

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9th DAY OF MARCH, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

REGULAR FIRST APPEAL NO.454 OF 2023 (INJ)

BETWEEN:

M/s. VATSAV ENTERPRISES
A PARTNERSHIP FIRM
REGISTERED UNDER THE INDIAN
PARTNERSHIP ACT AND HAVING
ITS OFFICE AT:
#1178, 22ND "A" CROSS
23RD MAIN, BSK 2ND STAGE
BENGALURU-560 070

REPRESENTED BY ITS
MANAGING PARTNER
MR. V.S. SURESH
AGED ABOUT 53 YEARS
S/O MR. V.S. MURTHY
#1178, 22ND "A" CROSS
23RD MAIN, BSK 2ND STAGE
BENGALURU-560 070

...APPELLANT

(BY SRI. A. RAVISHANKAR, ADVOCATE FOR
SRI. MUNIRAJA M., ADVOCATE)

AND:

1 . MRS. T.R.L. PADMAVATHI
AGED ABOUT 48 YEARS
W/O MR. T. RAVIKUMAR
RESIDING AT: HOUSE No.185

AECS LAYOUT, 1ST CROSS
'A' BLOCK, KUNDANAHALLI
BENGALURU

- 2 . PAVAGADA SOUHARDHA MULTI
PURPOSE CO-OPERATIVE LTD.
A SOCIETY REGISTERED UNDER THE
KARNATAKA CO-OPERATIVE SOCIETIES ACT
AND HAVING ITS OFFICE AT:
2729, 1ST FLOOR
14TH MAIN, 'E' BLOCK
KODIGEHALLI GATE
SAHAKARANAGAR
BENGALURU-560 092
REPRESENTED BY ITS SECRETARY

...RESPONDENT

(BY SRI. DILIP KUMAR I.S., ADVOCATE FOR R1;
R2-SERVED)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER 41
RULE 1 OF CPC, AGAINST THE ORDER DATED 23.09.2021
PASSED ON I.A.No.8 IN O.S.No.2566/2018 ON THE FILE OF XIV
ADDITIONAL CITY CIVIL JUDGE AND C/C OF XXXVIII
ADDITIONAL CITY CIVIL JUDGE, BENGALURU, ALLOWING
I.A.No.8 FILED UNDER ORDER VII RULE 11 R/W SEC.151 OF CPC.

THIS RFA HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 18.02.2026 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN
J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV JUDGMENT**(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)**

This appeal is preferred against the Order dated 23.09.2021 passed by the XIV Additional City Civil Judge and Concurrent Charge of the XXXVIII Additional City Civil Judge, at Bengaluru (CCH-28 and CCH-39) ('trial Court' for short) in O.S.No.2566/2018. By the said order, the application preferred by defendant No.2 under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908, was allowed and the plaint was rejected.

2. We have heard Shri. A. Ravishankar, learned counsel appearing for the appellant as well as Shri. Dilip Kumar I.S, learned counsel appearing for respondent No.1.

3. The plaint averments are as follows:-

The plaintiff's firm had entered into an Agreement of Sale with defendant No.1 in respect of the schedule property which belonged to defendant No.1. The registered Agreement for Sale was executed between the parties on 26.05.2016. It is contended that there were pending works in respect of the schedule property and the Sale Deed was agreed to be

executed after the pending works were fully finished. Further, defendant No.1 had informed the plaintiff that the original Sale Deeds of the property were mortgaged to defendant No.2 and defendant No.1 had agreed to discharge the mortgage loan and furnish the original Title Deeds. The time for executing the Sale Deed as provided in the agreement had been extended by mutual agreement of parties. However, the loan advanced by defendant No.2 was not cleared by defendant No.1 and the original documents were not produced for execution of the Sale Deed. A legal notice was issued on 30.11.2017, to which a reply notice was issued on 04.12.2017. However, defendant No.1 filed O.S.No.8256/2017 on the file of XXIV Additional City Civil Judge (CCH-6), Bangalore for bare injunction. On coming to know that defendant No.1 did not intend to execute the Sale Deed, the present suit for specific performance had been filed by the plaintiff. It was contended therein that the amounts due to defendant No.2 would be cleared by defendant No.1 and that Sale Deed in respect of the property was to be executed in favour of the plaintiff.

Defendant No.1 had filed written statement, admitting the

registered Agreement of Sale and stating that the plaintiff had paid only a sum of Rs.1,40,00,000/- through RTGS and that the agreed sale consideration was Rs.10 Crores. It is contended that after payment of the amount of Rs.1,40,00,000/-, the plaintiff never acted in pursuance of the agreement and the defendants sustained huge loss as the bank loan was not cleared and the Sale Deed was not executed after paying the balance amounts. It is contended that the plaintiff did not have the financial capacity to pay the balance amount and was not ready to execute the Sale Deed.

Defendant No.2 appeared before the Court and filed an application stating that defendant No.1 had mortgaged the schedule property with defendant No.2 and the title deeds are in possession of defendant No.2. It is contended that it is with full knowledge of the mortgage transaction that the plaintiff had entered into a Sale Agreement with defendant No.1. It is further contended that due to default on the part of defendant No.1, SARFAESI proceedings had been initiated against the property and the Court has no jurisdiction to try the suit for specific performance in respect of the mortgaged property.

The plaintiff filed statement of objections specifically stating that as on the date of the suit agreement or the date of suit, that is, 05.04.2018 there were no SARFAESI proceedings initiated by defendant No.2 against defendant No.1. It is stated that the relief claimed by the plaintiff has no connection with the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short) and that the plaintiff was always ready and willing to clear the amount outstanding to defendant No.2. It is contended that as on today, the entire amount due to defendant No.2 stand settled and there are no dues in respect of the property.

4. The trial Court had considered the application and relied on Section 34 of the SARFAESI Act, to reject the plaint. It is contended that the said finding was absolutely perverse since it is clear that the Agreement for Sale specifically recorded that the mortgage would be redeemed and the property would be released from the mortgage.

5. It is submitted that all due amounts as claimed by respondent No.2 have been paid by now and the mortgage

stands redeemed. In the above circumstances, it is contended that the action of the trial Court in having rejected the plaint on the ground of Section 34 of the SARFAESI Act, is completely illegal. It is submitted that a plain reading of Section 34 of the SARFAESI Act would show that it is only in case where there is an alternate efficacious remedy provided in Section 17 of the SARFAESI Act that a Civil Suit would be barred. This is not the situation in the present case and the rejection was therefore bad in law.

6. We have heard the contentions advanced. We notice that the plaint was filed with the following reliefs:-

- "a) *To Grant a decree of specific performance of the suit contract dated 26.05.2016 by directing the Defendant No.1 to execute the Sale Deed in favour of the Plaintiff against the receipt of the balance sale consideration after allowing lawful expenses incurred by the Plaintiff and under due compliance of the terms of the contract dated 26.05.2016.*
- b) *That in the event of the Defendant No.1 failing to discharge the mortgage loan on the Schedule Property with the Defendant No.2 before the judgment, the Hon'ble Court be pleased to issue a direction in the nature of a mandatory injunction directing the Plaintiff to clear the outstanding mortgage loan of the Schedule Property claimed by*

the Defendant No.2 from out of the balance sale consideration.

- c) *Consequently to issue a direction in the nature of mandatory injunction directing the Defendant No.2 execute Deed of Discharge in respect of the mortgage loan against the receipt of the amount due in favour of the Plaintiff.*
- d) *Consequently against the discharge of the mortgage loan by the Plaintiff from out of the balance sale consideration, the Hon'ble Court be pleased to issue a direction in the nature of a mandatory injunction directing the Defendant No.2 to release and deliver all the original document of title in respect of the Schedule Property deposited by the Defendant No.1 under due acknowledgement to the Plaintiff.*
- e) *To direct the Defendant No.1 to execute the Sale Deed in favour of the Plaintiff within a time stipulated by this Hon'ble Court against the receipt of the balance sale consideration after deducting lawful expenses as ordered by this Hon'ble Court in term of the sale agreement dated 26.05.2016, failing which the Hon'ble Court be pleased to permit the Plaintiff to deposit the balance sale consideration in Court and the Hon'ble Court be pleased to execute the Sale Deed in terms of the Sale Agreement dated 26.05.2016 in respect of Plaintiff Schedule Property on behalf of the Defendant No.1 in favour of the Plaintiff;*
- f) *To put the Plaintiff in vacant legal possession of the Schedule Property within a time to be stipulated by*

this Hon'ble Court, failing which, the Hon'ble Court be pleased to appoint a Court Commissioner to execute the delivery warrant and to put the Plaintiff in vacant legal possession of the Schedule Property except the portions in the occupation of the tenants;

- g) That if for any reason this Hon'ble Court were to come to the conclusion that now withstanding that the Plaintiff has established the case of Specific Performance, but in terms of equities, the Plaintiff is not entitled for obtaining the specific performance of the suit contract dated 26.05.2016 on the grounds of equity, this Hon'ble Court be pleased to grant a decree against the Defendant No.1 for a sum of Rs.2,10,00,000/- (Rupees Two Crores Ten Lakhs Only) being the advance amount paid under the Suit Contract and further to grant a compensation of Rs.7,50,00,000/-(Rupees Seven Crores Fifty Lakhs Only) and to award interest at the rate of 24% on the amount so awarded from the date of the suit till the date of realization on the amount awarded.*
- f) That in the event of this Hon'ble Court were to grant any money decree, this Hon'ble Court be pleased to order charge on the Schedule Property under Section 100 of the Transfer of Property Act until the due discharge of the decreetal amount;*
- g) To grant such other relief/s as this Hon'ble Court deem fit in the circumstances of the case and*
- h) To award costs of the above suit, in the interest of justice and equity."*

7. It was the specific averment that a registered Agreement for Sale had been entered into between the parties on 26.05.2016. It is contended that the prayer sought for in the plaint were completely beyond the scope of the relief that could have been granted by the Debt Recovery Tribunal (DRT) under Section 17 of the SARFAESI Act and there was absolutely no justification for rejecting the plaint on the contention that the plaint stood barred.

8. The learned counsel appearing for the appellant has placed reliance on the following judgments:-

- ***Mr. Sriram Chitturi v. Mrs. D. Indrani and Others*** by Order ***dated 28.10.2024*** passed in ***RFA No.2024 of 2018***;
- ***Kum. Geetha D/o Late Krishna and Others v. Nanjundaswamy and Others*** reported in ***(2024) 14 SCC 390***;
- ***Sejal Glass Limited v. Navilan Merchants Private Limited*** reported in ***(2018) 11 SCC 780***;
- ***Madhav Prasad Aggarwal and Another v. Axis Bank Limited and Another*** reported in ***(2019) 7 SCC 158***;

- ***Bank of Baroda, Through its Branch Manager v. Gopal Shriram Panda and Another*** reported in ***2021 SCC OnLine Bom 466***, and
- ***R. Venkatapathy v. Bank of India, Bangalore and Others*** reported in ***ILR 2014 KAR 430***.

9. Having considered the contentions advanced, we notice that a co-equal Bench of this Court in RFA.No.2024/2018 has considered the identical question and after considering the contentions as well the precedents in detail held that the remedy under Order VII Rule 11, CPC is an independent and special remedy wherein the Court is within its power to dismiss a suit at the threshold without proceeding to hold trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the ground contained in the said provision. It was further held that a plaint cannot be rejected in part and if there are reliefs sought which fall outside the scope of adjudication under the provisions of the SARFAESI Act, then, the plaint cannot be rejected. It was held that, whether there is a claim for compensation even in the alternative, such prayer could be sought only before the Civil Court and the plaint could not

have been rejected.

10. Further, the Apex Court in ***Madhav Prasad Agarwal***'s case (supra), has also considered the issue and has held at paragraph No.12, which read as follows:-

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by Respondent 1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against Respondent 1 in the suit concerned is barred by Section 34 of the 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly."

11. The other judgments relied on by the learned counsel for the appellant are also authority on the point that the

extreme step of rejection of plaint can be resorted to, only if the plaint as a whole is not maintainable in terms of Section 9 of the Code of Civil Procedure.

12. Sections 17 and 34 of the SARFAESI Act, read as follows:-

"17. [Application against measures to recover secured debts].-(1) *Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:*

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-

- (a) the cause of action, wholly or in part, arises;*
- (b) where the secured asset is located; or*
- (c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]*

[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for

enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,-

- (a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and*
- (b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and*
- (c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]*

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

[(4A) Where-

- (i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for*

the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy.-

- (a) has expired or stood determined; or*
- (b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or*
- (c) is contrary to terms of mortgage; or*
- (d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and*

- (ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]*

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application,

make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]

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)."*

13. We notice that the bar under Section 34 of the SARFAESI Act is limited to any suit or proceeding in respect of any matter, which a DRT or an appellate Tribunal is empowered by or under this Act to determine. A perusal of Section 17 of the SARFAESI Act would show that recourse to the DRT is provided under the Act only in respect of any of the measures taken by the secured creditor or his authorized officer under Chapter III of the SARFAESI Act. In the circumstances and in the nature of the prayers sought for in the suit, we are of the

clear view that all the prayers sought for in the suit are not matters which comes within the bar of Section 34 of the SARFAESI Act.

14. In the facts and circumstances of the instant case, we are of the opinion that the rejection of the plaint by the trial Court on the grounds as raised was not proper. The appeal therefore requires to be allowed. Accordingly:-

- (i) The appeal is ***allowed***.
- (ii) The suit is restored to the file of XIV Additional City Civil Judge and Concurrent Charge of the XXXVIII Additional City Civil Judge, at Bengaluru, who shall consider the matter afresh after recording the evidence, in accordance with law.

All pending interlocutory applications shall stand *disposed of*.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

cp*