

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

CIVIL REVISION APPLICATION NO. 248 OF 2014

State Bank of India and Ors .. Applicants

Vs

R.S.Luth Education Trust and Ors .. Respondents

WITH

CIVIL REVISION APPLICATION NO. 161 OF 2015

Punjab National Bank & Ors .. Applicants

Vs

R.S.Luth Education Trust and Ors .. Respondents

Mr. Y. S. Jahagirdar, Senior Counsel a/w Mr. Atul G. Damle, Senior Counsel i/b Rupesh R Lanjekar for Applicants in CRA/248/2014 & Respondents No.5 & 6 in CRA/161/2015.

Ms Gauri Bhagwat i/b PS Legal, Advocate for Applicant in CRA/161/2015 & Respondents No. 5 & 6 in CRA/248/2014.

Mr. V. A. Thorat, Senior Counsel, a/w Mr. P.J.Thorat i/b S. Mahomedbhai & Co., Advocates for Respondents No.1 to 4 in both Applications.

CORAM : R.G.KETKAR,J.

DATE : 13/08/2015

PC:

1. Heard Mr. Y. S. Jahagirdar, learned senior counsel for the applicants in Application No.248 of 2014 and Respondents No.5 & 6 in Application No.161 of 2015, Ms. Gauri Bhagwat, learned counsel for Applicant in Application No.161 of 2015 & Respondents No. 5 & 6 in Application No. 248 of 2014 and Mr. V.A.Thorat, learned senior counsel for respondents no. 1 to 4 in

both Applications, at length.

2. Rule. Learned counsel for the respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and Applications are taken up for final hearing.

3. Both the Applications are filed by the defendants challenging the Judgment and order dated 28.3.2013 passed by the learned 4th Jt. Civil Judge, Sr. Dn., Nashik below Exhibit -1 in Spl. Civil Suit No.192 of 2011. By that order, the learned trial Judge answered following issue in the affirmative.

(1) Whether this Court has jurisdiction to try and entertain the present suit in view of Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ?

4. The learned trial Judge held that Civil Court has jurisdiction to entertain and try the suit.

5. After arguing Applications for quite some time, Mr. Thorat, upon taking instructions, states that the impugned order may be set aside and the learned trial Judge may be directed to decide the issue afresh on the basis of pleadings and evidence already on record. Learned counsel appearing for the parties further state that the parties will appear before the trial Court on 26.8.2015 and for that purpose fresh notice need not be issued to them. In view thereof, by consent of the parties, the Applications are disposed of in the following terms.

6. Impugned order dated 28.3.2013 is quashed and set aside. The learned trial Judge shall decide the said issue afresh on the basis of pleadings of the parties and in particular the case made out by the plaintiffs and evidence already on record. All contentions of the parties on merits are expressly kept open.

7. Parties agree that they will appear before the trial Court on 26.8.2015 and, for that purpose, fresh notice need not be issued to them. Learned trial Judge is requested to decide the said issue within four weeks from the date of appearance of the parties in accordance with law uninfluenced by the observations made in the impugned order and this order.

8 Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)