

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

**APPEAL FROM ORDER (ST.) NO.25897 OF 2019
WITH
INTERIM APPLICATION NO.1 OF 2019**

Mr. Arjun Sanjeev Tejawani Proprietor, Arjun Enterprises	...	Appellant
Versus		
Chief Executive Officer, City Co-operative Bank Ltd. And Others	...	Respondents

.....

Mr. Mathews Nedumpara a/w Ms. Preeti Dambre, Mr. Amrit Pal
Khalsa i/b Mr. C.J. Joveson for the Appellant/Applicant.
Mr. K.V. Tembe for Respondent No.1.

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CORAM : S.C. GUPTE, J.

DATE : 20 SEPTEMBER 2019

P. C. :

. Heard learned Counsel for the parties.

2 This Appeal from Order challenges an ad-interim order passed by the City Civil Court at Bombay on a draft notice of motion, refusing ad-interim relief. By the notice of motion, the Appellant herein (original plaintiff) sought an interim injunction against the Defendants, who are, respectively, a financial institution who is a secured creditor in respect of the suit property and to whom the plaintiff owes the suit debt and statutory authorities, who are

enforcing that debt. The injunction was for restraining the defendants from acting under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act).

3 The present suit has been filed by the plaintiff seeking a declaration that defendant No.2, who is the Deputy Registrar of Co-operative Societies, who did not have competence to decide the disputes between the plaintiff and the defendants in Case No.232 of 2017. Case No.232 of 2017 was filed under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (“Co-operative Societies Act”), for a recovery certificate. The 1st defendant creditor was the applicant in the case. The grievance of the plaintiff in the present notice of motion, in which the impugned order came to be passed, is that the defendant-bank had simultaneously sought recovery under the SARFAESI Act. The learned Judge of the trial court did not find any substance in the contention and rejected his application.

4 Mr. Nedumpara, learned Counsel appearing for the Appellant/plaintiff, submits that, in the first place, the provisions under the SARFAESI Act could not have been invoked in the present case. Learned Counsel, secondly, submits that in any event, the Defendant-bank cannot simultaneously invoke provisions of the SARFAESI Act and the Co-operative Societies Act. Learned Counsel submits that the bank, as a creditor, ought to elect between the remedies available to it in law, assuming without admitting that it

has a remedy under the SARFAESI Act. There is no substance in either of these submissions. In the first place, the plaintiff's suit merely challenges the power or authority of Dy. Registrar to pass any order of recovery certificate under Section 101 of the Co-operative Societies Act. The bank's approach to the authorities under the SARFAESI Act is not the subject matter of challenge in the present suit. Therefore, it was not necessary, in any case, for the trial court to consider any application seeking a remedy or relief vis-a-vis the bank's application under the SARFAESI Act. In the present case, the bank has taken possession under the SARFAESI Act and obtained a warrant of possession in respect of the suit property under Section 14 of the SARFAESI Act. In pursuance of an order passed by the learned Magistrate under Section 14, the possession has already been taken over from the plaintiff and handed over to the 1st defendant-bank. Copies of the possession receipt, panchnama and statements along with photographs have been tendered across the Bar by learned Counsel for the bank.

5 In the premises, there is no merit in the Appeal from Order. The Appeal from Order is dismissed.

6 In view of the dismissal of the appeal, the Interim Application does not survive and is disposed of.

7 Mr. Nedumpara, learned Counsel for the Appellant, seeks a

clarification that this order shall not come in the way of any decision in the suit. There is no gainsaying that it shall not.

(S.C. GUPTE, J.)