that the respondent and his family members were unaware of the proceedings before the Debts Recovery Tribunal, Chennai. It was learnt that Ravi Prakash, in collusion with the bank officials and the petitioners

herein, had usurped the suit property and they are taking steps to throw out the respondent, his mother and his brother, who are the joint owners of the suit property, by threat and by using illegal means. In such circumstances, the respondent had prayed for an order of interim injunction to restrain the petitioners and their men and agents from, in any way, alienating the suit property and from In any way, interfering with the plaintiff's peaceful possession and enjoyment of the suit property, pending disposal of the suit.

8. The petitioners in the present civil revision petition had filed a counter affidavit stating that the suit filed by the respondent, in O.S. No. 603 of 2009, and the interlocutory applications, in I.A. Nos. 1366 and 1367 of 2009, are not maintainable in law, as the respondent is a stranger to the suit property and as he is a trespasser in the suit property. It has been further stated that the petitioners are the owners of the suit property, along with Champadevi. Since, it is an admitted position, the respondent is not entitled to an order of injunction, as prayed for in the interlocutory applications.

9. It has been stated that the interim orders had been granted by the trial Court, by its order, dated 6.2.2009. However, the respondent had not complied with the requirements of Order XXXIX Rule 3A of the Civil Procedure Code, 1908. Therefore, the interim orders granted in favour of the respondent ought to be vacated. It has also been stated that the trial Court ought not to have granted the interim orders in favour of the respondent, as he had admitted that the petitioners are the registered owners of the suit property, by way of an auction sale, conducted by the Debts Recovery tribunal, Chennai, under a Certificate of sale of immovable property No. 65/2006, dated 10.10.2006, in T.A. No. 39/2001. Since the said sale had become final there cannot be a prima facie case in favour of the respondent, for granting the interim orders in his favour. Injunction orders cannot be granted against the true owners of the suit property. The respondent had not come before the Court with clean hands, as he had suppressed crucial facts which are material to the decision making process of the Court. It had also been stated that the petitioners have been put to irreparable loss and agony due to the continuance of the interim orders granted by the trial Court, by its order, dated 30.6.2009. Since the balance of convenience is only in favour of the petitioners the

applications filed by the respondent ought to be dismissed, as devoid of merits.

10. Considering the averments made on behalf of the petitioners, as well as the respondents, the trial Court by its order, dated 30.6.2009, had allowed the interlocutory applications, in I.A. Nos. 1366 and 1377 of 2009, accepting the claims made by the respondent.

11. Aggrieved by the order, dated 30.6.2009, passed by the learned VIII Assistant Judge, City Civil Court, Chennai, the respondents, in I.A. Nos. 1366 and 1377 of 2009, have preferred the present civil revision petitions.

12. The learned Counsel appearing on behalf of the petitioners had stated that the order of the Court below is unsustainable in law, as it is opposed to the facts of the case and the records available. The order of the Court below has been vitiated by material irregularities and errors of jurisdiction. The trial Court had miserably failed in appreciating the basic issue of lack of jurisdiction of the Civil Court, in entertaining a suit of this nature, in view of the specific provisions contained in Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

13. It has also been stated that the trial court had failed to consider the fact that its jurisdiction had been ousted by Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and therefore, the suit, as well as the interlocutory applications filed by the respondent, are not maintainable. It had also been stated that, when the respondent had admitted that the petitioners are the owners of the suit property, the trial Court ought not to have granted the interim orders. When the appropriate remedy for the respondent would be to approach the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal, for setting aside the sale certificate issued in favour of the petitioners, the trial Court ought to have dismissed the suit and the interlocutory applications filed by the respondent.

14. The learned Counsel for the petitioners had also submitted that the respondent had not challenged the sale certificate issued by the Debts Recovery Tribunal, in favour of the revision petitioners and therefore, the sale had become final. The

learned VIII Assistant Judge, City Civil Court, Chennai, had taken into account irrelevant factors before granting the interim orders, as prayed for by the respondent. Since Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, is a self contained Code, it overrides all other laws relating to the matter. When Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, imposes a total ban on the Civil Courts from entertaining civil suits, in respect of properties being dealt with under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the trial Court should have dismissed the suit filed by the respondent, in limine. When the respondent has been aware of the proceedings before the Debts Recovery Tribunal, it was not open to him to file a suit before the City Civil Court, Chennai, to set aside the auction sale conducted by the Debts Recovery Tribunal, Chennai.

15. The learned Counsel appearing on behalf of the petitioners had relied on the following decisions in support of his contentions:

15.1) In M. Gurudas v. Rasaranjan : AIR 2006 SC 3275, the Supreme Court had held that in an application for injunction, under Order XXXIX Rules 1 and 2, the finding of a `prima facie case' would be a finding of fact. However, while arriving at such finding of fact, the Court should not only arrive at a conclusion that a case for trial has been made out, but should also consider the question, with regard to the balance of convenience of parties, as also the irreparable injury, which might be suffered by a party asking for the interim relief.

15.2) In Kishore Kumar Khaitan v. Praveen Kumar Singh : 2006 (3) SCC 312, while dealing with the scope of the jurisdiction of the High Court, under Article 227 of the Constitution of India, the Supreme Court had held that it is to be invoked only to correct errors of jurisdiction, and where the Court below comes to a finding of fact, by asking itself a wrong question or approaches the question in an improper manner. Failure to render necessary findings to support its order would also be a jurisdictional error liable to be corrected, under Article 227 of the Constitution of India.

15.3) In Sree Lakshmi Products v. State Bank of India 2007 (2) CTC 193, the Supreme Court had held as follows:

9. On a plaint reading of the observations made in Transcore case it is clear that the bank/FI is entitled to take actual possession of the secured assets from the borrower or from any other person in terms of Section 13(4) of the SARFAESI Act. Any transfer of secured assets after taking possession of the same by the bank/FI shall vest in the transferee all rights in relation to the secured assets as if the transfer has been made by the owner of such secured assets. Any party aggrieved by such dispossession will have to take recourse to approaching the DRT under Section 17(4) of the SARFAESI Act. If the party is dispossessed, not in accordance with the provisions of the Act, then the DRT is entitled to pt the clock back by restoring the status quo ante. By virtue of Section 17(4) read with Section 35 of the SARFAESI Act, if in a given case the measures under taken by the secured creditor under Section 13(4) come in conflict with the provisions of any State law, then notwithstanding to such conflict, the provisions of Section 13(4) shall override the local law. Section 13(13) of the SARFAESI Act operates as an attachment/injunction restraining the borrower from disposing of the secured assets and therefore, any tenancy created after such notice would be null and void. Any tenancy created by the mortgager after the mortgage in contravention of Section 65A would not be binding on the bank/FI, and in any event such tenancy rights shall stand determined once action under Section 13(4) has been taken by the bank/FI. When the petitioner is claiming a tenancy prior to the creation of mortgage and such tenancy is disputed by the Bank the remedy of the petitioner is to approach DRT by way of an application under Section 17 of the SARFAESI Act to establish its rights.15.4) In T.N. Handloom Weavers Co-op. Society v. S.R. Ejaz : 2009 (8) MLJ 991, the Supreme Court had held as follows:

I. While considering an application for interlocutory injunction, the trial Court was obliged to peruse the plaint as well as the documents produced by the plaintiff in the suit at least to see prima facie as to whether he would be able to decree the suit ultimately. In case the Court was of the view, prima facie, that there was no ground to decree the suit, the question of granting an order of interim injunction during the pendency of the suit does not arise. In any case, there is no question of

granting interlocutory injunction without notice to the other side in such matters. Injunction with notice to the opposite party is the rule and ex parte order is only an exception. The trial Court being the lowest Court in the hierarchy was expected to Honour the order passed by the Supreme Court and the attempt should be to enforce the direction.

II. The statutory provision as contained in Section 11 C.P.C. bars the jurisdiction of a Court to try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title and has been heard and finally decided by such Court. As per Explanation IV to Section 11 C.P.C., any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. Therefore, the second suit is barred not only on the ground that the issue raised in the said suit was directly in issue in the former suit between the parties or their predecessor-in-interest but also on the ground of a deeming fiction. The explanation IV to Section 11 of C.P.C was inserted with a specific purpose, to put an end to the litigation once for all. In the absence of such a provision, the parties would file suits after suits with new grounds. There should be finality to litigation. The principles of constructive res judicata would be applicable in such cases. In case parties are permitted to initiate re-litigation, it would have the effect of unsettling matters which were settled earlier.

III. There is no dispute with respect to the legal position that before approaching the High Court in exercise of jurisdiction under Article 227 of the Constitution of India, the parties should avail the alternative remedy. However, in a given case, if the attempt of a party to the litigatin was to take undue advantage and the suit was a clear case in which the very sit itself was filed only to circumvent the order passed by the Supreme Court, this Court was not expected to be a mute spectator without taking steps to correct the jurisdictional error.

IV. When the Supreme Court issues a direction in a particular matter and the Civil apprised of such direction at a later point of time, the Court was bound to

implement the direction. The Court was not expected to entertain any proceeding which would interfere with the order passed by the Supreme Court or the direction issued.

V. In cases wherein the suit itself was an abuse of process of law and filed with the sole intention of defeating the order passed by the Supreme Court and the trial Court having apprised of such facts, failed to act at once, the High Court is entitled to exercise the supervisory jurisdiction under Article 227 of the Constitution of India to axe the suit in the initial stage itself.

15.5) In Sneh Gupta v. Devi Sarup : 2009 (6) SCC 194, it has been held as follows:41. The High Court moreover was exercising its jurisdiction under Article 27 of the Constitution of India. While exercising the said jurisdiction, the High Court had a limited role to play. It is not the function of the High Court while exercising its supervisory jurisdiction to enter into the disputed question of fact. It has not been found by the High Court that the findings arrived at by the learned Additional District Judge were perverse and/or in arriving at the said findings, the learned Additional District Judge failed and/or neglected to take into consideration the relevant factors or based its decision on irrelevant factors not germane therefor. It could intervene, if there existed an error apparent on the face of the record or, if any other well-known principle of judicial review as found to be applicable.

16. The learned Counsel appearing on behalf of the respondent had submitted that the sale certificate has not been issued under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as stated by the learned Counsel for the petitioners. In fact, it has been issued under Sections 25 to 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, read with Rule 65 of the Second Schedule to Income Tax Act, 1961. The civil suit filed by the respondent before the City Civil Court, Chennai, has not been filed challenging the sale certificate issued by the Debts Recovery Tribunal, Chennai, or an order passed by the said Tribunal.

17. It has been further stated that the petitioners had played a fraud on the respondent, by colluding with the bank officials concerned in bringing the property

for sale, by auction. The petitioners are not strangers or third parties, as both the petitioners and the respondent are cousins. It is the petitioners, who had initiated the proceedings before the Debts Recovery Tribunal, with unclean hands. The proceedings before the Debts Recovery Tribunal had been initiated only with the mala fide intention of grabbing the property, which belongs to the respondent and his family members.

18. The learned Counsel for the respondent had further stated that the trial Court was right in entertaining the suit and in granting the interim orders in favour of the respondent. The Court below had taken into consideration all the relevant factors before it had allowed the interlocutory applications filed by the respondent, in I.A. Nos. 1366 and 1367 of 2009. The fact that the respondent and his family members are in possession and enjoyment of the suit schedule property cannot be disputed by the petitioners. In such circumstances, the trial Court had found it fit to grant the interim orders in favour of the respondent. The appropriate remedy for the petitioners to challenge the order passed by the trial Court would be only by way of an appeal. Therefore, the civil revision petitions filed by the petitioners, under Article 227 of the Constitution of India cannot be maintained. Since the civil revision petitions filed by the petitioners are devoid of merits, they are liable to be dismissed.

19. The learned Counsel appearing on behalf of the respondent had relied on the following decisions in support of his contentions:

1) In Mardia Chemicals Ltd. v. Union of India and Ors. : AIR 2004 SC 2371, the Supreme Court had held as follows:

Sections 13(2), 17 are for the purposes of giving some reasonable protection to the borrower. Under Sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceeding to take any of the measures as provided under Sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply tot he notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. On measures having

been taken under Sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debt Recovery Tribunal. The Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose. Thus the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debt Recovery Tribunal. The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of economy of the country and welfare of the people in general which would sub serve the public interest.

The question is whether there is absolute bar of any remedy to the borrower, before an action is taken under Sub-section (4) of Section 13 of the Act in view of non obstante clause under Sub-section (1) of Section 13 and the bar of the jurisdiction of the Civil Court under Section 34 of the Act. The circumstances in which it was thought necessary to incorporate non obstante clause in Section 13 would be relevant in this regard. In a nutshell, the position as prevailed in 1882 when the Transfer of Property Act was enacted has undergone a sea-change. What was conceived correct in the situation then prevailing may not be so in the present day situation. Functions of different institutions including the banking and financial institutions have changed and new functions have been introduced for financing the industries etc. New economic and fiscal environment is around more than 100 years later after the enactment of the Transfer of Property Act. The Narasimham Committee also advocates for a legal framework which may clearly define the rights and liabilities of the parties to the contract and provisions for speedy resolution of disputes, which is a sine qua non for efficient trade and commerce, especially for financial intermediation. Even the guidelines of the Reserve Bank of India in relation to classifying the NPA's while stressing the need of expeditious steps in taking a decision for classifying and identification of NPA's says, a system be evolved which should ensure that the doubts in asset classification are settled through specified internal channels within the time

specified in the guidelines. It is thus clear that while recommending speedier steps for recovery of the debts it is envisaged by all concerned that within the legal framework, such provisions may be contained which may curtail the delays. Nonetheless dues or disputes regarding classification of NPAs should be considered and resolved by some internal mechanism. The above position suggests the safeguards for a borrower, before a secured asset is classified as NPA. If there is any difficulty or any objection pointed out by the borrower by means of some appropriate internal mechanism it must be expeditiously resolved.

The purpose of serving notice upon the borrower under Sub-section (2) of Section 13 of the Act is, that a reply may be submitted by the borrower explaining the reasons as to why measures may or may not be taken under Sub-section (4) of Section 13 in case of non-compliance of notice within 60 days. The creditor must apply its mind to the objections raised in reply to such notice and an internal mechanism must be particularly evolved to consider such objections raised in the reply to the notice. There may be some meaningful consideration of the objections raised rather than to ritually reject them and proceed to take drastic measures under Sub-section (4) of Section 13 of the Act. Once such a duty is envisaged on the part of the creditor it would only be conducive to the principles of fairness on the part of the banks and financial institutions in dealing with their borrowers to apprise them of the reason for not accepting the objections or points raised in reply to the notice served upon them before proceeding to take measures under Sub-section (4) of Section 13. Such reasons, overruling the objections of the borrower, must also be communicated to the borrower by the secured creditor. It will only be in fulfillment of a requirement of reasonableness and fairness in the dealings of institutional financing which is so important from the point of view of the economy of the country and would serve the purpose in the growth of a healthy economy. It is made clear unequivocally that communication of the reasons not accepting the objections taken by the secured borrower may not be taken to be given an occasion to resort to such proceedings which are not permissible under the provisions of the Act. But communication of reasons not to accept the objections of the borrower, would certainly be for the purpose of his knowledge which would be a step forward towards his right to know as to why his objections have not been accepted by the secured creditor who intends to resort to harsh

steps of taking over the management/business of viz. secured assets without intervention of the Court. Such a person in respect of whom steps under Section 13(4) of the Act are likely to be taken cannot be denied the right to know the reason of non-acceptance and of his objections. It is necessary to communicate the reasons for not accepting the objections raised by the borrower in reply to notice under Section 13(2) of the Act more particularly for the reason that normally in the event of non-compliance with notice, the party giving notice approaches the Court to seek redressal but in the present case, in view of Section 13(1) of the Act the creditor is empowered to enforce the security himself without intervention of the Court. Such a duty, in the circumstances of the case and the provisions is inherent under Section 13(2) of the Act. The next safeguard available to a secured borrower within the framework of the Act is to approach the Debt Recovery Tribunal under Section 17 of the Act. Such a right accrues only after measures are taken under Sub-section (1) of Section 13 of the Act.

To a very limited extent jurisdiction of the Civil Court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe whatsoever or to say

19.2. In Subramaniam S.V. v. Cypress Semiconductor Technology India Private Ltd. 2008 (1) CTC 471, it had been held, by a Division Bench of this Court, that, when a decree had been obtained by fraud, the suit is not maintainable.

19.3) In G.V. Films Ltd. v. Indian Bank 2009 (4) CTC 663, it has been held that Civil Courts do have jurisdiction, in respect of matters covered by SARFAESI Act, and even if the financial institutions concerned had invoked the provisions of the SARFAESI Act the jurisdiction of the Civil Court is not ousted

20. From the following decisions it is clear that when an alternative remedy is available, under Order XLIII Rule 1 of the Civil procedure Code, 1908, it may not be open to the petitioners to prefer a Civil Revision Petition before this Court, under Article 227 of the Constitution of India:

20.1. In N. Yonus Sait v. T. Joseph 2007 (4) MLJ 451, wherein, it has been held that when there is an alternative remedy open to the party, which is effective and adequate to meet the needs of the case, the High Court will not use its extraordinary powers, under Article 227 of the Constitution.

20.2. In Alexander v. M. Balu : 2008 (2) MLJ 139, it has been held that, when the alternative remedy, by way of an appeal, is available against the order making the interim injunction absolute, a revision, under Article 227 of the Constitution of India , is not maintainable.

20.3. In Punjab National Bank v. O.C. Krishnan : 2001 (6) SCC 569, it has been held as follows:

The Recovery of Debts due to Banks and Financial Institutions Act, 1993, has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-tract procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.20.4.In Surya Dev Rai v. Ram Chander Rai : 2003 (6) SCC 675, it had been held as follows:

Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step into exercise

its supervisory jurisdiction.

Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision.

20.5. In Rajasthan SRTC v. Bal Mukund Bairwa : 2009 (4) SCC 299, it has been held as follows:Section 9 of the Code is an enforcement of fundamental principle of law laid down in the maxim ubi jus ibi remedium. A litigant, thus having a grievance of a civil nature has a right to institute a civil suit in a competent civil Court unless its cognizance is either expressly or impliedly barred by any statute. Civil courts can try all suits, unless barred by a statute, either expressly or by necessary implication. Civil Court being a Court of plenary jurisdiction has the power to determine its jurisdiction upon considering averments made in the plaint but that does not mean that plaintiff can circumvent provisions of law in order to invest jurisdiction on civil Court which it may not otherwise possess. Fort he said purpose, the Court in given cases would be entitled to decide the question of its own jurisdiction upon arriving at a finding in regard to the existence of jurisdictional fact. There is a presumption that a Civil Court has jurisdiction. Ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction.

21. In view of the submissions made by the learned counsels appearing on behalf of the petitioners, as well as the respondent and on a perusal of the records available and in view of the decisions cited above, this Court is of the considered

view that the the petitioners have not shown sufficient cause or reason for granting the reliefs, as prayed for by the petitioners in the present civil revision petitions.

22. From the decisions cited by the learned Counsel appearing on behalf of the respondent it is seen that civil suits can be maintained in certain circumstances, in spite of the prohibition prescribed by Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Further, the petitioners could avail the appellate remedy, provided under Order XLIII Rule 1 of the Civil Procedure Code, 1908, by filing an appeal challenging the impugned order of the trial Court, dated 30.6.2009, made in I.A. Nos. 1366 and 1367 of 2009. Further, it is not in dispute that it would be open to the petitioners to take possession of the suit schedule property, under the due process of law. As such, the civil revision petitions are devoid of merits and therefore, they are liable to be dismissed. Hence, they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.