

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE HIRDESH**

**ON THE 23<sup>rd</sup> OF JULY, 2024**

**FIRST APPEAL No. 354 of 2005**

***M/S SANMAN COLD STORAGE AND OTHERS***

*Versus*

***THE JAMMU KASHMIR BANK & ANR. AND OTHERS***

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**Appearance:**

Shri Rohit Kumar Mangal, learned counsel for the appellant.

Shri Vinay Kumar Zelawat, learned senior counsel with Shri Abhinav Maitra and Shri Aashay Dubey, learned counsel for the respondent No.1.

Shri Sanjay P.Joshi, learned counsel for the respondent No.4.

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**JUDGEMENT**

The appellant has filed this present appeal being aggrieved by the order dated 22.06.2005 passed by 13<sup>th</sup> Additional District Judge, Indore in Civil Suit No.22-A/5 dismissing the plaintiff's suit on the ground that jurisdiction of the civil court is barred under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as "Act, 2002").

2. Brief facts of the case are that appellant purchased the agricultural

land situated at Lasudiya Mori, Tehsil and District- Indore survey Nos.27/2 area 0.808 hectare, 7.1 area 0.530 hectare, survey No.27/4 area 558 hectare and 20/8 area 405 hectare and respondent No.1 granted financial assistance to the appellant against the mortgaged of the aforesaid agricultural land and due to financial crisis appellant could not repay the loan amount and their loan amount became irregular and subsequently declared NPA.

3. Respondent No.1 issued notice under Section 13(2) of the Act, 2002 for repayment of loan. Appellant sent reply to the aforesaid notice and submitted the compromise proposal under OTS scheme announced by the Reserve Bank of India. Meanwhile, respondent filed an application before Debt Recovery Tribunal (DRT) and appellant filed a writ petition under Article 226 of the Constitution of India i.e. W.P. No.768/2003 assailing the illegality and validity of the notice issued by the respondent No.1, which was dismissed by the High Court. Being aggrieved by the order dated 26.08.2003 passed in W.P. No.768/2003, appellant preferred an appeal i.e. Writ Appeal No.182/2003 before the Division Bench of this High Court which was also disposed by this High Court in light of the verdict of the Apex Court in the case of **Mardia Chemicals Ltd. etc. Vs. Union of India and others**, 2004 (4) SCC 311.

4. The appellant filed a civil suit before the District Judge, Indore seeking relief that auction proceeding initiated by the respondent is fraudulent and contrary to law, hence, cannot be made. Further, he sought prohibitory injunction that disputed property cannot be auctioned under the provisions of the Act, 2002 because it is an agricultural land and covered under Section 31(i) of the Act, 2002 and further sought mandatory injunction for compliance of the directions issued in the

matter of **Mardia Chemicals Ltd. (supra)**.

5. During the pendency of the suit, respondent No.1 filed an application for rejection of the plaint under Order 7 Rule 11 of CPC on the ground that civil suit is not mandatory because jurisdiction of the civil court is barred under Section 34 of the Act, 2002.

6. The appellant filed a detailed reply in the matter. After hearing the learned counsel for the parties, trial court allowed the application filed by the respondent and rejected the plaint by holding that jurisdiction of the civil suit barred.

7. Being aggrieved by the impugned order, appellant preferred this appeal on the ground that trial court has not exercised its jurisdiction in the judicial manner and in accordance with law. Respondent No.1 deliberately deposed the wrong and incorrect fact in exercise of jurisdiction which otherwise could not be exercised. The respondent had got attached agricultural land of the plaintiff which is exempted from the auction, sale and attachment as per clear provision of Section 31 (i) of the Act. Trial court further committed error in holding that the suit is barred by Section 34 of the Act, 2002 and the trial court misinterpreted the judgment passed by the Apex Court in Mardia Chemical Ltd. (supra).

8. He further stated that fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. The respondent's action is fraudulent as self proclamation was by falsely describing property and neither reserved price nor estimated price was mentioned more so often made by the plaintiff was not considered. So, respondents were acting in tandem and committed fraud in proceeding further, so prayed for setting aside the impugned order and to remand the suit to the trial court for disposal on merits.

9. On the other hand, learned counsel for the respondent supported the impugned order and prayed for rejection of this appeal.

10. First contention of the learned counsel for the appellant is that suit property was an agricultural land and agricultural land is exempted from auction, sale or attachment as per clear provision of Section 31(i) of the Act, 2002. He relied upon the decision of the Division Bench of this High Court in the case of **Anil Vs. State of Madhya Pradesh, 2020 (3) MPLJ 634** and the decision of High Court of Madras in the case of **Eshwar Purushothaman Gardens rep. by its partner Vs. Authorized Officer, Indian Bank Zonal Office, 2012 (5) CTC 257** of in W.P. No.19903/2011 & MP No.1/11 order dated 05.07.2012, in which it was held that order of taking of possession of agricultural land of borrower, provision of the Act, 2002 are not applicable in respect of security interest credit in agricultural land. He also placed reliance upon the judgments in the cases of **Santhi Kumari, IAS, Secretary, A.P. Social Welfare Residential Education Institutions Society, Hyderabad Vs. K. Ravi and another, 2002 SCC OnLine AP 1003**; **R.Muthaiyah and others Vs. Deputy Inspector of General Registration , O/o Deputy Inspector of General Registration and others, 2018 SCC OnLine Mad 6025** and **Dulabhai Vs. State of Madhya Pradesh, AIR 1969 SC 78**,

11. In this context, perused the plaint filed by the appellant before the trial court in para 6 of which it was mentioned by the appellant that plaintiff are having cold storage. It is also admitted in this context that plaintiff filed a writ petition i.e. W.P. No.768/2003 before this Court in which an order was passed on 26.08.2003. The writ court has held in paragraph No.8 of the order as under:-

**“8. Thus, from the aforesaid discussion and looking to the documents and the show cause notice**

(Annexure P/4) and the pleadings of the parties, it is clear that it is not a case which attracts the provisions of Section 31 of the Act of 2002. No particulars or documents have been placed before me to record a conclusion that the loan was granted only for agricultural purposes or for the development of agricultural land or for performing any agricultural operations or that any security has been created in agricultural land. When a cold storage plant has been set up over the said land, the same cannot remain as an agricultural land. If for the purposes of some scheme of the Government, the cold storage industry being treated as agricultural based industry even then it will not be helpful to the petitioner as this would not mean that the charge has been created on agricultural land as required under Section 31 of the Act of 2002. Thus, examining the matter from all corners and the fact that it is not a case of agricultural loan but a case for grant of loan for establishment of cold storage plant, I do not find that the case of the petitioner falls within the purview of the provisions of Section 31 of the Act of 2002 and the notice Ex.P/4 is without any jurisdiction. Consequently, the petition being devoid of any merit and substance is hereby dismissed.”

12. The writ court found that the case of the petitioner (appellant) does not fall within the purview of the provision of Section 13(i) of the Act, 2002 and appellant filed writ appeal against this order which was disposed of by the writ appellate court and writ appellate court disposed of the writ appeal following the directions in the case of **Mardia Chemicals Ltd. (supra)**. In this writ appeal, writ appellate court did not set aside the findings given by the Court in W.P. No.768/2003. So in view of the aforesaid discussion, in the considered opinion of this Court, the land in question is non-agricultural diverted land and there is a cold storage structure and heavy machinery which were hypothecated by the appellant along with the land for the loan so contention raised by the

appellant that the said land being agricultural land does not arise.

13. Learned counsel for the appellant submits that under Order 7 Rule 11 of CPC, suit must be rejected with statement as made in the plaint without any doubt in dispute showing the suit barred by any law in force, does not apply in case any dispute is in question. He placed reliance upon the judgment of the Apex Court in the case of **Popat and Kotecha Property Vs. State Bank of India Staff Association**, 2005 (7) SCC, 510. In the aforesaid case, Apex Court has held that High Court has rejected the plaint under Order 7 Rule 11 (d) on the ground the suit was barred by limitation. In this citation, the Apex Court has held that it is not a case where suit from the statement of the plaint can be said to be barred by law and appellant's counsel also relied upon the citation in the case of **Pawan Kumar Vs. Babulal since Deceased through legal representatives and others**, 2019 (4) SCC, 367, in which the Apex Court has held that the matter is required further and final consideration after the evidence was relied by the parties. It cannot be said that appeal on the ground of the appellant as rest on face of it is barred under the Act. In this citation fact of the case is that based on Benaami transaction which needs to be evidenced whether transaction is Benaami so above both the citations are not applicable in this case.

14. Learned counsel for the appellant submits that respondent made fraud with the appellant and in the case of **Mardia Chemicals Limited (supra)**, Apex Court has held that if the plea of fraud was raised then civil court enquire the matter and appellant also relied upon the judgment of coordinate Bench of this Court in **CR No.542/22** dated 26.09.2023 in which coordinate Bench of this Court has held that if the plaintiff has specially alleged fraud having been practiced upon her by the defendant,

her claim to the limited extent as held in case of **Mardia (supra)** is maintainable before civil court.

**15.** But in the present case, appellant/plaintiff has not substantially offered the pleadings that defendants are playing fraud against him. There is a lack of pleadings in regard to the plaint in regard to the defence so his suit does not cover in the decision in the case of **Mardia Chemical Ltd. (supra)** in which it has been held that to a very limited extent, jurisdiction of the civil court can also be invoked.

**16.** In the present case, after perusal of the pleadings, it was not found that plaintiff/appellant has not pleaded any substantial pleading in regard to the fraud played by the defendants/respondent. In the present case, according to **Mardia Chemical Ltd. (supra)**, no pleading of fraud was found.

**17.** So in view of the aforesaid discussion, in the considered opinion of this Court, appellant is unable to show that the suit in question is an agricultural land and he is also unable to show that respondent/defendant has played fraudulent act against him. In view of the aforesaid discussion, in the considered opinion of this Court, trial court has not committed any error in rejecting the plaint under Order 7 Rule 11 of CPC. Hence, no case for interference by this Court is made out in the matter. The present appeal stands dismissed.

**(HIRDESH)  
JUDGE**

N.R.