

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Appellate Jurisdiction)
S. A. No. 59 of 2020

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Purnima Devi & Another Appellants
Versus
M/s Motor Tech. & Others Respondents

CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through : Video Conferencing)

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For the Appellants : Mr. Sudhir Kumar Sharma, Advocate
For the Respondents :

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03/10.09.2020

It appears that pursuant to the order dated 11.06.2020, the Joint Registrar (Judicial) has submitted report in a sealed cover.

It appears that the Second Appeal No. 59/2020 has been filed on 27.02.2020 challenging the order dated 30.11.2019 passed by learned District Judge-III, Bokaro in Civil Appeal No.13/2019 affirming the order dated 21.01.2019 passed by Civil Judge Sr. Division-I, Bokaro in Original Suit No. 35/2016 on the ground of lack of jurisdiction.

The stamp reporter has submitted that Sections 13 (1), 13(4), 34 and 35 of the SARFAESI (Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest) Act, 2002 as well as Section 9 of the Code of Civil Procedure may be perused, which reads as follows:-

13. Enforcement of security interest.-

(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act. (4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset: (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(B) Section 34 - Civil Court not to have jurisdiction:

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 or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

(C) Section 35 - The provisions of this Act to override other laws:

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

(D) Section 9 – Courts to try all civil suits unless barred:-

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

The report further submitted that as no decree was ever prepared, as such, order of the trial court dated 21.01.2019 must be deemed to have been passed under Order XIV Rule-2 CPC, dismissing the suit being barred by law.

Learned counsel for the appellants has submitted that though he has not perused the report, but he has explained that as per Section 2 (2) of the CPC, decree has been defined in this way.

2 (2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include -

- (a) any adjudication from which an appeal lies as an appeal from an order, or*
- (b) any order of dismissal for default.*

Learned counsel for the appellants has further submitted that since the decree is not required formally to be prepared, but the second appeal is maintainable.

Since, we are hearing through virtual court, it is difficult to decide the issue, as such, the case is ordered to be listed within 30 days after the physical court starts, so that, learned counsel for the appellants may also peruse the report submitted by Joint Registrar (Judicial) in compliance of the order dated 11.06.2020 passed by this Court and may file supplementary affidavit explaining the maintainability of the appeal.

Put up this case within 30 days after the physical court starts.

The report submitted by Joint Registrar (Judicial) shall be kept on record.

(Kailash Prasad Deo, J.)