

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

APPEAL FROM ORDER NO. 42 OF 2022

M/s. Texplast Industries Ltd. and anr. Appellants
v/s.
Indian Overseas Bank and ors. Respondents

Mr. Mathew Nedumpara a/w. Hemali S. Kurne for the Appellants.
Ms. Kalyani Wagle i/b. T.N. Tripathi and Co. for Respondent No.1.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 22nd JUNE, 2022.

P. C. :-

. This Appeal assailed the order dated 23/12/2021 whereby the learned Judge declined to grant ad-interim relief in Notice of Motion No.3363 of 2021 in Suit (St.) No.594 of 2021 passed by the City Civil Court, Greater Bombay.

2. Mr. Nedumpara, learned counsel for the Appellants after reading the provisions of MSME Act, submitted that he does not wish to argue the matter any further before this Court and left the court room.

3. Ms. Kalyani Wagle, learned counsel for the Respondent No.1 submits that the reliefs sought by the Appellants/Plaintiffs are barred under the provisions of Section 34 of the Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act').

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The records reveal that the Appellant (hereinafter referred to as 'the plaintiff') had availed credit facility from Respondent No.1-Bank. He failed to repay the dues as a consequence thereof in the year 2013 the account came to be declared as 'Non Performing Asset (NPA). Demand Notice was served on the plaintiffs on 12.05.2014 followed by Possession Notice dated 19.09.2014. The plaintiffs had challenged the Demand Notice in Second Appeal No.151 of 2015 before the Debt Recovery Tribunal-II, Mumbai which came to be dismissed. Appeal filed against the said order was also dismissed by Debt Recovery Appellate Tribunal, Mumbai. MA No.683 of 2016 filed by the plaintiffs also came to be dismissed by the DRAT, Mumbai.

6. The plaintiffs once again challenged Demand Notice by filing Second Appeal No.405 of 2016 before DRT-II, Mumbai which was dismissed for non prosecution. Interim Application No.689 of 2020 for

restoration of the said Appeal is pending before the DRT-II, Mumbai. Records also indicate that the Writ Petition No.11195/2015 filed by the Plaintiffs for seeking similar reliefs has been dismissed by this Court. Plaintiffs have thereafter filed the suit for several reliefs running from prayer clauses (a) to (p).

7. In paragraph 6 of the plaint, the plaintiff has averred that the suit is filed invoking the extra ordinary jurisdiction of the Court under Article 226 of the Constitution of India. It is averred that the seed of misconstruction of the provisions of SARFAESI Act was sown when the three-Judge Bench of the Supreme Court in ***Mardia Chemicals Ltd. v/s. Union of India (2004) 4 SCC 311***, did not address the challenge to the constitutional validity of the Act in the manner it should have been. It is averred that the enactment of the SARFAESI Act is a watershed in the Indian Legal/Constitutional history. After criticizing the judgment in Mardia, the Plaintiff proceeded to state that the judgment ***Transcore v/s. Union of India AIR 2007 712*** is a chronicle of the Himalayan blunder. The plaintiff further alleges that the scenario emerging in banking scrutinization law is horrifying. Section 34 and 35 of the SARFAESI Act bars jurisdiction of the Civil Court to entertain a plea for equitable and common law remedies against a banker without vesting

such jurisdiction in DRT.

8. The Complaint which runs over 50 pages is nothing but a tirade against the judicial pronouncements, legal system and legislation by a defaulter whose account has been declared to be NPA and who has failed to get any relief from DRT and other authorities. With such pleadings, the plaintiff has filed the suit not only raising challenge to the recovery proceedings but has sought a declaration that Section 14, 34 and 35 of the SARFAESI unconstitutional and further sought interim relief to restrain the Respondents from proceeding with action under SARFAESI Act. Being aggrieved by refusal to grant ad-interim relief, the plaintiff has filed this Appeal.

9. Suffice it to say that Section 34 ousts the jurisdiction of the Civil Court so far as the measures taken by the secured creditor under section 13 of the SARFAESI Act, to except limited extent as has been held by the Apex Court in *Mardia Chemicals*. In the instant case, the plaintiff has challenged the measures taken by the Respondent by challenging the legality of the legislation and the judicial pronouncement of the Apex Court in *Mardia Chemicals*. This is nothing but frivolous litigation filed only with an object of delaying the

recovery of the dues and amounts to abuse of process of law. The Appeal has no merits and is dismissed with costs of Rs.50,000/-.

(SMT. ANUJA PRABHUDESSAI, J.)