

rejected the plaintiff's injunction application in Original Suit No.186 of 2022 (Smt. Omika Devi v. Indian Bank (Allahabad Bank) and others).

4. Assailing the order impugned, learned counsel for the appellant submits that though the appellant is having 1/3rd share in an immovable property, the respondent Nos. 2 and 3 i.e. real brother and mother of the appellant have created mortgage in favour of respondent No.1-Bank and availed financial facility.

5. The contention is that seeking partition of the property, Original Suit No.2175 of 2023 (Smt. Omika Devi v. Om Kailash Pati and another) was filed by the appellant which is pending before the civil court. It is contended that when the Bank proceeded to auction the mortgaged property, plaintiff instituted Original Suit No.186 of 2022 claiming a decree for injunction only to the extent that without effecting partition between the co-sharers of the property, the Bank be restrained from taking possession over the property, from auctioning the same and from causing any interference in possession and user of the property. By referring to the definitions of "secured assets" and "security interest", respectively contained in Section 2(zc) and (zf) read with Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act of 2002'), learned counsel for the appellant vehemently argued that, in the instant case, the appellant cannot be relegated to avail remedy under the Act of 2002 and, inasmuch as, the Debts Recovery Tribunal is not competent to determine the respective shares of co-sharers of immovable property. He, therefore, submits that until and unless a decree of partition is drawn in Original Suit No.2175 of 2023, the appellant is entitled for injunction.

6. *Per contra*, Shri Habib Ahmad, learned counsel for the respondent-Bank submits that Bank has already proceeded with auction proceedings pursuant to notices issued under Section 13(2) and 13(4) of the Act and in view of Section 17 of the Act of 2002, any person (including borrower), aggrieved by any of the measures referred to in Section 13(4), may make an application before Debts Recovery Tribunal agitating his grievance. He places reliance upon judgment of the Hon'ble Supreme Court in **Jagdish Singh v. Heeralal and others, (2014) 1 SCC 479**. The relevant 'paragraphs 17 and 18' of the same are reproduced as under :-

"17. The expression 'any person' used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor **or any other person who may be affected by action** taken under Section 13(4) of the Securitisation Act. Reference may be made to the Judgment of this Court in **Union Bank of India v. Satyavati Tondon and others, (2010) 8 SCC 110**.

18. Therefore, the expression 'any person' referred to in Section 17 would take in the plaintiffs in the suit as well. Therefore, irrespective of the question whether the civil suit is maintainable or not, under the Securitisation Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the Securitisation Act, in case the bank (secured creditor) adopt any measure including the sale of the secured assets, on which the plaintiffs claim interest. "

7. He further submits that borrowers have already preferred Securitisation Application No.838 of 2023 which is pending before the Debts Recovery Tribunal. In rejoinder, learned counsel for appellant submits that property has not yet

been sold and present appellant has not been impleaded as a party before D.R.T.

8. Having heard learned counsel for the parties, this Court is of the considered view that scope of proceedings under Section 17 of the Act of 2002 is quite large and applicant of such proceedings can be any person including borrower, gaurantor or any person who may be affected by action taken under Section 13(4) of the Act. The Apex Court in **Jagdish Singh** (supra) has elaborately dealt with the said provision. The judgment of **Jagdish Singh** (supra) has been followed in **Sree Anandhakumar Mills Ltd. v. Indian Overseas Bank & others, 2019 (1) Supreme 514**.

9. Apart from this, I find that by the time the Original Suit No.186 of 2022 giving rise to the instant appeal was filed by the appellant, the suit for partition had not been filed by any of the alleged co-sharers and, it is only after one year, the partition suit being Original Suit No.2175 of 2023 was filed. This Court is not inclined to make any observation regarding subsequent institution of suit as an attempt to shield the action taken in pursuance of the Act of 2002, and without expressing any opinion on the maintainability of any suit at this stage when the said question has not yet arisen before the civil court, this Court is of the view that appellant has a remedy of approaching the Debts Recovery Tribunal independently or by seeking her impleadment in the pending Securitisation Application No.838 of 2023.

10. Here I may emphasise that grant of injunction is not, otherwise, permissible in view of U.P. amendment made under Order XXXIX Rule 2 C.P.C. as per which an injunction which cannot be granted under

the Specific Relief Act, 1963 (hereinafter referred to as ‘the Act of 1963’), the same cannot be granted under C.P.C. The Court may refer to Section 41(h) of the Act, 1963 according to which availability of equally efficacious relief would result in refusal to grant injunction. For a ready reference, relevant U.P. amendment in Order XXXIX Rule 2 CPC and Section 41(h) of the Act of 1963 are reproduced as under:-

Code of Civil Procedure, 1908
Order XXXIX Rule 2 (U.P. Amendment)

“Uttar Pradesh.-In its application to the State of Uttar Pradesh, in Rule 2, in sub-rule (2), the following proviso shall be inserted, namely:-

“Provided that no such injunction shall be granted-

(a) where no perpetual injunction could be granted in view of the provisions of Section 38 and Section 41 of the Specific Relief Act, 1963 (Act 47 of 1963), or

.....”

and any order for injunction granted in contravention of these provisions shall be void”.

The Specific Relief Act, 1963

“Section 41(h)-Injunction when refused

When equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;”

11. For all the aforesaid reasons, I do not find any error in the order rejecting injunction application.

12. The appeal has no merit and is, accordingly, **dismissed**, however, without affecting the appellant’s right to avail other remedies available under the law.
