

IN THE HIGH COURT OF BOMBAY AT GOA**CIVIL REVISION APPLICATION NO.13 of 2013**

State Bank of India,
A Body Corporate Constituted
under the Provisions of State
Bank of India Act, 1955
Having its Head Office at Mumbai
and Branch Office at Margo, Goa
Through its Manger (Development
Banking Division)

.. Petitioner/ Applicant

V/s.

1. Mr. Aurelio Jose Da Costa
Son of Ernesto Chagas da Costa
Aged 52 years, married, Service,
Resident of H.No.212, Afonsowaddo,
Cavelossim, Salcete, Goa.
2. Mahadev Naguesh Naik,
Major of age, resident of Flat No.201-A
2nd floor, Eyestar Dwelling,
Near PWD office, Fatorda
Margao, Goa
3. Mrs. Lydia Cardozo Monteiro
Major of age, resident of Monteiro
Building, Cuncolim, Bazar, Cuncolim,
Salcete, Goa.
4. Mr. Santano Caetano Smilia D'Souza
Major of age, H.no.134, Cobrawaddo,
Calangute, Bardez, Goa
5. Mrs. Filomena D'Souza
Major of age, H.no.134, Cobrawaddo,
Calangute, Bardez, Goa.
6. Mrs. Maria Odry Monteiro
Major of age, resident of H.No.212
Afonsewaddo, Cavelossim, Salcete,
Goa
7. Mr. Dominic Cleaphas Cardozo
Major of age, resident of Monteiro
Building, Cuncolim Bazar, Cuncolim,
Salcete, Goa

(respondent nos.2 to 7 are deleted
as per order dated 28/01/2014)

8. Collector of South Goa
Having its office at Collectorate
Building, Margao, Goa
9. Mamlatdar of Salcete
Having its office at Collectorate
Building, Margao, Goa
10. Mrs. Dionisia M. Rebello,
Major of age,
Tax-Inspector, office of
Mamlatdar of Salcete,
Collectorate Building, Margao,
Goa.

.. Respondents.

Mr. S. N. Joshi and Mr. Navdeep Aguiar, Advocates for the applicant.

Mr. P. S. Lotlikar, Advocate for the respondent no.1.

Mr. Amir Jamdar, Additional Government Advocate for respondent
nos.8 and 9.

CORAM :- C. V. BHADANG, J.

Date :- 20th February, 2017

ORAL JUDGMENT :

This Revision Application under Section 115 of the Code of Civil Procedure (CPC, for short), challenges the order dated 08/01/2013, passed by the learned Trial Court in Civil Suit No.4/2012. By the impugned order, the application under Order VII, Rule 11 of the Code of Civil Procedure (CPC, for short), filed by the petitioner, has been dismissed.

2. The brief facts, necessary for the disposal of the petition,

may be stated thus :

That the first respondent filed Regular Civil Suit No.4/2012 against the petitioner and others, for seeking a declaration that the Deed of Mortgage dated 29/09/2008, executed by the original defendant nos.3 to 7 in favour of the petitioner herein, is null and void and not binding on him. The respondent no.1 also sought permanent injunction, restraining the petitioner from attaching or taking over possession of the suit property.

3. For the sake of convenience, the parties are referred to in their original capacity as the plaintiff and defendants.

4. The defendant no.6 Mrs. Maria Odry Monteiro is the wife of the plaintiff Mr. Aurelio Jose da Costa. Original defendant no.2 Mahadev Naik had obtained a financial assistance from the petitioner (defendant no.1), for which defendant nos.3 to 7 had furnished security by executing the aforesaid Mortgage Deed in respect of the suit property.

5. The material case made out in the plaint is that the plaintiff was married to the defendant no.6, which marriage was solemnised in the Rosari Cathedral, Baroda on 03/07/2005. Subsequently, their marriage was registered in the office of Civil Registrar at Salcete in the year 2011. It is claimed that the plaintiff and defendant no.6 are both of Goan origin and there was no ante-nuptial agreement

entered into by the parties, as a result of which, the marriage would be governed by the regime of Communion of Assets. In short, it was claimed that the marriage of the plaintiff and defendant no.6, having been solemnised in the year 2005, the consequent Mortgage Deed executed in the year 2008, without the plaintiff being a party thereto, would be null and void and not binding on the plaintiff. It was further claimed that defendant no.3, who is the brother of defendant no.6 fraudulently represented the status of defendant no.6 as a spinster, at the time of execution of the Mortgage Deed, although defendant no.3 was knowing that she was married to the plaintiff. The relevant pleadings can be found in paras 17 and 18 of the plaint.

6. The petitioner (defendant no.1) filed an application under Order VII, Rule 11 of CPC, claiming that the suit is barred by the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act, for short). It was contended that the suit is filed to restrain the Court of competent jurisdiction from executing the orders passed under the SARFAESI Act, which is not permissible.

7. The application was opposed by the plaintiff.

8. The learned Trial Court, by the impugned order, has dismissed the application, inter alia, on the ground that the validity

of the Mortgage Deed can only be decided by a Civil Court and thus, in the opinion of the learned Trial Court, the suit was not barred under the provisions of SARFAESI Act. It is this order, which is subject matter of challenge in this petition.

9. I have heard Shri Joshi, the learned Counsel for the petitioner and Shri Lotlikar, the learned Counsel for the contesting respondent no.1. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned order passed.

10. It is submitted by Shri Joshi, the learned Counsel for the petitioner that under Section 34 of the SARFAESI Act, the jurisdiction of the Civil Court to entertain any suit or proceedings, in respect of any matter, which a Debts Recovery Tribunal (DRT, for short) or the Appellate Tribunal is empowered by or under the said Act to determine, is barred. It is submitted that once there was a mortgage executed by the respondent nos.3 to 7 in favour of the petitioner under the provisions of the SARFAESI Act, it would not be open for respondent no.1 to have approached the Civil Court. It is submitted that in view of specific bar under Section 34 of the SARFAESI Act, the learned Trial Court ought to have held that the suit was barred. The learned Counsel has also pointed out that under Section 17 of the SARFAESI Act, 'any person', aggrieved by any of the measures referred to in subsection (4) of Section 13

taken by the secured creditor, has a right of appeal before the DRT. It is submitted that even a stranger (not being the borrower or mortgager) can challenge such an order before the DRT under Section 17 of the SARFAESI Act. It is, thus, submitted that in view of the express bar of jurisdiction, the suit before the Trial Court, is not maintainable and was liable to be dismissed under Order VII, Rule 11(d) of CPC.

11. It is submitted that admittedly, the marriage between the parties is registered in the office of the Civil Registrar in the year 2011. On behalf of the petitioner, reliance is placed on Article 3 of the Family Laws, in order to submit that the marriage is required to be solemnised before the respective Civil Registrar, under conditions and manner established in Civil Law and only such marriage is valid. It is submitted that there is nothing on record as to under what law, the marriage between the plaintiff and defendant no.6 was solemnised at Baroda. It is submitted that there is also no material to show that the marriage was solemnised in the Rosari Church at Baroda, as claimed.

12. In so far as the plea raised about the Mortgage Deed being a product of fraud, it is submitted that there are no circumstances on record to infer fraud, particularly when the marriage was registered in the year 2011. On behalf of the petitioner, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Mardia**

Chemicals Ltd and others Vs. Union of India and others; [(2004) 4 SCC 311], ***Jagdish Singh Vs. Heeralal and others;*** [(2014)1 SCC 479] and the judgment of this Court in the case of ***Khaja Industries Vs. State of Maharashtra and another;*** [2007(11) LJSOFT 136], ***Housing Development Finance Corporation Ltd Vs. Mohit Govindrao Kale and another;*** [2012(2 LJSOFT 27)] and ***State Bank of India Vs. Jigishaben B. Sanghavi and others;*** [2011 (1) LJSOFT 44]. Reliance is also placed on the decision of the Hon'ble Delhi High Court in the case of ***Golf Technologies Pvt. Ltd and another Vs. Axis Bank Ltd and another;*** [2015 Law Suit (Del) 2693] and the decision of Madras High Court in the case of ***Indian Bank Asset Recovery Management Branch Vs. B Venkataraman s/o late S Balasubramaniam;*** [2014 Law Suit (Mad) 749].

13. On the contrary, it is submitted by Shri Lotlikar, the learned Counsel for the first respondent that the marriage between the plaintiff and defendant no.6, having been solemnised in the year 2005 and the marriage being governed by the regime of Communion of Assets, the plaintiff was a necessary party to the Mortgage Deed and in his absence, the Mortgage Deed was not binding on the plaintiff. It is submitted that the status of defendant no.6 was fraudulently shown as being a spinster although defendant no.3 to 7 were all along aware about the marriage of the plaintiff with defendant no.6. It is submitted that thus, the plaint read as a whole,

clearly makes out a case of fraud, in which case, the jurisdiction of the Civil Court, cannot be said to be barred. Reliance, in this regard, is placed on the decision of the Supreme Court in the case of **Mardia Chemicals Ltd** (supra). It is submitted that the Supreme Court has carved out an exception, namely in a case of fraud, the jurisdiction of the Civil Court to entertain the suit of the present nature, cannot be said to be barred. On behalf of the first respondent, strong reliance is placed on the Division Bench judgment of this Court in the case of **Kamlakant Pandurang Chibde Vs. Sushila Pandurang Chibde**; [(1990) Goa L.T. 185], in order to submit that the marriage cannot be treated as null and void for want of registration. It is submitted that thus, the date of registration in the year 2011, would not be relevant, once it is shown that the marriage had taken place in the year 2005. Further, reliance is placed on the decision of the Supreme Court in the case of **Greater Bombay Corporation Bank Ltd Vs. United Yarn Tex. Pvt. Ltd and Ors**; [AIR 2007 SC 1584]. It is submitted that the learned Trial Court was justified in dismissing the application filed under Order VII, Rule 11(d) of the CPC.

14. I have carefully considered the rival circumstances and the submissions made.

15. The suit, as is framed and filed, is based on the allegation of fraud, as set out in paras 17 and 18 of the plaint, which read

thus :

“17. The Defendant No.3 while executing the said Deed of Mortgage has wrongly shown the Defendant No.6 as a spinster. This is despite the fact that the Defendant No.6 is a sister of the Defendant No.3 and the Defendant No.3 was definitely aware that the Defendant No.6 is married to the Plaintiff. Obviously, the description of the Defendant No.6 as a spinster in the said Deed of Mortgage has been fraudulently done by the Defendant Nos.1 to 3 merely in order to avoid the legal requirement of authorization by the Plaintiff.

18. Even Assuming without admitting that the fact that the Defendant No.6 is married to the Plaintiff was not known to the Defendant No.1, still the Deed of Mortgage would be null and void and not binding on the Plaintiff in view of the fact that the Defendant No.6 could not have executed the Deed of Mortgage without authorization from the Plaintiff.”

16. It is now well settled that while considering the question of rejection of plaint under Order VII, Rule 11(d) of CPC, the Court has to look to the allegations in the plaint as a whole and then to decide whether the plaint can be said to be barred by any law. While reading the plaint as a whole, the Court has to see whether, by a clever drafting, an illusion of cause of action is created. To find out whether it is just a case of clever drafting, creating an illusion of cause of action, the Court has to read the plaint not formally but in a meaningful manner. (See **T. Arivandandam V. T. V. Satyapal;**

[1977 4 SCC 467] and ***ITC Ltd Vs. Debts Recovery Tribunal***; [1998 2 SCC 70]).

17. Section 34 of the SARFAESI Act on the basis of which, it is claimed that the suit is barred, reads thus :

"34. Civil Court not to have jurisdiction – *No civil suit 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).*"

18. It can, thus, be seen that the bar of jurisdiction of the Civil Court is two fold. Firstly, the Civil Court shall not entertain any suit or proceedings in respect of any matter, which a DRT or Appellate Tribunal is empowered by or under the Act to entertain and secondly, 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 order passed under the SARFAESI Act or Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

19. The Hon'ble Apex Court in the case of ***Mardia Chemicals***

Ltd (supra), has carved out a limited exception, in which case, the Civil Court can entertain a suit. The exception is where the action of the secured creditor is alleged to be fraudulent or its claim is so absurd and untenable, which may not require any probe whatsoever. It is only in such a limited case that the Civil Court can entertain an action by way of civil suit. The Division Bench of this Court in the case of **State Bank of India Vs. Jigishaben B. Sanghavi and Ors**; [2011(1) LJSOFT (URC)44] has *inter alia* held that SARFAESI Act provides a comprehensive scheme and the aggrieved person, who may even be a stranger, has a statutory remedy of appeal provided under Section 17 of the SARFAESI Act, under which, the DRT is empowered to determine whether the action, which is taken by the secured creditor, is in accordance with the provisions of the SARFAESI Act and Rules made thereunder. The Division Bench, after noticing the judgment in the case of **Mardia Chemicals Ltd** (supra), has held that to a very limited extent, the jurisdiction of the Civil Court can also be invoked, which is where the action of the secured creditor is alleged to be fraudulent or where the claim of secured creditor is so absurd and untenable that it could not require any probe whatsoever. It has been held that this exception like all other exceptions must be strictly construed and a borrower or a third party cannot be permitted to defeat or render nugatory the provisions of the Act, merely by a stray reference to an allegation of fraud. For determining this, the entirety of the plaint has to be read and the plaint cannot be compartmentalised or dissected nor can the

averments be read in isolation.

20. It can be seen that the entire case of the plaintiff rests on the exception which has been carved out by the Hon'ble Supreme Court on the ground that the action of the secured creditor is tainted with fraud. The ground, as noticed earlier, is that the plaintiff was married to defendant no.6 in the year 2005 and the Mortgage Deed was executed in the year 2008 without the plaintiff being a party to the same, would smack of fraud. After having carefully gone through the allegations in the plaint as a whole and in particular paras 17 and 18 thereof, I do not find that the contention can be accepted.

21. Admittedly, the parties are of Goan origin and governed by the Family Laws. Article 3 of Family Laws reads as under :

“Article 3. All Portuguese shall solemnize the marriage before the respective officer of Civil Registration, under the conditions and in the manner established in civil law, and only such marriage is valid.”

(Emphasis supplied)

It can, thus, be seen that Article 3 mandates that the marriage shall be solemnised before the respective officer of Civil Registration, under the conditions and in the manner established in Civil law and “only such marriage is valid.” Article 58 provides for a

contingency, where such marriage is performed in a foreign country, namely at a place beyond the area where the Family Laws apply (i.e. beyond the area comprising Portuguese Colonial Rule). In the present case, the marriage is alleged to have taken place in a Church at Baroda in Gujarat. Article 58, which is relevant for the present purpose, reads thus :

*“Article 58. The marriage of Portuguese in a foreign country shall be governed by the following provisions :
Paragraph 1. Whether only one of the contracting parties is Portuguese, the marriage may take place as per the procedure prevailing in the country where it is solemnized.*

Paragraph 2. Where both the contracting parties are Portuguese, they may contract marriage in the manner prescribed by the national law before the diplomatic or consular agent of Portugal, or in the manner that may be legally required in the country where it is solemnized, if not consistent with the principles of the Portuguese Public Law.”

(Emphasis supplied)

22. The present case would be governed by paragraph 2 of Article 58 in as much as both the contracting parties are of Goan origin, governed by the family laws. Paragraph 2 states that in such a case, the parties can contract marriage in the manner prescribed by the national law before the diplomatic or consular agent of Portugal or “in the manner that may be legally required in the

country, where it is solemnized, if not consistent with the principles of Portuguese Public Law.” It can, thus clearly, be seen that where the marriage is performed beyond the area, to which the Family Laws apply, it has to be performed in a manner that may be legally required at the place, where it is solemnized.

23. In the present case, it is neither pleaded nor established as to under which law the parties have contracted their marriage in a Church at Baroda and whether or not it compulsorily required registration. The later aspect will have a bearing while considering the Division Bench judgment of this Court in the case of **Kamlakant Pandurang Chibde** (supra), on which heavy reliance is placed on behalf of the first respondent.

24. It would now be necessary to notice the provisions of Article 245, which read thus :

“Article 245. The registration of marriages of Portuguese born in Portuguese State of India, performed abroad before the foreign authorities, in terms of Art. 58 of the said Decree No.1 dated 25/12/1910, shall be transcribed in this State in view of the documents legally necessary when they do not contrary (sic) the principles of Portuguese Public Law, within 3 months after their celebration or within 30 days from the return of both or at least one of the spouses to the country, on the pain of not producing any effects in the territory of the Republic. Regarding

the marriages before the Portuguese Authorities, what is provided in Art.60 of the said Decree and in Arts.37, 40, Nos.1 and 41 of this Code, shall be observed.”

Thus, Article 245 provides that the registration of the marriage of Portuguese born in Portuguese State of India, performed abroad, shall be transcribed in this State, which in the present case, is done in May, 2011.

25. In the case of **Kamlakant Chibde** (supra), Sushila Chibde, original plaintiff no.1 was the widow of Pandurang Chibde. Original plaintiff no.2 to 6 were the children born to Sushila and Pandurang Chibde. The first wife of Pandurang was Satyawati and original defendant nos.1 and 3 were the sons of Pandurang from the first marriage. The plaintiffs claimed that the subject matter of the suit exclusively belonged to Pandurang and after his death, was inherited by the plaintiffs and the defendants had no right, title in the suit property. The plaintiffs had sought declaration of their title and perpetual injunction. The suit was resisted by the defendants, *inter alia*, claiming that plaintiff no.1 i.e. Sushila was not the legally wedded wife of Pandurang and plaintiff nos.2 to 6 were not their children. In that case, indisputably, the marriage between Pandurang and Sushila was solemnized as per Hindu Marriage Act, 1955 at Sawantwadi, which was outside the territory of Goa. The marriage was solemnized in the year 1950 and at that time, the

registration of marriage under Hindu Law, was not compulsory and it was only by the Hindu Marriage Act, 1955 that the marriage was required to be compulsorily registered under Section 8 of the said Act. Furthermore, subsection (5) of Section 8 of the Hindu Marriage Act provides that the validity of any Hindu marriage shall in no way be affected by the omission to get the marriage registered. In the case of **Kamlakant Chibde** (supra), the marriage was not transcribed/ registered in Goa and it is in this context, the question arose whether the marriage between Sushila and Pandurang can be said to be legal and valid. It is, in this factual situation that after considering the provisions of Article 245 of the Family Laws, the Division Bench held that the marriage cannot be said to be invalid for want of registration. The Division Bench affirmed the finding of the Trial Court that Article 245 of the Family Laws, was not attracted. The Division Bench also found that to accept that the marriage was invalid for want of registration, would be a view, which would be opposed to public policy.

26. Coming back to the present case, as noticed earlier, it has not been shown as to under what law the marriage was performed beyond the Portuguese territory, namely at Baroda, Gujarat and whether or not, such a marriage required registration. Thus, the judgment of the Division Bench in the case of **Kamlakant Chibde** (supra), is clearly distinguishable on facts. I would hasten to add that the observations made herein above, will not have any bearing

on the existence and validity of marriage between the plaintiff and defendant no.6. The matter is being examined only for the limited purpose of ascertaining whether a genuine and triable case of fraud is made out in the plaint, so as to clothe the Civil Court with jurisdiction to entertain the suit and nothing further.

27. It would now be necessary to make a reference to the decision of the Hon'ble Supreme Court in the case of **Jagdish Singh** (supra), in which the Supreme Court in para 19 of the judgment had held that 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 SARFAESI Act. A useful reference, in this regard, can also be made to the decision of the Supreme Court in the case of **United Bank Vs. Satyawati Tondon**; [(2010)8 SCC 110]. It can, thus, be seen that the plaintiffs, if aggrieved and if so advised, have a remedy of appeal under Section 17 of the SARFAESI Act.

28. A brief reference, at this stage, can be made to the decision of the Delhi High Court in the case of **Golf Technologies Pvt Ltd.** (supra). This is what is held in para 22 of the judgment :

“22.At this juncture, reference to a few judicial precedents is necessary. A Division Bench of the Madras High Court in V. Thulasi v. Indian Overseas Bank (2011) 8 Mad LJ 441, Justice R. Banumathi, writing the judgement for the Bench, held as under:

"29. By clever and astute drafting, the Plaintiff might create an illusion of cause of action by trying to bring Civil Suit within the parameters laid down by the Supreme Court in *Mardia Chemicals case*, 2004 (4) SCC 311. Pointing that Court has duty to see if such allegations of fraud are thrown just for the purpose of maintaining a Suit, in *Punjab National Bank v. J. Samsath Beevi*, 2010 3 CTC 310, Justice V. Ramasubramanian held as under:

"8. But at the same time, the Court has a duty to see, if such allegations of fraud are thrown, just for the purpose of maintaining a Suit and ousting the jurisdiction of the Tribunal and to keep the Banks and Financial Institutions at bay. If by clever drafting, the Plaintiff creates an illusion of a cause of action, the Court is duty bound to nip it in the bud. To find out if it is just a case of clever drafting, the Court has to read the Complaint, not formally, but in a meaningful manner. So is the dictum of the Apex Court in *T. Arivandandam v. T. V. Satyapal*, 1977 (4) SCC 467. It was again reiterated by the Court in *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal*, 1998 (2) SCC 70, by holding that clever drafting, creating illusions of cause of action are not permitted in law. The ritual of repeating a word or creation of an illusion in the Complaint can certainly be unravelled and exposed by the Court while dealing with an Application under Order 7, Rule 11(a).

9. A Court is obliged to see if the allegations of fraud and collusion made in the Complaint, are themselves a product of "fraud and collusion"

between the family members of the borrowers, so as to escape liability and save the secured assets, somehow or the other. In the recent past, there is a sudden spurt in the number of Civil cases filed against the actions initiated by Banks and Financial Institutions, either under the 1993 Act or under the SARFAESI Act, 2002. All these cases fall under 3 or 4 categories viz.--

(i) Cases filed by strangers claiming that their properties are brought to sale on the basis of forged documents or certified copies of documents submitted by borrowers to Banks.

(ii) Cases filed by guarantors claiming that they never signed letters of guarantee or offered their properties as securities.

(iii) cases filed by close relatives of borrowers such as spouses, children, brothers and sisters, claiming that they have a share in the properties mortgaged by the borrowers and that they were never aware of and they never gave consent to the properties being offered as securities, and

(iv) cases filed by third parties claiming that the properties were sold to them by the borrowers or guarantors by suppressing the creation of the mortgage and that they are bona fide purchasers for value without notice of the encumbrances.

10. It is not very difficult for a seasoned litigant or an intelligent lawyer to draft the Plaint in such a manner as to make a secured asset, come

within anyone of the above 4 categories, by a clever drafting of the Complaint, thereby creating an illusion of fraud, collusion, misrepresentation and the like. Today, with the advancement of technology, the creation of an illusion and the creation of a virtual world are both possible. The moment the Civil Suit is taken on file, the proceedings before the Debts Recovery Tribunal or under the SARFAESI Act, 2002 gets slowed down. This results in two consequences viz., (i) out of frustration, the Banks agree for one time settlements, or (ii) third party rights get created by taking advantage of the situation. Therefore, the Courts have a greater responsibility to scan the pleadings and see if the allegations of fraud and collusion made in the Complaint are actually a product of fraud and collusion between the borrowers and those making such claims."

We fully endorse the above views of the learned Single Judge."

(Emphasis supplied)

29. In para 33, it has been held that the Courts have a duty to see whether genuine grounds have been made out to attract the jurisdiction of the Civil Court. There cannot be any generalisation in this respect as to when the suit is maintainable or when the jurisdiction of the Civil Court is ousted and it would depend upon facts and circumstances of each case. It has to be examined whether there is genuine grievance to be redressed in the Civil Court. In the facts of that case, it was found that the ground of

fraud raised by the plaintiff can be gone into in appeal under Section 17 of the SARFAESI Act.

30. As noticed earlier, the learned Trial Court has dismissed the application on the ground that the validity of the Mortgage Deed cannot be examined by DRT in the appeal under Section 17 of the SARFAESI Act, which, to my mind, cannot be accepted. As noticed earlier and at the cost of repetition, it needs to be mentioned that it is only in a limited sphere that the Civil Court can entertain a suit of the present nature i.e. where a genuine and triable case of fraud is made out, which in the present case, has not been made out by the plaintiff. In such circumstances, the impugned order, to my mind, cannot be sustained. Civil Revision Application is, accordingly, allowed. The impugned order is hereby set aside. Application Exh.13 stands allowed. Consequently, the plaint in RCS No.4/2012 shall stand rejected under Order VII, Rule 11(d) of the CPC. In the circumstances, there shall be no order as to costs.

31. At this stage, the learned Counsel for the first respondent prays for continuation of the interim order for a period of eight weeks, for which the learned Counsel for the petitioner has no objection. The interim order shall continue for a period of eight weeks from today.

C. V. BHADANG, J.

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