

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST. NO. 2201 OF 2018
WITH
CIVIL APPLICATION NO. 61 OF 2018
WITH
CIVIL APPLICATION ST. NO. 2204 OF 2018
IN
APPEAL FROM ORDER ST. NO. 2201 OF 2018

Shri Girish Keshavji Chheda & Anr. ...Appellants
Versus
The Cosmos Co-op. Bank Ltd. & Ors. ...Respondents

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Mr. V.K.Dubey for the Appellants.
Mr. Joel Carlos for Respondent No.1

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CORAM: MRS.MRIDULA BHATKAR, J.
DATE : JANUARY 30, 2018

PC.:

1. Upon urgent mentioning, taken on Production Board.
2. This Appeal from Order is directed against the order dated 8th December, 2017 passed by the learned Ad-hoc Judge, City Civil Court & Asstt. Sessions Judge, Dindoshi, Mumbai thereby refusing ad-interim injunction in Draft Notice of Motion in S.C.Suit No. 3537 of 2017.
3. The learned Counsel for the appellants submits that the appellants are the partners of the partnership firm viz. Janta Sales Agency. According to him, one of the partners by showing himself as a proprietor of the firm has mortgaged the shop. The appellants civil rights are infringed and, therefore, they have approached the Civil Court for injunction against

which they have initiated the proceedings under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (**SARFAESI Act**). In the said proceeding, a notice under Section 13 (2) of the SARFAESI Act is issued. He further submits that the appellants were not aware about mortgaged of the suit shop. He prays that the order of refusal of the ad-interim relief be set aside.

4. The learned Counsel for respondent no.1 submits that Janta Sales Agency i.e., partnership firm has filed proceedings challenging the notice issued under Section 13 (2) of the SARFAESI Act before the Debt Recovery Appellate Tribunal. He further submits that one proceeding is filed by the appellants before the Metropolitan Magistrate. The order of issuance of possession warrant is challenged by the appellants in the High Court in Criminal Writ Petition No. 5109 of 2017 and the said matter is fixed on 31.01.2018.

5. Perused the impugned order. This Court has taken a view in **Appeal from Order (St.) No. 36597 of 2017** in the case of **Pravin Wipers and Ancillaries Pvt. Ltd vs. Vibgyor Texotech Ltd. & Ors.** that the trial Court has no jurisdiction to try and entertain the suit in view of Section 34 r/w. 17(4A) of the SARFAESI Act. The view taken by the trial Court holding that the Civil Court has no jurisdiction to try and entertain the suit is correct.

Nothing remains in this Appeal from Order hence disposed of. Civil Applications do not survive and the same are accordingly disposed of.

(MRIDULA BHATKAR, J.)