

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER (ST) NO. 11427 OF 2019
WITH
CIVIL APPLICATION NO. 814 OF 2019 (FOR DELAY)
AND
CIVIL APPLICATION (ST) NO. 11428 OF 2019 (FOR STAY)**

Bank of Baroda	...Appellant
vs.	
Makjai Laboratories Pvt.Ltd.	...Respondent

**WITH
APPEAL FROM ORDER NO. 876 OF 2019
WITH
CIVIL APPLICATION (ST) NO. 20081 OF 2019 (FOR DELAY)
AND
CIVIL APPLICATION NO. 1051 OF 2019 (FOR STAY)**

Bank of Baroda	...Appellant
vs.	
Makjai Laboratories Pvt.Ltd.	...Respondent

Mr.Arsh Misra with Heena Shaikh i/b. M.V. Kini & Co. for
Appellant/Applicant.
Mr.Yuvraj P. Narvankar for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 27 SEPTEMBER 2019

P.C. :

This appeal from order (Appeal from Order (Stamp) No.11427 of 2019) challenges an order passed by the Joint Civil Judge, Senior Division, Kolhapur. There is a delay of 114 days in filing the appeal from order. Civil Application No.814/2019 seeks condonation of that day. For the reasons stated in the civil application, the delay is condoned. Registry is directed to number the appeal from order. The civil application is disposed of accordingly.

2 The controversy in the present appeal concerns mortgage

of a property described in the order. The property apparently was mortgaged by the Respondent herein for repayment of the debt owed by the Respondent to the Appellant bank. It is the Respondent's case that the dues have been fully paid by the Respondent and there is a No Due Certificate issued by the bank on 19 September 2011. It is submitted that despite such No Due Certificate, the Appellant made a wrongful demand for recovery of its dues *inter alia* seeking to enforce the mortgage in respect of the suit property. The Respondent has filed its own suit before the court of Civil Judge, Senior Division, Kolhapur. The impugned order has come to be passed in this suit. The impugned order *inter alia* requires the Appellant bank to release the suit property after completing the requisite legal formalities. One of the main grounds of challenge in the present appeal from order concerns jurisdiction of the civil court to order release of property mortgaged by the Respondent constituent to the Appellant bank. It is submitted that under Section 18 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, there is a bar of jurisdiction in entertaining the suit, since the suit is in respect of a matter specified in Section 17 of that Act. Since any objection to the jurisdiction of the court goes to the root of the matter, it is imperative for the court to decide it before the merits are scrutinised. It is apparent from the impugned order that the jurisdictional aspect was not considered by the court. Having regard to this, the impugned order cannot stand and will have to be quashed and set aside and the matter remanded to the trial court for a fresh consideration in accordance with law.

3 The impugned order dated 29 August 2018 is, accordingly, quashed and set aside and Exhibit 75 in Special Civil Suit No.510/2011 is remanded to the court of Civil Judge, Senior Division, Kolhapur, for a fresh hearing in accordance with law. It is made clear that this remand is on the basis that the jurisdictional issue arising in the matter was

not considered by the trial court and not on merits. This court has not applied its mind to the merits of the respective cases of the parties. All rights and contentions of the parties in that behalf as also on the jurisdictional issue are kept open. Considering the fact that the value of the suit property far exceeds the claim of the Appellant bank, the hearing of Exhibit 75 is expedited. The trial court is required to dispose of the application as expeditiously as possible and preferably within a period of eight weeks from today. Either party may bring this order to the notice of the trial court by producing an authenticated copy of this order. The appeal from order is disposed of accordingly.

4 In view of the disposal of this appeal from order as above, the companion appeal from order also deserves to be allowed by condoning the delay in filing it. Civil Application (Stamp) No.20081 of 2019 is, accordingly, allowed and the delay is condoned. Appeal from Order No.876 of 2019 is allowed by quashing and setting aside the impugned order dated 8 April 2019 at Exhibit 83.

5 In view of the disposal of the two appeals from order, the civil applications taken out therein for stay do not survive. Civil Application (Stamp) Nos.11428 of 2019 and 1051 of 2019 are, accordingly, disposed of.

(S.C. GUPTE, J.)