

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.137 of 2014

State Bank of India,
a Bank constituted under
State Bank of India Act, 1955,
having its Head Office at
C-6, G-Block, State Bank Building,
Bandra-Kurla, Mumbai-400 051
and having branch office
at Vishwakarma Paradise,
Ambadi Road, Vasai (West),
Taluka Vasai,
District Thane-401 202.

... Appellant/
Ori. Defendant/
Respondent

Versus

1. Shri Pankaj Jagubhai Shah,
Age 45 years,
Occupation – Business,
residing at Flat No.8,
Telephone Exchange Building,
Vartak Road, Vasai (West),
Taluka Vasai, District Thane.

... Respondent/
Ori. Plaintiff/
Appellant

2. M/s. Kisna Investments,
through its Proprietor
Mr. Kapil Jain,
Indian Inhabitant, having

its office at 101, Jeevandeep
Building, Kopri Colony,
Near Railway Station,
Thane (East),
Thane 400 603.

... Intervener

Ms Usha K. Srivastava, i/b Ms Consulta Juris, Advocate for
Appellant.

Shri Vinay M. Bhate, Advocate for Respondent.

Coram : R.K. Deshpande, J.

Dated : 16th June, 2015

Oral Judgment :

1. The Trial Court rejected the plaint in exercise of its jurisdiction under Order VII, Rule 11(d) of the Civil Procedure Code, holding that the suit is barred by the provision of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”). In Regular Civil Appeal No.45 of 2009, the Appellate Court has set aside the decree passed by the Trial Court, holding that the defendant-Bank has not challenged the findings recorded on the application under Order XXXIX, Rules 1 and 2 of the Civil Procedure Code to the effect that the Civil Court has

jurisdiction to entertain, try and decide such application.

2. The substantial question of law, which arises for consideration, is whether the Appellate Court was right in dismissing the appeal on the ground that the defendant-Bank has not challenged the findings recorded on the aspect of jurisdiction by the Trial Court while deciding an application at Exhibit 5 for grant of temporary injunction.

3. Admit. Heard finally by consent of the learned counsels appearing for the parties.

4. The question as to whether the bar created under Section 34 of SARFAESI Act operates to entertain, try and decide the suit, was decided by the Trial Court in exercise of its jurisdiction under Order VII, Rule 11(d) of the Civil Procedure Code. In view of this, the lower Appellate Court ought to have addressed to the question as to whether the bar created under

Section 34 of the SARFAESI Act operates or not. The finding recorded on the prima facie assessment of the case on the application under Order XXXIX, Rules 1 and 2 of the Civil Procedure Code would not come in the way of the parties in raising an issue of jurisdiction of the Trial Court to entertain, try and decide the suit either under the provision of Section 9A of the Civil Procedure Code or under the provision of Order VII, Rule 11(d) of the Code. The Appellate Court ought to have, therefore, addressed to the main question instead of dismissing the appeal, holding that the defendant-Bank is estopped from raising an issue of jurisdiction. The issue of jurisdiction goes to the root of the matter and needs to be decided by the Appellate Court on its own merits.

5. In the result, the second appeal is allowed. The judgment and order dated 2-1-2010 passed by the lower Appellate Court in Regular Civil Appeal No.45 of 2009, is hereby quashed and set aside. The appeal is remitted back to the lower Appellate

Court to decide the same on its own merits in accordance with law after hearing all the parties. The parties to appear before the lower Appellate Court on 6-7-2015.

6. The learned counsel for the appellant to pay the costs of Rs.2,000/- to the High Court Legal Aid Committee for not being prepared with the matter and thereby wasting the time of the Court.

7. The second appeal is disposed of accordingly.

Judge.

Lanjewar