

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 530 OF 2022

1. State Bank of India,
State Bank of India Bldg,
Near Mantralaya, Mumbai.
Through Authorized Officer &
Chief Manager, SBI,
Mr. Ramchandra Akulwal.

 2. State Bank of India Shop No. 9 & 10,
Sun Magnatica, LIC Service Road,
Luiswadi, Thane-400 604.
New (present) Address:
Stress Assets Recovery Branch
Situate at 1st Floor, Kerom Building,
Plot No. A-112, Near Road No. 22 Circle,
Wagle Industrial Estate,
Thane (W), Dist. Thane-400 604.

 3. Nishikant Prabhakar Ambodkar,
Age- 51 years, Authorized Officer &
Chief Manager, State Bank of India,
Stressed Assets Recovery Branch,
Shop No. 9 & 10, Sun Magnatica,
LIC Service Road, Louiswadi,
Thane-400 604.
New (present) Address:
Stress Assets Recovery Branch
situate at 1st Floor, Kerom Building,
Plot No. A-112, Near Road No. 22 Circle,
Wagle Industrial Estate,
Thane (W), Dist. Thane-400 604.
- ... Applicants**

Vs.

1. Bhat Mahabaleshwara Edakkanan Sham,
Age- 48 years, Occu- Business,

R/at- 10/42, Edakkana House,
Post- Permude, Kumbala,
Dist. Kasaragod, Pin-671324.
Through his Constituted Attorney,
Mr. Manoj V. Shetty, Age- 39 years,
Occu- Business, Residing at Mira-
Bhayandar, Dist. Thane.

2. Palm Beach Hospital,
Plot No. 240, Sector 28,
Palm Beach Road, Bashi,
Navi Mumbai-400 703.
3. Dr. Amit Subhash Pathak,
Age- 53 yrs, Occu: Service,
Gurukul Hospital bldg., 4th Floor,
Plot No. 7, Sector - 12A, Koparkhaine,
Navi Mumbai-400 709.
4. Dr. Abhilasha Amit Pathak,
Alias Abhilasha Kantilal Jadhav,
Age: 51 yrs, Occu: Service,
O/at: Gurukul Hospital bldg.,
4th Floor, J Plot No.7,
Sector - 12A, Koprkhairne,
Navi Mumbai-400 709.

... Respondents

Mr. Drupad Patil a/w Mr. Suyash Sule, for the applicants.

Dr. Brinda Gurbuxani a/w Mr. Amrendra Sinha & Mr. Pankaj Ghai, for the respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

RESERVED ON : 22nd JUNE, 2026

PRONOUNCED ON : 17th SEPTEMBER, 2026

JUDGMENT:

- 1.** Heard learned counsel for applicants as well as learned counsel for respondents.
- 2.** Rule. Rule made returnable forthwith. Heard finally with consent of parties.
- 3.** This Civil Revision Application raises a challenge to the order dated 3rd August 2022 passed by the Trial Court rejecting the application (Exh.26) under Order VII Rule 11 of the Code of Civil Procedure, 1908, (in short "CPC").
- 4.** The revision applicants are the original defendant nos. 1 to 3 - Bank in Civil Suit No. 295 of 2017, which was filed by the respondent no. 1 herein seeking declaration and cancellation of the sale certificate dated 7th April 2016 and other consequential reliefs. In the said suit, the defendants had appeared and filed written statement and had raised a preliminary objection to the maintainability of suit on account of provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, Act 2002 (hereinafter referred as "SARFAESI Act"). The defendants also filed a separate application, at Exh. 26 under Order VII Rule 11 (d) of CPC on the ground that the suit is barred by Section 34 of the SARFAESI Act. The said application was initially rejected by the order dated 3rd October 2021 and the rejection order was challenged before this Court vide Civil Revision Application No. 37 of 2022. By order dated 27th April 2022, this Court had remanded the matter to the Trial Court with a direction to decide the application in the light of the embargo under Sections 17 & 34 of the SARFAESI Act. After the remand of the matter, both the parties advanced their arguments and by order dated 3rd August 2022, the said application came to be rejected. Feeling aggrieved by this order, the instant Civil Revision Application is filed.

5. The suit was filed for cancellation of the sale certificate under the Specific Relief Act, 1963 and for recovery of an amount of Rs. 8,00,00,000/- and interest thereon. The plaintiff has alleged in the suit that, after participating in the e-auction process initiated by the defendant nos. 1 to 3 - bank, he has purchased the suit property for valuable consideration of Rs. 7,00,00,000/-. It is stated that the e-auction sale was conducted under the SARFAESI Act for recovery of outstanding dues from the secured assets mortgaged by the defendant nos. 4 to 6, who were the borrowers. The plaintiff has alleged that, before participating in the e-auction sale, he was informed that the building under auction was constructed for commercial use and at that time, 27 documents were provided to the plaintiff for inspection purpose. The plaintiff has further alleged in the plaint that, after obtaining sale certificate, when he approached to the authorities of NMMC for obtaining the necessary permission regarding renovation of the building, it was revealed that the purpose of construction of the building was residential and not commercial. In this background, the plaintiff has alleged that the defendant nos. 1 to 3 - bank had misrepresented and induced the plaintiff to participate in the auction by showing fabricated documents. On the basis of these pleadings, the plaintiff has prayed for the relief of cancellation of the sale certificate along with ancillary reliefs.

6. The defendant nos. 1 to 3 - bank have filed the application at Exh. 26 under Order 7 Rule 11(d), seeking rejection of plaint on the ground that the jurisdiction of Civil Court is barred since the Debt Recovery Tribunal only is empowered to take cognizance of the dispute in view of Section 34 of the SARFAESI Act. The application is resisted by the original plaintiff, who submitted that the relief claimed is within the jurisdiction of the Civil Court, since the plaintiff has not challenged the proceedings initiated against the

defaulting borrower under the SARFAESI Act. The plaintiff has also opposed the application by contending that he has alleged fraud and misrepresentation, which has resulted in legal injury and in view of this, the reliefs claimed in the suit cannot be granted by the Debt Recovery Tribunal.

7. Adv. Drupad Patil, learned counsel for applicant submitted that the Trial Court has failed to consider the purport of the provisions of Section 34 of the SARFAESI Act, which provides for a bar of jurisdiction of the Civil Court. In support of his submissions, he placed reliance on the judgments of Hon'ble Supreme Court in the matter of (i) ***Charu Kishor Mehta Vs. Prakash Patel & Ors.*** reported at **2022 SCC Online SC 1962**, (ii) ***Mardia Chemicals Ltd. & Ors Vs. Union of India & Ors*** reported at **(2004) 4 SCC 311** and (iii) ***Jagdish Singh Vs. Heeralal & Ors*** reported at **(2014) 1 SCC 479**, and pointed out the position of law as laid down in these judgments.

8. Learned counsel for applicant also submitted that the property was sold on 'as is where is basis' and as such the plaintiff cannot raise any grievance after the sale certificate is issued. He thus submitted that the plaintiff failed to exercise due diligence while participating in the auction. By pointing out the scope of 'any person', as mentioned in Section 17 of SARFAESI Act, he submitted that the expression 'any person' as used in Section 17 is of wide import and accordingly, the plaintiff had the remedy to approach to the Debts Recovery Tribunal. Apart from this, it is submitted that the defendant bank has supplied all the relevant documents at the time of the auction process to the plaintiff and as such no grievance can be raised alleging subsequent revelations on the basis of documents.

9. The Civil Revision Application is opposed by the respondents who have justified the impugned order. Learned counsel for respondents submitted that the suit as filed by the original plaintiff is purely civil in nature by which he has asserted his civil rights to challenge the sale certificate alleging the same to be based on fraud and misrepresentation. He invited attention to the reply to the application under Order VII Rule 11 of CPC and submitted that the plaintiff has opposed the application by stating that the grievance of the plaintiff is based on the premise that a false representation was made to the plaintiff on the basis of fabricated documents which led to an inducement to purchase the property. It has been stated that the dispute raised by way of the suit is not connected with any challenge to the proceedings initiated under the SARFAESI Act and the plaintiff being the *bona-fide* purchaser is entitled to agitate his grievance against the fraud committed upon him and is entitled to seek costs and damages. Learned counsel for respondent thus submitted that the Trial Court has appropriately considered the application under Order VII Rule 11 by considering pleadings in the plaint, which does not show any jurisdictional error, and as such interference by way of revisional jurisdiction of this Court is not warranted.

10. In the backdrop of these arguments, rival contentions fall for my consideration.

11. At the outset, it has to be noted that the instant Civil Revision Application has to be considered by keeping in mind the scope of revisional jurisdiction under Section 115 of Code Of Civil Procedure. Thus, it is crucial to see as to whether the Trial Court has committed any material irregularity, while exercising its jurisdiction to decide the application under Order VII Rule 11 of Code of Civil Procedure.

12. The primary issue while considering the application under Order VII Rule 11, is as to whether the plaint as filed deserved to be rejected in view of bar of jurisdiction under Section 34 of the SARFAESI Act. It has to be noted that while considering this application, only the pleadings in the plaint and the document filed along with the plaint need to be considered. On considering the pleadings in the plaint, it has to be noted that the plaintiff has filed the suit against the bank and its authorised officer and chief manager, so also the other individual persons who had mortgaged the property with the bank against which loan was advanced to them. The plaintiff has narrated the sequence of events in the plaint with respect to execution of the Sale Certificate dated 07-04- 2016 in favour of the plaintiff and has incorporated pleadings about the documents on the basis of which it was revealed to the plaintiff that the defendant nos. 1 to 6 had misrepresented the public at large and a false public notice for the e-auction of the suit property was published. In paragraph no. 14 of the plaint, it is specifically averred that the defendant nos. 1 to 3 had misrepresented and induced the plaintiff to participate in the e-auction by showing forged and fabricated documents that the suit property is meant for commercial use. He has averred that the documents were not earlier shown to the plaintiff before participating in the bid. A perusal of the entire plaint reveals that the grievance of the plaintiff mainly relates to the fraud committed by the defendants on the basis of which the sale certificate came to be issued in favour of the plaintiff and in this background, a challenge is raised to the Sale Certificate dated 07-04- 2016. It has to be noted that the plaintiff has not challenged the procedure followed by the bank under SARFAESI Act. The plaintiff has also prayed for the refund of amount of Rs. 8 crore, including the amount of consideration and other expenses. As such, it becomes clear that there are specific

pleadings in the plaint alleging misrepresentation and fraud by the defendant no. 1 to 6. In this background, if the plaint is considered from the perspective of Section 34 of the SARFAESI Act, it has to be noted that the subject matter and relief claimed in the suit is not the matter which the Debt Recovery Tribunal is empowered to adjudicate. It is crucial to note that the plaintiff was not the borrower or the guarantor of the defendant bank. Further, the plaintiff has not challenged any action taken by the bank against their borrowers i.e. the defendant nos. 4 to 6. The plaintiff claims to have participated in the e- auction and in that process, it is alleged that the plaintiff was induced to participate on the basis of false representations made by the bank and in this background by alleging fraud and cheating, the reliefs are claimed in the suit. Considering the reliefs claimed in the suit, it appears that the same reliefs cannot be granted by the Debt Recovery Tribunal under the provisions of SARFAESI Act.

13. Although learned counsel for applicant has tried to submit that the relevant documents were supplied to the plaintiff at the time of e-auction process, it has to be noted that there are specific pleadings in the plaint that the plaintiff was not made aware that the suit property was not meant for commercial use. It has to be noted that this crucial aspect is subject matter of evidence. However, it is difficult to believe at this stage, that being aware that the suit property was meant only for residential purpose, the plaintiff after participating in the e- auction would still purchase it for the purpose of commercial use. The issue as to whether the consideration of the suit property was decided by considering its value for residential or commercial use is also a subject matter of evidence.

14. As regards the reliance placed by the applicant on the judgment of Hon'ble Supreme Court in the matter of ***Charu Kishore Mehta (referred supra)*** it has to be noted that in absence of any particulars of fraud being pleaded in the plaint in that case, it has been observed by the Hon'ble Supreme Court that mere recital of fraud without mentioning the particulars as required under Order VI Rule 4 of CPC may warrant rejection of plaint in a given case. Considering the pleadings in the instant suit, even from the perspective of Order VI Rule 4 of CPC, it has to be noted that there are pleadings in the plaint with respect to the particulars of misrepresentation and fraud. In view of this, I am of the considered opinion, that the judgment in the matter of ***Charu Kishore Mehta (referred supra)*** is of no assistance to the revision applicant.

15. The position of law as laid down by Hon'ble Supreme Court in the matter of ***Mardia Chemicals Ltd, (referred supra)*** regarding scope of powers under Section 34 of the Act is not disputed. It has to be noted that, in the instant case, the Civil Suit is not filed by the borrower or the guarantor and since the suit is filed by a *bona-fide* purchaser, he is entitled to claim reliefs as claimed in the suit. Having regard to the pleadings in the plaint, categorically pointing out the misrepresentation and acts of collusion by the defendants nos. 1 to 6, I am of the opinion that the judgment of Hon'ble Supreme Court in the matter of ***Mardia chemicals Limited (referred supra)*** is also not of any assistance to the applicant.

16. Similarly, even the judgment of Hon'ble Supreme Court in the matter of ***Jagdish Singh (referred supra)*** dealing with scope of Section 17 of the SARFAESI Act is not relevant in the facts and circumstances of the instant case.

17. As regards the contentions canvassed on behalf of the revision applicant, it has to be seen as to whether the Trial Court has committed any illegality in rejecting the application under Order VII Rule 11 of CPC. In view of the position of law as laid down by the Hon'ble Supreme Court in the matter of *Shiv Shakti Cooperative Housing Society Nagpur versus Swaraj Developers* reported at **(2003) 6 SCC 659**, it has to be seen as to whether the Trial Court has committed any illegality while rejecting the application under Order VII Rule 11 of CPC. On consideration of the pleadings in the plaint and after reading the reasoning recorded by the Trial Court, it appears that the Trial Court has given due consideration to the relevant aspects, including the pleadings in the plaint and provisions of Section 34 of SARFAESI Act. Further, by considering the position of law as clarified by this Court in the matter of *Bank of Baroda versus Gopal Sriram Panda And Anr. 2021 SCC Online 466*, dated 25 March 2021, dealing with jurisdiction of Civil Court vis-a-vis the Debt Recovery Tribunal in the backdrop of Section 34 of the Act, the Trial Court has rejected the application. I do not find any perversity or illegality with the approach adopted by the Trial Court in rejecting the application, warranting interference under revisional jurisdiction of this Court.

18. On consideration of all the above mentioned factual and legal aspects, I am of the considered view, that the applicant has failed to demonstrate any illegality with the impugned order and therefore the instant Revision Application needs to be rejected. Hence, the Civil Revision Application is rejected with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)