

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 292 OF 2014****WITH****CIVIL APPLICATION NO. 346 OF 2014****IN****APPEAL FROM ORDER NO. 292 OF 2014**

Nikhil Amod Buchke & Ors.

....Appellants/
Applicants.

Vs.

Bank of Maharashtra & Ors.

....Respondents.

Mr. Shailendra S. Kanetkar for the Appellants/Applicants.

Mr. O.A. Das for Respondent No.1.

CORAM : A.A.SAYED, J.

DATE : 16 MARCH 2017.

P.C.:-

By this Appeal, the Appellants/Original Plaintiffs impugn the order dated 25 February 2014 passed by the Small Causes Court, Pune, in Special Civil Suit No. 597 of 2011. By the impugned order, it was held that the Court has no jurisdiction to entertain, try and decide the Suit, on the application of the Respondent-Bank raising preliminary issue of jurisdiction.

2 The Suit was filed by the Appellants for a declaration that the suit properties owned by them are not secured assets and cannot be attached and for accounts and recovery of certain amounts. Appellants have also prayed for other reliefs in the Suit.

3 The learned counsel appearing for the Appellants has placed the reliance on the following Judgments in support of his contention that when there is an issue of fraud raised, a Suit may be maintainable.

(a) *India Household and Healthcare Ltd. Vs. LG Household and Healthcare Ltd.*¹ and;

(b) *Mardia Chemicals Ltd. Vs. Union of India*²

4 The learned counsel appearing for the Respondent-Bank supported the impugned order and has placed the reliance on the following judgments:

(a) *State Bank of India Vs. Jigishaben B. Sanghavi & Ors.*³ and;

(b) *Central Bank of India Vs. Tarseema Compress*.

1 (2007) 5 SCC 510

2 2004(2) Mh.L.J. (SC) 1090=AIR 2004 SC 2371

3 2011(2) Mh.L.J. 342

Wood Manufacturing Company and Ors.⁴

(c) **Jagdish Singh Vs. Heeralal & Ors.⁵**

5 It is an admitted position that the Respondent No.1-Bank has proceeded under the SARFAESI Act and notices under Sections 13(2) and 13(4) of the SARFAESI Act are issued to the Appellants. DRT proceedings being Original Application No. 213 of 2011 had been filed by the Respondent-Bank on 1 August 2011. The Appellants had participated in the OA and have raised the very issues as in the suit including that of fraud in the OA. The said OA is now decreed. The plea of fraud cannot be reagitated.

6 In Jagdish Singh's case, the Apex Court has held that Section 34 of the SARFAESI Act oust the jurisdiction of the Civil Court and Section 17 confers right of appeal to not only the borrower, but also guarantor or any other person who may be affected by action under Section 13(4) of the SARFAESI Act. The Apex Court in the said case has also considered the case of Mardia Chemicals Ltd., relied upon by the learned counsel appearing for the Appellants.

4 AIR 1997 Bom. 225

5 (2014) 1 SCC 479

7 In the circumstances, the Trial Court has rightly held that in view of Section 34 of the SARFAESI Act, the Civil Court would have no jurisdiction to entertain the Suit. No case for interference with the impugned order is made out. The Appeal from Order is dismissed with costs of Rs.10,000/- (Rupees Ten Thousand only) to be paid by the Appellants to the Respondent-Bank within a period of four weeks from the day this order is uploaded.

8 In view of the dismissal of Appeal From Order, nothing survives in Civil Application No. 346 of 2014 and the same is also disposed of.

(A.A.SAYED, J.)