

[Update]

Case Laws on SARFAESI Act, 2002



Shambo Dey

shambo@vinodkothari.com

31st December, 2013

Check at:

<http://india-financing.com/staff-publications.html>
for more write ups.

Copyright:

This write up is the property of Vinod Kothari & Company and no part of it can be copied, reproduced or distributed in any manner.

Disclaimer:

This write up is intended to initiate academic debate on a pertinent question. It is not intended to be a professional advice and should not be relied upon for real life facts.



Update

Case law on Jurisdiction of Civil Court Barred

Atheeqa Begum v. Indian bank and Ors

Karnataka HC RFA No.1687/2012

Facts:

1. X, the plaintiff is the sister of Y. Z is the son of Y. According to X, her mother had gifted her half share in a suit property through an oral gift in 11.3.1982 and since then X has been the absolute owner. X handed over the property to Y under the *bona fide* intention that Y would look after the property in the best interest of X.
2. Y however claims that their mother executed a trust deed on the property on 5.2.1983 in favour of Z, the beneficiary. Y is the trustee of the property. Y availed loan from Indian Bank (the Defendant) on strength of the suit property.
3. Upon default in repayment of loan, the Defendant invoked provisions of SARFAESI Act 2002 and thus took over the possession of the suit property.
4. X claims that the possession by the Bank should be withdrawn and that the trust deed does not bind her.
5. The Bank denies the averment by X regarding the gift. The Bank further claimed that the suit is not maintainable and is expressly barred under s.17 and s.34 of the Act.
6. At this stage, an application was also filed with under Order 7 Rule 11(d) of the CPC by the Plaintiff seeking direction against the Defendant for withdrawal of possession notice (the main relief) along with other reliefs.
7. The civil court rejected the plaint stating jurisdiction of civil court is barred and hence the appeal.

Questions:

1. Whether the lower court's rejection of the plaint was justified?
2. Whether the suit appears to be barred by any law?

Judgment:

S.17: "Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under the SARFAESI Act, may make an application along with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date on which such measure had been taken..."



Update

S.34: "No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act..."

The High Court held that taking over of the possession of the suit property is one of the coercive steps undertaken by the Defendant under s. 13(4). The fact that such steps were taken by the Bank is evident from the statements and documents provided by the Plaintiff in her plaint. The Plaintiff, who is the aggrieved party in this case, would then have only a specific remedy as provided under S.17 of the SARFAESI Act.

Upon conjoint reading of S.17 and S.34, it is clear that there is a statutory bar on Civil Court to try cases in which action under SARFAESI Act has already been taken or are to be initiated. The Civil Court thus cannot impose an injunction. Further, the High Court upheld that the decision of the Civil Court was right in rejecting the plaint.

<http://judgmenthck.kar.nic.in/judgments/bitstream/123456789/909764/1/RFA1687-12-22-11-2013.pdf>

KINGFISHER AIRLINES LTD. v. STATE BANK OF INDIA and ORS

KARNATAKA HIGH COURT

Company Application No. 2214/2013 in Company Petition No. 164/2013

1. State Bank of India leading a consortium of banks (Repsondent Banks) filed an application under S.14 of SARFAESI act contending that they were entitled to take physical possession of a building in Mumbai named Kingfisher House, a property which was mortgaged by Kingfisher Airlines Limited in favour of the consortium.
2. Kingfisher Airlines Limited holds that a large number of petitions for winding up of the Company is pending before this court (High Court) and if the earliest of these petitions is admitted, then the assets would come under the jurisdiction of this court.
3. Hence the Company filed the Company Application for an Order to direct the Respondent Bank(s) not to proceed with the Application filed under Section 14 of the SARFAESI Act before the CMM Court and for a direction that physical possession of the secured asset shall not been taken in undue haste.
4. The said Application was filed contending that by invoking the jurisdiction of the this Court for winding up, the Banks are deemed to have relinquished and surrendered all security interest and therefore seeking to invoke Section 14 of the SARFAESI Act after filing the Petition for winding up is wholly illegal and without jurisdiction. Further the proceedings under SARFAESI may jeopardize the interests of a large number of creditors, employees, shareholders and the company as well.



Update

The following points were considered in the above Judgment:

Whether there is a bar on jurisdiction of the High Court as a Company Court to grant relief in the light of Sections 34 and 35 of the SARFAESI Act?

A plain reading of Section 34 of the SARFAESI Act would indicate that the jurisdiction of all civil courts is barred and no injunction can be granted by any Court in respect of any action taken or to be taken pursuant to SARFAESI Act. Such bar would apply to Company Court as well. Section 35 of the SARFAESI Act declares that the provisions of the Act would prevail over other laws notwithstanding anything inconsistent therein. Though Section 446 (2) of the Companies Act, 1956 provides that the Company Court shall have absolute jurisdiction to entertain and dispose of any suit or proceedings notwithstanding anything contained in any other law, this provision is applicable to a post winding up order. That apart, the *non obstante clause* contained in the subsequent enactment would normally prevail. Therefore, it was held that the Karnataka High Court as a Company Court did not have jurisdiction to interfere.

Whether the Banks could choose to stand outside the winding up, in seeking to enforce the security assets and simultaneously prefer a Company Petition seeking for winding up of the Company in respect of the balance debt not covered by such security?

AND

Whether the Company Court could exercise jurisdiction over the secured assets whether before or after a winding up order is passed when possession of the property is sought to be taken by recourse to SARFAESI Act in the capacity of a secured creditor?

The Single Judge held that a secured creditor can choose to stand outside the winding up and yet simultaneously prefer a company petition and also that the Company Court could not exercise jurisdiction over the property when recourse is sought to be taken against the secured asset by a secured creditor under SARFAESI Act. The Court held that the Company Court could not exercise jurisdiction over the secured assets whether before or after the winding up order is passed when the secured creditor has taken recourse under SARFAESI Act. This so because the secured creditor does not need to relinquish his secured asset if he files petition for a winding up. When the stage of proving his debt does arise, he will only have to prove the balance due to him after he has realized the secured assets. Thus secured creditor may pursue the remedies available to him irrespective of the winding up.

<http://judgmenthck.kar.nic.in/judgments/bitstream/123456789/913832/1/CA2214-13-11-12-2013.pdf>