IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Civil Revision Application No. 117/2014
(The Akola Janta Commercial Co-op. Bank Ltd. Akola .vs. Prem Mohanlal Kanojiya and another.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.

Mr. Pritam Malwe, Advocate along with Mr. R.L. Khapre, Advocate for Applicant.
Mr. G.G. Mishra, Advocate for Respondent no.1.

CORAM : A.V. Nirgude, J.
DATED : April 18, 2015.

This revision challenges order dated 5.9.2014 passed by 8th Jt. Civil Judge, Junior Division, Akola holding that plaint in Regular Civil Suit No.71/2014 is not liable to be rejected under any provisions of Order VII Rule 11 of the Code of Civil Procedure.

2. The applicant was the defendant. It is a Multi-State Cooperative Bank. The facts leading to this litigation in short can be stated as under:-

Respondent no.1/plaintiff is brother of respondent no.2. They stay in one building. It is said that respondent no.2 resides on second floor of the building whereas the first and ground floor are in occupation of respondent no.1/plaintiff. It was stated in the plaint that respondent no.1 was owner of the building which then was consisting of ground plus first floor. Above first floor, there was a terrace. Respondent no.1 sold the terrace to respondent no.2 where respondent no.2 constructed one floor. This happened long back in 1995-96. It appears that respondent no.2

then approached the applicant-Bank and sought loan. He mortgaged certain properties for securing the loan. Apparently he mortgaged only first floor of this building for securing the loan. Unfortunately he committed default and action under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") was taken by the applicant-Bank against him. They even attached the first floor of the building. When the action of taking possession under Sections 13 and 14 of the Act was taken in respect of the first floor, respondent no.1 became aware of the threat to his property. He immediately filed this suit for declaration of title and injunction.

3. Respondent no.1 wanted to assert in this plaint that the first floor of the building belonged to him. The applicant-Bank took objection that the plaint deserves to be rejected under the provisions of Order VII Rule 11 of the C.P.C. as it is barred by provisions of Section 34 of the Act. Section 34 of the Act reads as under:-

> *"**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)."

4. On plain reading of this provision, it becomes clear that Debt Recovery Tribunal which has power to determine a matter in which foreclosure of a mortgage is sought. The mortgagor may oppose such action by raising various defences and the Tribunal will decide whether the foreclosure is possible. At the same time, a third party may also come to the Tribunal with a request to decide his title to the mortgaged property. In other words, respondent no.1 could have easily gone to the Tribunal with a plea that the mortgaged property belonged to him and, therefore, could not have been mortgaged. All that he has to prove before the Tribunal is his title to the property in question. The Tribunal is empowered to decide as to whether the property in question belonged to mortgagor or otherwise. Such question is within the jurisdiction of the Tribunal and, therefore, Section 34 of the Act will debar the present suit.

5. In the present suit also as stated above, the main question would be whether the first floor of the building which is apparently mortgaged by respondent no.2 to the applicant really belonged to respondent no.1. Such a question is quite within the jurisdiction of the Tribunal and, therefore, bar of Section 34 will apply.

6. The learned counsel for respondent no.1 placed reliance on the judgment of the Supreme Court in

case of **Mardia Chemicals and ors. .vs. Union of India and ors** reported in **(2004) 4 SCC 311**. As against this, the learned counsel for the applicant placed reliance on judgment of the Supreme Court in case of **Jagdish Singh .vs. Heeralal** reported in **2014 (3) Mh.L.J. 588**. The law on this subject is discussed by the Supreme Court in the latter judgment. I am of the firm view that the view taken by me in the present case is in consonance with the view taken by the Supreme Court in **Jagdish Shingh's** case (supra).

5. Revision stands allowed. The plaint in Regular Civil Suit No.71 of 2014 stands rejected. Liberty is given to respondent no.1 to approach Tribunal for appropriate relief.

JUDGE

halwai