

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

CIVIL REVISION APPLICATION NO. 345 OF 2026

L & T Finance Ltd. (earlier known as L&T
Housing Finance Ltd.)
Having its Head Office at Mumbai and also
an Branch Office in Nashik, located at West
Wing, First Floor, Devis College Road,
Opposite Big Bazaar, Nashik – 422 005

...Applicant
(Ori.Def.No.7)

Versus

1. Sanjay Ishwarlal Thakkar
Age-57 years, Occupation Business
R/o Flat No.19 and 26, Kalavishva
Housing Society, Bhabha Nagar, Mumbai
Naka, Nashik.

...Ori. Plaintiff

2. Gautam Bhausaheb Wadekar
Age 37 years, Occupation Business

3. Sonam Gautam Wadekar
Age 35 years, Occupation Housework
Both Defendant Nos.2 and 3
R/o Flat No.9, Sairaj Apartment,
Opposite Hotel Celebration Paqrthardi
Fata, Mumbai-Agra Highway, Nashik,
Taluka and District Nashik.

4. Sandeep Motiram Khandbhale
Age 34, Occupation – Agricultural and
Business, R/o. At Post Mahirawani, Tq.
& Dist. Nashik.

5. The Branch Manager,
State Bank of India, Mumbai Naka
Branch, located at Mumbai Naka Area,
Agra Road, Nashik

6. Santosh Bhikaji Bhor
Age 35 years, Occupation Business
R/o Pathardi Fata, Nashik

7. Nitin Asaram Shirsat
Age 30 years, Occupation – Business
R/o. Nashik, Location at House No.26,
Amarapali Chowk, Pabuddh Nagar, MIDC

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Satpur, Nashik, Taluka & District Nashik

8. Business Co-operative Bank Ltd.

Meher Branch Nashik, located at Kailas
Bhavan, Near Meher Signal, Old Mumbai
Agra Road, Nashik

...Respondents
(Ori.Resp.Nos.3
to 6 & 8.

Mr. Anand Poojari, a/w Reet and Rahila Menon, i/b S. I. Joshi
& Co., for the Applicant.

Mr. Nitin Thakker, a/w Vivek Punjabi and Priyansh Jain, for
Respondent No.1.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 29th JULY, 2026

PRONOUNCED ON: 22nd SEPTEMBER, 2026

JUDGMENT:-

1. This revision application is directed against an order dated 22nd June, 2024 passed by the learned Civil Judge, Nashik, on an application for rejection of the plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 ("the Code"), whereby the said application (Exhibit-32) preferred by the Applicant-Defendant No. 7 in Special Civil Suit No. 91 of 2023, came to be rejected.

2. Shorn of superfluities, the background facts leading to this revision application can be stated as under:

2.1 Respondent No.1 - Plaintiff was the owner of the flats, being Flat Nos. 19 and 26 in Shri Kalavishva Co-operative Housing Society Limited, situated at Survey No. 570/1-2, Plot No. 5, within the limits of Nashik Municipal Corporation ("the

suit flats”). On 12th March, 2020, the Plaintiff had purportedly executed a Sale Deed styled as Transfer Deed in favour of Defendant Nos. 1 and 2 for a consideration of Rs. 49,51,000/-. Defendant No. 7 is a Housing Finance Company. Defendant Nos.1 and 2 had availed loan from Defendant No. 7 to finance the acquisition of the subject flats. Defendant Nos. 1 and 2 committed default in repayment of the loan amount. Defendant No. 7 was thus constrained to initiate action against Defendant Nos. 1 and 2 and the suit flats in which Defendant Nos. 1 and 2 had created a security interest. Eventually, the learned Magistrate passed an order under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act, 2002”) for possession of the subject flats.

2.2 In the meanwhile, the Plaintiff – Respondent No.1 instituted the suit on 9th February, 2023, seeking a declaration that the Transfer Deed dated 13th March, 2020, having been obtained by practicing fraud on the Plaintiff, was null and void and the ownership of the Plaintiff over the suit flats was not thereby divested and that Defendant No. 7 and the other co-Defendants had no concern with the suit land and for the consequential relief of injunction.

2.3 In the said suit, by an order dated 22nd June, 2024, the learned Civil Judge granted an interim injunction restraining the Defendants from causing obstruction to, or interference with, the Plaintiff's possession over the suit flats.

2.4 Defendant No. 7 took out an application for rejection of the plaint under the provisions of Order VII Rule 11 of the Code, on the ground that the suit was barred by the provisions contained in Section 34 of the SARFAESI Act.

2.5 The application was resisted by the Plaintiff.

2.6 After appraisal of the averments in the plaint, and the submissions canvassed on behalf of the parties, the learned Civil Judge was persuaded to reject the application for the rejection of the plaint observing that, the Civil Court had jurisdiction to entertain, try and decide the question as to whether the Sale Deed was obtained by practicing fraud on the Plaintiff, and there were adequate averments in the plaint to merit the trial of the suit. Conversely, the DRT was not competent to adjudicate the issues raised by the Plaintiff and grant the prayers sought by the Plaintiff.

3. Being aggrieved, Defendant No. 7 has come in revision.

4. I have heard Mr. Anand Poojari, the learned Counsel for the Applicant, and Mr. Nitin Thakker, the learned Senior Advocate for Respondent No. 1-Plaintiff, at some length. The learned Counsel took the Court through the averments in the plaint and the documents annexed thereto.

5. Mr. Poojari, the learned Counsel for the Applicant, submitted that the learned Civil Judge misconstrued the nature of the suit. The fact that the suit was instituted after Defendant No. 7, the secured creditor, initiated measures under Section 13 of the SARFAESI Act to realise the security was completely lost sight of by the trial Court. The alleged fraud was discovered in the month of March 2020 itself and, yet, the suit came to be instituted after the possession notice was affixed on the suit flats in the year 2023. This motive behind the litigation did not enter the verdict of the learned Civil Judge, submitted Mr. Poojari.

6. Mr. Poojari further submitted that, the learned Judge wrongly assumed jurisdiction on the premise that the Plaintiff had pleaded fraud. Mere use of the words "fraud" or "fraudulent" in the plaint is of no significance. The person seeking to avoid a transaction evidenced by a registered instrument is enjoined to plead the material particulars in relation to, and the manner in

which, the fraud was allegedly played. The averments in the plaint, Mr. Poojari would urge, singularly lack the requisite particulars. Such bald allegations of fraud are of no avail. To bolster up this submission, Mr. Poojari placed reliance on the judgments of the Supreme Court in the cases of *Charu Kishor Mehta vs. Prakash Patel and others*¹, and *Electrosteel Castings Limited vs. UV Asset Reconstruction Company Limited and Others*².

7. Mr. Poojari strenuously urged that, the bar to the jurisdiction of the Civil Court in relation to a matter which is governed by the provisions of the Recovery of Debts and Bankruptcy Act, 1993, ("the RDB Act") and the SARFAESI Act is, in a sense, absolute. Any person aggrieved by the measures initiated by the secured creditor qua the secured assets has to work out his remedies before the Tribunal constituted under the RDB Act. The statutory bar cannot be circumvented by resorting to clever drafting. To buttress these submissions, Mr. Poojari banked upon the decisions of the Supreme Court in the cases of *Jagdish Singh vs. Heeralal and others*³, *Sree Anandhakumar Mills Limited vs. Indian Overseas Bank and others*⁴, *Punjab and*

1 2022 SCC OnLine SC 1962.

2 (2022) 2 SCC 573.

3 (2014) 1 SCC 479.

4 (2019) 14 SCC 788.

*Sind Bank vs. Frontline Corporation Limited*⁵, and *Central Bank of India and Another vs. Prabha Jain and Others*⁶.

8. In opposition to this, Mr. Nitin Thakker, the learned Senior Advocate for Respondent No. 1, submitted that the learned Civil Judge has correctly exercised the jurisdiction not to reject the plaint at the threshold. Neither there is any jurisdictional error nor material irregularity in exercise of jurisdiction by the trial Court. Therefore, in exercise of its limited revisional jurisdiction, this Court may not interfere with the impugned order.

9. Mr. Thakker joined the issue on the absence of pleadings to make out a case of fraud. Taking the Court through the averments in the plaint and the documents annexed thereto, Mr. Thakker would urge, the Plaintiff has specifically averred about the manner in which the fraud was practiced upon him. The Plaintiff has furnished all the necessary particulars in regard to the acts and conduct of the co-defendants which were fraudulent in nature. The manner in which Defendant No. 7 professed to sanction the purported loan to Defendant Nos. 1 and 2 also betrays an element of knowledge about the fraudulent acts on the part of the co-Defendants. Mr. Thakker

5 (2023) 16 SCC 301.

6 (2025) 4 SCC 38.

would further urge, in any event, it is now well settled by a catena of judgments that, the determination of fraud and the consequential reliefs of declaration and injunction are beyond the remit of the statutory powers of DRT, a Tribunal with limited jurisdiction.

10. Mr. Thakker laid emphasis on the fact that the issues raised by the Plaintiff and the prayers sought by the Plaintiff are such that the DRT can neither examine those issues nor grant the reliefs. Only the Civil Court having plenary jurisdiction can grant the reliefs of the nature claimed by the Plaintiff. To lend support to the aforesaid submissions, Mr. Thakker pressed into service a Division Bench judgment of this Court in the case of *Bank of Baroda vs. Gopal Shriram Panda and another*⁷, wherein this Court elaborately considered the interplay between the jurisdiction of the DRT and the Civil Court where infringement of civil rights is alleged.

11. At any rate, Mr. Thakker would submit, the issue of fraud raised by the Plaintiff merits trial and the Plaintiff cannot be non-suited at the threshold.

12. I have given careful consideration to the submissions canvassed across the bar.

7 2021 SCC Online Bom 466.

13. Section 13 of the SARFAESI Act, 2002 empowers any secured creditor to enforce the security interest without the intervention of the Court or Tribunal, in accordance with the provisions of the said Act, notwithstanding anything contained in Section 69 or 69A of the Transfer of Property Act, 1882 ("TP Act, 1882").

14. Under Section 17 of the SARFAESI Act, 2002, any person including the borrower, aggrieved by any of the measures referred to in Sub-section (4) of Section 13 taken by the secured creditor may make an application to the Tribunal assailing the legality, propriety and correctness of the measures initiated by the secured creditor.

15. The measures which can be taken by the secured creditor have been enumerated in Section 13 of the SARFAESI Act, 2002. Section 34 of the SARFAESI Act, 2002, bars the jurisdiction of the Civil Court to entertain any suit or proceedings in respect of any matter which the Tribunal or Appellate Tribunal is empowered by or under the said Act to determine and proscribes grant of injunction by any Court or Authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the said Act or under the RDB Act, 1993. Section 35 provides that the provisions of the SARFAESI

Act, 2002 shall have overriding 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.

16. The fulcrum of the submissions on behalf of the applicant was that the instant suit is clearly barred by the provisions of Section 34 of the SARFAESI Act, 2002. Section 34 reads as under:

“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).”

17. Whether the aforesaid provision excludes the jurisdiction of the Civil Court to entertain, try and decide the suit of the present nature, is at the heart of the matter.

18. To begin with, it is necessary to note that the jurisdiction of the Civil Court to decide the suits of a civil nature is of wide amplitude. It is considered to be plenary. The normal rule is that the Civil Courts have jurisdiction to decide all suits of civil nature except those of which cognizance by the Civil Court is either expressly or impliedly barred. An inference of exclusion

of the jurisdiction of the Civil Court is not to be readily drawn. On the contrary, there is a presumption in favour of the existence rather than the exclusion of the jurisdiction of the Civil Court. Where the jurisdiction of the Civil Court is stated to be barred by the adjudicatory machinery created by the special statute, then investigation as to the issues like, whether the statute gives finality to the orders of the Tribunal or Authority created therein and whether such Tribunal or Authority is empowered to do what the Civil Court would normally do in a suit, warrant consideration. Even in such cases, the jurisdiction of the Civil Court cannot be completely barred. If it can be demonstrated that the provisions of the particular statute have not been complied with or the Tribunal or Authority constituted thereunder has not acted in conformity with the fundamental principles of judicial procedure, the Civil Court can still adjudicate the rights and liabilities of the parties.

19. On the aforesaid premise of the nature of the jurisdiction of the Civil Court, if the provisions of Section 34 of the SARFAESI Act, 2002 are considered, it becomes abundantly clear that the jurisdiction of the Civil Court is barred “in respect of” any matter which the DRT or the Appellate Tribunal is empowered under the said Act to determine and the second part

of Section 34 proscribes the grant of injunction also “in respect of” any action taken or to be taken in pursuance of any power conferred under the SARFAESI Act, 2002 or the RDB Act, 1993. Though the expression, “in respect of” appears to be of wide connotation, yet, the said expression is required to be appreciated in the light of the expression which follows, “*any matter which a DRT or Appellate Tribunal is empowered by or under this Act to determine*”. On a proper construction, the latter expression governs the former expression, “in respect of”. On a plain reading, it thus becomes evident that the interdict contained in Section 34 of the SARFAESI Act, 2002 to a suit or proceeding is in respect of any matter which the DRT is empowered by or under the SARFAESI Act, 2002 to determine. The necessary corollary is that the prohibition is in respect of the matters which properly fall within the ambit of the measures envisaged by Section 13 of the SARFAESI Act, 2002.

20. Likewise, the bar under Section 18 of the RDB Act, 1993 is in relation to the matters specified in Section 17 of the said Act, which, in turn, empowers the Tribunal to exercise the jurisdiction, powers and authority to entertain and decide applications from the Banks and Financial Institutions for recovery of debts due to such Banks and Financial Institutions.

21. The aforesaid statutory regime, therefore, necessitates an enquiry into the matters which can be legitimately determined by the Tribunal or the province of authority of the Tribunal under the SARFAESI Act, 2002 and RDB Act, 1993. Incontrovertibly, the Tribunal constituted under the RDB Act, 1993 is a creature of statute. The Tribunal cannot exercise authority or assume jurisdiction over the matters which have not been specifically entrusted to the Tribunal for determination. Of necessity, the Tribunal has to act within the parameters of the jurisdiction conferred upon it.

22. Keeping the aforesaid principle in view, the controversy at hand is required to be appreciated. The foundational premise of the case of the Plaintiff is that the Defendant No. 3, with whom the Plaintiff had financial transactions, had in collusion with the Defendant Nos. 1 and 2, and the other co-defendants, defrauded the Plaintiff by making him to execute the Sale Deed by making false representations and thereafter surreptitiously transferred the consideration from the account of the Plaintiff maintained with State Bank of India to the Business Co-operative Bank Ltd. account, and, eventually, the moneys were distributed amongst the Plaintiff, Defendant Nos. 3 and 4 on 23rd March, 2020.

23. In view of the provisions contained in Order VI Rule 4 of the Code, in all cases in which the party pleading reliance on any misrepresentation, fraud and other vitiating elements, particulars with dates and items, if necessary, shall be stated in the pleading. The learned Civil Judge was of the view that there were clear and sufficient averments in the plaint which *prima facie* suggest as to how the fraud has been committed and, thus, the case warranted a trial.

24. Mr. Poojari, the learned Counsel for the Applicant, submitted that mere assertion of fraud is of no avail. The Plaintiff has failed to furnish the requisite particulars of fraud. An endeavour was also made by Mr. Poojari to drive home the point that even when a fraud is alleged unless such fraud is attributable to the secured creditor, the Civil Court would not have the jurisdiction to entertain and try the suit.

25. This submission was premised on the observations of the Supreme Court in the case of ***Mardia Chemicals Ltd. and others vs. Union of India and others***⁸. Attention of the Court was invited to the observations of the Supreme Court in paragraph 51 of the judgment in the case of ***Mardia Chemicals*** (supra), which read as under:

8 (2004) 4 Supreme Court Cases 311.

"51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe, whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages. We find such a scope having been recognized in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely *V. Narasimhachariar v. Egmore Benefit Society* (Air 1955 Mad 135) AIR at pp.141 and 144, a judgment of the learned single Judge where it is observed as follows in para 22: (AIR p.143)

"22. The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the Court before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee must clearly disclose a fraud or irregularity on the basis of which relief is sought: '*Adams v. Scott*, (1859) 7 WR (Eng.) 213 (Z49). I need not point out that this restraint on the exercise of the power of sale will be exercised by Courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely. (See Ghose, Rashbehary: *Law of Mortgages*, Vol.II, 4th Edn., p 784)."

26. Support was also sought to be drawn from the following observations in the case of *Electrosteel Castings Ltd.* (supra):

"7.1 It is the case on behalf of the plaintiff-appellant herein that in the plaint there are allegations of "fraud" with respect to the assignment agreement dated 30-6-2018 and it is the case on behalf of the plaintiff – appellant herein that assignment agreement is "fraudulent" inasmuch as after the full payment as per the approved resolution plan under IBC and the original corporate debtor is discharged, there shall not be any debt by the plaintiff-appellant herein as is discharged, there shall not be any debt by the plaintiff-appellant herein as a guarantor and therefore assignment deed is fraudulent. Therefore, it is the case on behalf of the plaintiff-appellant herein that the suit in which there are allegations of "fraud" with respect to the assignment deed shall be maintainable and the bar under Section 34 of the SARFAESI Act shall not be applicable.

7.2 However, it is required to be noted that except the words used "fraud"/"fraudulent" there are no specific particulars pleaded with respect to the "fraud". It appears that by a clever drafting and using

the words “fraud”/“fraudulent” without any specific particulars with respect to the “fraud”, the plaintiff-appellant herein intends to get out of the bar under Section 34 of the SARFAESI Act and wants the suit to be maintainable. As per the settled proposition of law mere mentioning and using the word “fraud”/“fraudulent” is not sufficient to satisfy the test of “fraud”. As per the settled proposition of law such a pleading/using the word “fraud”/“fraudulent” without any material particulars would not tantamount to pleading of “fraud”.

.....

9. Having considered the pleadings and averments in the suit more particularly the use of word “fraud” even considering the case on behalf of the plaintiff, we find that the allegations of “fraud” are made without any particulars and only with a view to get out of the bar under Section 34 of the SARFAESI Act and by such a clever drafting the plaintiff intends to bring the suit maintainable despite the bar under Section 34 of the SARFAESI Act, which is not permissible at all and which cannot be approved. Even otherwise it is required to be noted that it is the case on behalf of the plaintiff-appellant herein that in view of the approved resolution plan under IBC and thereafter the original corporate debtor being discharged there shall not be any debt so far as the plaintiff-appellant herein is concerned and therefore the assignment deed can be said to be “fraudulent”.

(emphasis supplied)

27. Mr. Poojari would further urge that the fact that the Plaintiff was not a borrower or guarantor was not of material significance. The expression, “any person” used in Section 17 is of wide import to cover in its fold any other person who may be affected by any action taken under Section 13 of the SARFAESI Act, 2002. A strong reliance was placed by Mr. Poojari on the judgment of the Supreme Court in the case of *Jagdish Singh* (supra), wherein the following observations were made:

“19. 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 Satyavati Tondon’s case (supra).

20. 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.

.....

24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well."

28. The aforesaid submissions of Mr. Poojari are required to be appreciated keeping in view the well recognized principle that a judgment cannot be read like a statute. The words used in the judgment cannot be construed with the same strictness as the words and expressions employed by the legislature. The ratio of the judgment of the Supreme Court in the case of *Mardia Chemicals* (supra) is that if it could be demonstrated that the action of the secured creditor is based on fraudulent

transactions, the jurisdiction of the Civil Court would not be completely ousted. A proposition that the fraud must be attributable to the actions of the secured creditor and then only the Civil Court would have jurisdiction may not be deducible from a correct and meaningful reading of the judgment of the Supreme Court in the case of *Mardia Chemicals* (supra).

29. As the process of creating security interest in a property involves, at times, multiple parties and passes through various stages, it would be difficult to accede to the submission that only when it could be demonstrated that, the fraud is clearly attributable to the secured creditor, the affected party could invoke the jurisdiction of the Civil Court. It is quite conceivable that the underlying transaction may be tainted with fraud, as alleged in the instant case, and, subsequently, the security interest is created in respect of the said property. In such a situation, the allegations of fraud and the consequences that emanate therefrom cannot be legitimately enquired into by the Tribunal which is a creature of statute with limited jurisdiction.

30. A useful reference, in this context, can be made to a Division Bench Judgment of this Court in the case of *Bank of Baroda* (supra), wherein the Division Bench, on a reference, considered the following question:

"Whether the jurisdiction of a Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Section 17 of the Securitisation Act, in relation to enforcement of security interest of a secured creditor, is barred by Section 34 of the Securitisation Act ?

31. After an elaborate analysis, the Division Bench answered the above question as under:

"Answer :

The answer, looking to the nature of the question, in our view, is in parts :-

(A) Jurisdiction of the Debts Recovery Tribunal, to decide all matters relating to Sections 13 and 17 of the SARFAESI Act, is exclusive.

(B) In all cases, where the title to the property, in respect of which a 'security interest', has been created in favour of the Bank or Financial Institution, stands in the name of the borrower and/or guarantor, and the borrower has availed the financial assistance, it would be only the DRT which would have exclusive jurisdiction to try such matters, to the total exclusion of the Civil Court. Any pleas as raised by the borrowers or guarantors, vis-a-vis the security interest, will have to be determined by the DRT.

(C) The jurisdiction of the Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Sections 13 and 17 of the SARFAESI Act, in relation to enforcement of security interest of a secured creditor, is not barred by Section 34 of the SARFAESI Act.

(D) Where civil rights of persons other than the borrower(s) or guarantor (s) are involved, the Civil Court would have jurisdiction, that too, when it is prima facie apparent from the face of record that the relief claimed, is incapable of being decided by the DRT, under Section 17 of the DRT Act, 1993 read with Sections 13 and 17 of the SARFAESI Act.

(E) Even in cases where the enforcement of a security interest involves issues as indicated in *Mardia Chemicals (supra)* of fraud as established within the parameters laid down in *A. Ayyasamy (supra)*; a claim of discharge by a guarantor under Sections 133 and 135 of the Contract Act [*Mardia Chemicals (supra)*]; a claim of discharge by a guarantor under Sections 139, 142 and 143 of the Contract Act; Marshaling under Section 56 of the Transfer of property Act [*J.P. Builders (supra)*]; the Civil Court shall have jurisdiction.

(F) Examples as indicated in para 22.3, are illustrative of the Civil Court's jurisdiction.

(G) The principles laid down in para 33 (i) to (ix) of *Sagar Pramod Deshmukh (supra)* are in accordance with what we have discussed and held above.”

(emphasis supplied)

32. The Division Bench has held in clear and explicit terms that, the jurisdiction of the Civil Court to decide all the matters of Civil nature, excluding those to be tried by the Tribunal under Sections 13 and 17 of the SARFAESI Act, 2002, in relation to enforcement of security interest of a secured creditor, is not barred by Section 34 of the SARFAESI Act, 2002. Where civil rights of persons other than the borrowers or guarantors are involved, the Civil Court would have jurisdiction, that too when it is *prima facie* apparent from the face of the record that the relief claimed is incapable of being granted by the Tribunal under Section 17 of the Recovery of Debts and Bankruptcy Act, 1993 (“the RDB Act”) read with Sections 13 and 17 of the SARFAESI Act, 2002. Likewise, the Civil Court would have jurisdiction to decide the issue of fraud as indicated in *Mardia Chemicals* (supra).

33. In the case of *Central Bank of India and Anr Vs Prabha Jain and Ors*⁹, the Plaintiff had, *inter alia*, sought the following reliefs :

- “(1) declaration that the sale deed executed by the brother-in-law of the Plaintiff in favour of the borrower was illegal;
- (2) declaration that the mortgage deed executed by the borrower in favour of the bank was illegal;
- (3) delivery of possession of the subject property”

34. It is in that context, the Supreme Court held that, so far as the first and second reliefs were concerned, they were not in relation to any measures taken by the secured creditor under Section 13(4) of the SARFAESI Act, 2002. Rather, those reliefs were in relation to action taken prior to the secured creditor stepped into the picture and well prior to the creditor invoking the provisions of SARFAESI Act, 2002. Therefore, the Tribunal would have no jurisdiction under Section 17 of the SARFAESI Act, 2002 to grant declarations sought in the first and second reliefs.

35. To retain emphasis, reverting to the facts of the case, it may be apposite to note that, the Plaintiffs in the instant case, is seeking the following reliefs :

- “(1) The plaintiff prays that the present suit be granted along with costs.

9 (2025) 4 SCC 38.

(2) Considering the reason mentioned in the suit, the sale deed dated 13/03/2020, which was executed with the assistance of Defendant No. 3 by Defendants No. 1 and 2 and registered with- the Sub-Registrar, Nashik-1 under Registered Document No. 2183/2020, may be declared null and void and cancelled and also on the basis of said sale deed. It is further declared that the plaintiff's ownership of the suit property remains unaffected. And Notice of this declaration should be given to the Sub-Registrar, Nashik-1.

(3) It should be declared that Defendant No. 7, as well as other defendants, have no rights, interests, or claims concerning the suit property.

(4) It should be declared that defendants or any others person on behalf of defendants should be restrained from obstructing or interfering with the plaintiff's lawful possession of the suit property, either directly or through third party. They should not remove the plaintiff's possession, create any rights or interests related to the suit property, or engage in any dealings with others regarding the suit property and for that purpose permanent injunction be granted against the defendants.

5. Any other just and equitable reliefs should be passed in favour of the plaintiff."

36. If the principles adverted to above, are applied to the facts of the case at hand, the Tribunal would have no jurisdiction under Section 17 of the SARFAESI Act, 2002, much less, under Section 17 of the RDB Act, to grant declarations sought in prayer clause (2), extracted above, which is the principal prayer

on the grant or refusal of which the fate of the entire suit hinges.

37. While explaining the ratio in the case of *Jagdish Singh* (supra), the Supreme Court in the case of *Central Bank of India and Anr vs. Prabha Jain and Ors* (supra), observed, *inter alia*, in relation to the Division Bench Judgment of this Court in the case of *Bank of Baroda* (supra), as under :

“29. In para 24 (of Jagdish Singh) this Court held that DRT has jurisdiction with respect to “measures” taken by the secured creditor under Section 13(4) and that in respect of such matters, the civil court’s jurisdiction is ousted. However, thereafter, there is no further discussion on the nature of the suit and without recording any finding that DRT has the power to decide partition suits, this Court straightaway affirmed the rejection of the plaint under Order VII, Rule 11. While doing so, this Court missed to consider that under Section 17, DRT has no power to partition properties and hence, civil court’s jurisdiction to grant a decree of partition cannot be said to be ousted. When there is no finding in the judgment that the DRT has the jurisdiction to grant the relief of partition, the judgment cannot be said to be a precedent on that point.

30. The aforesaid was looked into by a Division Bench of the Bombay High Court in Bank of Baroda (supra), and the reasonings assigned in our view are very commendable.....”

(emphasis supplied)

38. In view of the aforesaid clarification of law, in the context of the jurisdiction of the Tribunal under Section 17 of the SARFAESI Act, 2002, reliance placed by Mr. Poojari on the decisions in the cases of *Jagdish Singh* (supra) and *Sree Anandhakumar Mills Ltd* (supra), which followed *Jagdish Singh*

(supra), does not advance the cause of the submission on behalf of the Applicant.

39. If the aforesaid principles are applied to the facts of the case at hand, *prima facie*, the following position emerges. There are clear and categorical allegations of fraud qua the Defendant Nos. 1 to 3, especially the manner in which the Defendant No. 3 allegedly exploited the precarious financial position of the Plaintiff and indulged in purported fraudulent acts. From the averments in the plaint, it also becomes evident that, no sooner, the purported fraud was unearthed, the Plaintiff had lodged a criminal complaint against the Defendant No. 1 being Criminal Case No. 5338/2020, and also reported the matter to Sarkarwada Police Station on 24th July, 2021. The manner in which the purported consideration amount was shared between Defendant No. 1 (Rs.15,00,000/-), Defendant No. 3, (Rs.6,00,000/-), and Defendant No. 4, (Rs. 25,00,000/-), when the Defendant No. 1 was, in fact, the purchaser who was to pay the consideration, also lends *prima facie* support to the claim of the Plaintiff. The assertion in paragraph No. 5 of the plaint that, Defendant No. 1 had drawn a cheque in the sum of Rs.46,12,500/- payable on 20th March, 2020, after the fraud was allegedly unearthed and, upon presentment, the said

cheque was returned for insufficiency of funds also renders the *prima facie* finding of the learned Civil Judge that, there are adequate averments in the plaint to demonstrate the manner in which the fraud was allegedly practiced to merit a trial.

40. Resultantly, in exercise of limited revisional jurisdiction, this Court does not find any jurisdictional error or material irregularity in exercise of the jurisdiction by the learned Civil Judge. The Civil Revision Application, thus, deserves to be dismissed.

41. Hence, the following order:

: O R D E R :

The Civil Revision Application stands dismissed.

[N. J. JAMADAR, J.]