
BAR ON INSTITUTION OF SUIT IN CIVIL COURTS UNDER SECTION 34 OF SARFAESI ACT

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ABSTRACT

To understand which matter comes under which jurisdiction in the case of civil nature it is necessary to know about the kinds of Jurisdiction and to know what is the exact meaning of the term Jurisdiction and what the term jurisdiction actually means. To decide which court is the appropriate to deal with any particular suit or matter, it is necessary to know the kinds of Jurisdiction. Jurisdiction means the power to take and decide any matter is known as the jurisdiction. Basically it means the competence of the court to take any matter and decide that matter. There are four kinds of Jurisdiction Territorial Jurisdiction, Pecuniary Jurisdiction, Subject matter Jurisdiction, Original and Appellate Jurisdiction.

In order to institute the suit it is necessary to determine the jurisdiction of the court under which the matter or suit must be initiated. The civil court holds the jurisdiction over the matters in concern with the civil nature however, section 9 of the code states that when there is any express or implied bar upon institution of suits the same does not fall under the civil court's jurisdiction.

Section 34 of the SARFAESI Act, directly imposes restriction in order to deal with the matter in relation under section 13 of the Act any matter which is in relation of the Securitisation Act, 2002. The jurisdiction in any matter with relation to any civil matter which is in relation to the SARFAESI Act, the jurisdiction is held by the DRT or DRAT, the civil courts are barred with the jurisdiction in relation of such matters under the SARFAESI Act.

The paper deals with the topic of Bar on institution of a civil suit stated under section 34 of the SARFAESI Act, 2002. The paper deals with the concept of Jurisdiction, limitations on Jurisdiction, Kinds of Jurisdictions, etc. of the Civil Courts. The main idea behind this paper was to look upon the bar set by the SARFAESI Act upon the institution of civil suit with the civil courts.

Keywords: Jurisdiction, SARFAESI Act, Restriction

OBJECTIVE OF STUDY

The Objective of the study and to choose the topic is that to,

1. Study the Bar on institution of a civil suit stated under section 34 of the SARFAESI Act, 2002. The research done and the data used in the paper is based and taken from the secondary and tertiary sources and not from the primary source.
2. The basic objective was to know the meaning of the term jurisdiction of the Civil Courts and limitation under section 34 of the SARFAESI Act, 2002.
3. Through this paper the attempt is been made to look for the procedure behind identifying the jurisdiction under which the suit must be initiated.

SIGNIFICANCE OF THE STUDY

This paper aims at clarification its reader with the basics of section 34 of the Securitisation Act and the Code of Civil Procedure. More precisely what actually are the various types of types of jurisdiction, limitations on the Jurisdiction, actual context of section 34, etc. The concept of Jurisdiction of the civil courts in instituting suits is covered under this paper. This is done to explain the various provisions which secure the rights to the civil courts and their limitations in instituting the suit.

METHODOLOGY OF STUDY

The information accessed for the paper was obtained through secondary and tertiary sources available. The information was accessed through various online portals, government websites, various published research reports and other media sources.

The information accessed for the paper was obtained through secondary and tertiary sources available. The information was accessed through various online portals, government websites, various published research reports and other media sources. The data was obtained by various legislations and rules for limitation by the SARFAESI Act on institution of a civil proceeding, Code of Civil Procedure and Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act, 2002) and report by various governmental and non-governmental organizations and individual authors.

JURISDICTION

The courts need to adjudicate all the matters which so every come before it, but there is a set limit on the courts to adjudicate which kind of matters. The jurisdiction of the court, can be said that the authority of the courts to deal with the matters which comes before that court. The court has the authority to deal with only those matters which comes under their jurisdiction. Whenever there is any matter in issue, based upon the specific nature of the matter the issue is dealt by that related court for adjudication. The court which has the authority to deal with the matter which is present before that court for adjudication to deal with that specific nature of case. The jurisdiction of the court is limited where any act or law or charter or commission expressly or impliedly mentions any restrictions on any particular court to deal with the matter of certain nature. Jurisdiction basically means or stats the power of the court to adjudicate the subject matter of the offence and determine the cause of action. In the case of Hriday Nath Roy V/s Akhil Chandra Rao and others; the court has defined the term jurisdiction as the power of the court to adjudicate the matter. Jurisdiction basically means the competency of the court to take up any matter and to decide that matter. Any individual who wish to approach the court of law must know and identify which is the appropriate court and address their redressal.

Limitation:

Jurisdiction over subject matter of the issue: A limitation is based on the subject matter as there are various courts to deal with different matters in issue like for e.g. where the Small Cause Courts are formed to deal with the matters related to issues like dealing with money for work or any other case where small issue has taken place.

Place of filing the suit: Every court has its local limits to deal with the the matters within that territorial limit which are fixed by the law, the courts cannot exercise their jurisdiction beyond that local limit as mentioned under that law.

Jurisdiction over Persons: In the case of foreign state or representatives of the foreign state unless there is permission of the central government the court does not have the jurisdiction to adjudicate such suits which are related to foreign state or representatives of the foreign state.

KINDS OF JURISDICTION

1. Territorial Jurisdiction:

Each court is given specific areas and boundaries within which limits if any civil dispute arises then within that limit the matter is needed to be adjudicated. As, in the district court the entire district has the jurisdiction over that suit. Each and every court has been given specific boundaries within which boundaries whichever court has the power to entertain such matter, that court has the jurisdiction to take up and entertain such matter.

The Supreme Court of India is having jurisdiction throughout the country and any High Court has its jurisdiction has territorial jurisdiction of entire state and the District court has the territorial jurisdiction over the entire district, as well the senior division of the Civil Judge will be having the jurisdiction of two or three taluqa's and the junior division of the civil court will be having jurisdiction of one or more taluqa.

2. Pecuniary jurisdiction:

Pecuniary means the monetary aspect, whenever the litigation work is below Rs. 5 Lakh. Here the pecuniary jurisdiction may differ from state to state the High court decides the pecuniary Jurisdiction of the respective courts, accordingly the matters will be taken into consideration by the respective courts. It is the respective high court that fixes the pecuniary jurisdiction of each court. E.g. in Maharashtra the small cause courts the pecuniary jurisdiction's upper limit is 25,000/-. Courts can take and entertain only such matters which do not exceed their pecuniary value. There is no any kind of limitations on High Courts and the District Courts in relation to the Pecuniary Jurisdiction.

Unless the pecuniary jurisdiction is known of each and every court we have to join and understand about the territory and pecuniary jurisdiction of the court to know the competency of the court's jurisdiction.

3. Subject matter jurisdiction

Sometimes the dispute cannot be calculated in terms of money though the territorial jurisdiction can be identified but the pecuniary value a dispute cannot be set, as the matter in relation of assembly election or parliamentary matters, matrimonial disputes matters related to companies, tax related matters in which the jurisdiction may vary and based upon the subject matter the jurisdiction is needed to be decided.

Jurisdiction is allocated to courts also on the basis of the subject matter in the dispute. As whenever there is any company matter involved the Company courts are there to litigate the matter, as in the matters in case of election the High Courts have the jurisdiction to deal such matters. Depending on the subject matter involve in the jurisdiction the courts have to be identified.

4. Original Jurisdiction and Appellate Jurisdiction

In Civil matters whenever a person wants to approach the court of law the very beginning, which court is competent to take up that issue decides that issue or adjudicates that issue that court's jurisdiction is known as an original jurisdiction.

According to the territory, pecuniary value, subject matter it can be said that the S.C and the H.C even have the original Jurisdiction in the matters under Article 32 and 226 of the Indian Constitution of India where the Fundamental rights are violated one can directly appeal to the S.C under article 32 and to the H.C under article 226. For the First time if person wants to redress their grievance you can approach H.C. or S.C. that matter is said to be the original Jurisdiction of H.C and S.C., dispute between the State, dispute between the State and Central Government holds original Jurisdiction on the basis of subject matter. The original jurisdiction sometimes can also be known as the subject matter jurisdiction.

Original Jurisdiction of the Supreme Court, it deals with the cases which can be directly dealt by the Supreme Court such cases come under the original jurisdiction of the Supreme Court. The implementation of Fundamental Rights presents the original jurisdiction of the Supreme Court under Article 32 of the Indian Constitution. For the implementation of fundamental rights each individual resident has the option to move towards the High Court. Each individual citizen has the option to appeal and proceed to the Supreme Court for the requirement of their fundamental rights as the Supreme Court has the power to give directions or writs.

Appellate Jurisdiction of Supreme Court: The greatest authority to appeal is the Supreme Court in India. A person has the power to move their case which was decided by any lower court and if the decision made by the lower court is not satisfactory by any other court then the person can move the case further from the high court, subject to the case has been approved by the High Court that the matter is fit to go for appeal

in the Supreme Court in civil cases.

If any lower court has given the decision subject to death sentence then the person can move his appeal either to the High Court or the Supreme Court.

EXCLUSIVE JURISDICTION TO SUPREME COURT OR THE ADVISORY JURISDICTION

The S.C holds the advisory jurisdiction, where the president of India can refer certain matters whenever the law is not clear under article 143 can refer the matter to Supreme Court when the public interest is involved the president by the way of advisory jurisdiction can advice for help from the S.C. The president may seek an advice from the Supreme Court. In the matters with relation to any public importance or the matters related with the constitutional interpretation the president can ask for help from the Supreme Court and approach them for advice.

The advisory jurisdiction is given only to the Supreme Court as any ordinary court cannot exercise the power with control which is mentioned under article 142 of the Indian Constitution¹.

If the matter is not involved in public interest and is more in the political nature the Supreme Court can refuse to give an advice over that matter. The Supreme Court is not bound by its decision and can have the power to revise its decision whenever needed.

SECTION 9 OF THE CODE OF CIVIL PROCEDURE

Section 9 of the Civil Procedure Code confers the jurisdiction on civil courts to try all the suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred². The section in its explanation clearly specifies that when the matter is in relation with the subject matter over the right to property or in relation to the office then such matter would be contested by the civil courts as such suit come under the suit in the civil nature. The section specifies that the civil courts have the jurisdiction over a specific matter unless it is been barred under any other act. If any act or legislation or charter bars any suit to be dealt by the civil court then the civil court has no jurisdiction to contest such matter which is expressly or impliedly barred by such act or legislation.

¹ Anita Kushwala V. Pushap Sudan, (2016) 7 SCALE 235: 2016 (3) RCR (Cri.) 852: 2016 (4) Raj. 472

² Section 9 of CPC

- Suits which are expressly barred under the code: Some kind of suits are expressly barred by the civil code, where under section 11 of the code states bar on instituting a fresh suit which has already been adjudicated and decided by competent court between same parties. Section 10 of the code, mentions about the stay on suits (Res Subjudice) where Res means things and Subjudice means pending before the court; the main motive behind the doctrine of Res Subjudice is to lessen the burden of the courts and to eliminate the trial of same matter between same parties. As for e.g. if the matter is contested in Aurangabad and if the party thinks that it is not convenient for the party to continue and he thinks to shift the matter to Pune and files another case in Pune, against same party of similar nature in Pune and institutes suits. The code under Section 10 bars such suits which are already instituted under any competent court. the bar on institution of suits under the code are further seen under section 95, order 2, rule 2; Order 9, rule 9 and order 22, rule 11 of the Code. The other statues or acts can also impose restriction on the institution of suits in the civil courts though the matters are of the civil nature. If certain employee of the company wants to institute a suit against the employer regarding the issue of wage rate then he needs to file the dispute as per mentioned under the IDA despite the matter is of civil nature.
- Impliedly barred suits: Section 9 of the code clearly mentions that the suit may either be expressly or impliedly barred, where the suit may impliedly barred if it violates general principles of law or where the suits are in relation to the act done by any state. Such kind of suits can be said to be impliedly barred. The civil courts only entertain the matters in relation to the civil courts so it impliedly bars the matter where there is recovery proceeding to recover the costs incurred in any criminal manner. In such cases the civil courts do not hold the jurisdiction.

SECTION 34 OF THE SARFAESI ACT, 2002

Section 34 of the SARFAESI ACT, 2002; Civil Court not to have Jurisdiction: *“No Ciivil Court shall have Jurisdiction to entertain any suit or proceeding in respect of any matter which a Debt Recovery Tribunal (DRT) or Appellate Tribunal (DRAT) is empowered by or under this Act³ to determine and no injuction 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 the*

³ SARFAESI Act, 2002

Recovery of Debts due to Banks and Financial Institutions Act, 1993.”

Section 34 of the Securitisation Act bars the purview of the Civil Court in a restricted way. The Civil Court can't engage any suit or continuing in regard of a matter which the DRT or the DRAT is enabled under the Securitisation Act to decide and no order can be allowed in regard of any activity taken in compatibility of any force by the Securitisation Act. The bar on the enforcement of a Civil Court isn't supreme, yet is just as for issue covered under the Securitisation Act. Inasmuch as the Civil Court isn't analyzing an inquiry including the lawfulness of the activity taken by a Bank under Section 13 and Section 14⁴, any remaining issues are surely not hit by Section 34 of the Act.

Section 17⁵ of the act allows the person against whom the notice has been served under section 13 of the Act, to challenge the action which is been taken against him by the secured creditor, by making an application to the DRT within the prescribed limit of 45 days under the Act.

When there is a question in regard to the power of the DRT in relation to have power of jurisdiction under section 34 of the SARFAESI Act, 2002 the question was dealt in the case of *Authorised Officer v. Allwyn Alloys Pvt Ltd* also known as the Allwyn Alloys case, the Supreme Court in the case was of the opinion that when the question is in relation to the mortgaged property where the action has been taken accordingly as prescribed under the SARFAESI Act, then only DRT has the power to adjudicate such matters as precisely mention under section 34 of the Act. The section clearly mentions about the bar on civil courts and institutes bar on civil courts to deal with the matters which are in relation to the securitization act.

When the question is in relation to the matters in regard of the property which is been mortgaged, then the proceeding of the mortgaged property may be initiated under section 13 of the SARFAESI Act. As the dispute in relation to the property mortgaged has taken place under section 13 of the Act then there the civil court loses its jurisdiction to hear the matter in relation to the mortgaged property which is in dispute. In the case of *M/s Madras Petrochem v BIFR and others* the Supreme Court was of the view that once the dispute is initiated under section 13 of the Act then DRT or DRAT holds the jurisdiction over trial of the property mortgaged and the plaintiff is needed to approach the Debt Recovery Tribunal or the DRAT

⁴ SARFAESI Act, 2002

⁵ SARFAESI Act, 2002

under Section 17 of the SARFAESI Act, 2002.

In the case of *Jagdish Singh V/s.Heeralal*, the court was of the view that, while any one's rights to initiate a suit under section 17 of the Act then they need to institute a proceeding in front of DRT. The DRT or DRAT hold the Jurisdiction over the matter in relation to Securitisation Act.

The DRT holds the right over jurisdiction of matters which are initiated under section 13 of the Securitisation Act, where the question is in relation to the property which is mortgaged under the Transfer of Properties Act and not under the SARFAESI Act, and then the DRT does not hold jurisdiction over such mortgaged property. The matter which does not fall under the Securitisation Act, such matters are dealt under the jurisdiction of the Civil Courts.

CONCLUSION

The jurisdiction of the court, can be said that the authority of the courts to deal with the matters which comes before that court. The court has the authority to deal with only those matters which comes under their jurisdiction. The jurisdiction of the civil court is limited by the subject matter of the suit, place for filing of the suit, persona against whom the suit is initiated.

Every civil court has been given a jurisdiction under which it can function the jurisdiction of court is of four kinds the territorial jurisdiction, this jurisdiction states and confers the boundaries of the court under which it can function. Pecuniary jurisdiction is nothing but the monetary limitation of any civil court i.e. the higher monetary limit of the court to entertain the suits. Subject matter jurisdiction, based upon the subject matter the civil court holds the jurisdiction to entertain the matter. The Original and Appellate jurisdiction, whenever a person wants to approach the court of law the very beginning, which court is competent to take up that issue decides that issue or adjudicates that issue that court's jurisdiction is known as an original jurisdiction, the Supreme Court holds the appellate Jurisdiction.

Section 9 of the Civil Procedure Code gives civil courts the authority to try all civil matters, with the exception of those that are expressly or impliedly banned from their jurisdiction. The establishment of an action in regard to the case under the Securitisation Act, 2002 is barred under Section 34 of the SARFAESI Act, 2002.