IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 531 OF 2022
WITH
INTERIM APPLICATION NO. 3542 OF 2022
IN
FIRST APPEAL NO. 531 OF 2022

Smt. Charu Kishor Mehta ...Appellant/ Applicant

Vs.

Prakash Patel & ors. ...Respondents

Mr. Anil Anturkar, Senior Advocate a/w Ms Dhruti Kapadia, Mr. Kalpesh Joshi i/b. M/s Kalpesh Joshi Associates, for the Appellant/ Applicant

Mr. Simil Purohit a/w Ms Shivani Bhate & Mr. Mayank Bagla i/b. M/s. Sonal Doshi & Co., for the Respondent Nos. 1 & 2

Mr. Rahul Narichania, Senior Advocate a/w Mr. Kunal Mehta i/b. Mr. Akshay Sawant and Mr. Gaurav Gautam for I.V. Merchant & Co. for Respondent No. 4

Mr. Kishor Jain a/w. Mr. Nikhil Rajani, Mr. Apoorva Kulkarni i/b. M/s. V. Deshpande & Co., for Phoenix ARC - Intervenor

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATE : 13th JUNE, 2022.

P. C.

1. The challenge in this appeal is to the Order dated 25.05.2022, whereby the learned Judge, City Civil Court, Mumbai allowed the Notice of Motion No. 1462 of 2022 filed by the

Respondent Nos. 1 & 2 under Order VII, Rule 11 of the Code of Civil Procedure,1973 and thereby rejected the plaint under Stamp No. 3679 of 2022.

2. Before adverting to the facts of the case it would be relevant to narrate in brief the chequered history of the case. The Appellant, who shall be hereinafter referred to as the ‘Plaintiff’ had availed credit facilities from the Oriental Bank of Commerce (hereinafter referred to as “the Bank”). It was alleged that the outstanding dues were approximately to the tune of Rs.277,00,00,000/-. The Bank filed original application No.303 of 2002 before the DRT Mumbai for recovery of the said dues from the Plaintiff and others. The original application was allowed on 24/07/2006. Pursuant thereto recovery certificate was issued whereby the borrower and guarantors were directed to repay the outstanding dues. The order dated 24/07/2006 was challenged before DRAT and several other measures taken by the Bank were challenged under the provisions of SARFAESI Act.

3. Pending the aforesaid proceedings by deed of

assignment dated 30/09/2013 the Bank assigned the debts concerning the present dispute and underlying securities in favour of M/s. Phoenix ARC Pvt. Ltd. Pursuant to the assignment, the Plaintiff and other concerned parties and M/s. Phoenix ARC Pvt. Ltd. arrived at a settlement and executed consent terms dated 01/10/2013. The Plaintiff, who was a party/signatory to the said consent terms undertook to repay to M/s. Phoenix ARC a sum of Rs.27,31,04,000/- on or before 30/09/2014. The Plaintiff also agreed to handover possession of the secured asset being Flat No. 37 on the 18^{th} floor of the building known as "Usha Kiran", along with Garage No. 17 and open parking space, hereinafter referred to as "the Suit Premises" to M/s. Phoenix ARC and also gave an undertaking not to obstruct execution in case of the recovery certificate in case of default of consent terms.

4. The Plaintiff not only failed to repay the amount and handover possession of the secured asset but in clear breach of the consent terms, made every possible attempt to obstruct execution of recovery certificate by filing several proceedings before the authorities under the SARFAESI Act as well as before this Court

and the Hon'ble Supreme Court.

5. The Plaintiffs filed writ petition 1766 of 2017 and 1767 of 2017 challenging the order dated 15/06/2017 and possession notice dated 21/06/2017 passed/issued by the DRT for handing over possession of the suit premises. These petitions were dismissed by the Division Bench of this Court vide order dated 05/07/2017 with cost. On 06/07/2017 the Plaintiff sought extension of time to vacate the premises on medical grounds of her husband. Minutes of the order between the parties came to be recorded and by order dated 06/07/2017 this Court granted 8 weeks time to the Plaintiff to vacate the premises. Instead of vacating the premises, the Plaintiff filed SLP before the Hon'ble Supreme Court, which came to be dismissed.

6. The Plaintiff once again filed a notice of motion before the Division Bench of this Court and sought modification of orders dated 05/07/2017 and 06/07/2017. The said notice of motion was rejected, which order came to be challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court by order

dated 30/08/2017 dismissed the SLP and granted time to the Plaintiff to vacate the premises by 31/10/2017 subject to the usual undertaking before the Hon'bel Supreme Court within 7 days from 30/08/2017. Accordingly, possession of the suit premises was handed over to the DRT Receiver on 31/10/2017. The flat was thereafter put to sale by auction after following due process. Since no bids were received auction could not be held in respect of the suit premises.

7. The Plaintiff thereafter filed two separate Applications being Exhibit Nos.618 and 631 before the Recovery Officer DRT-I Mumbai seeking discharge of liability alleging that the liability was only to the extent of Rs. 5 Crores with interest. These applications were rejected by DRT with costs. The said order was challenged in Writ Petition No.9785 of 2021 which came to be withdrawn in view of availability of alternative remedy of appeal before the DRT.

8. The Plaintiff thereafter filed appeal before the DRT, in which prayer for waiver was rejected. Since the Plaintiff was

unable to comply with mandatory requirement of pre-deposit under Section 30 A of the SARFAESI Act, the appeal came to be dismissed. The challenge to the said order was rejected by the Division Bench of this Court with costs of Rs.50,000/-. The said order was challenged before the Hon'ble Apex Court in SLP No.8946 of 2021, which was also dismissed by the Hon'ble Apex Court vide order dated 16/07/2021.

9. In the meantime, sale program in respect of the suit premises was fixed. The Plaintiff and her son deposited an amount of Rs. 1.25 Crores before the Debts Recovery Appellate Tribunal, Mumbai towards 25% of the alleged outstanding liability and sought stay of sale scheduled on 27.12.2021 by taking shelter of order dated 02/12/2021 of the Division Bench of this Court in Writ Petition (L) No. 24293 of 2021. In the said writ petition the Division Bench of this Court while considering the issue of vacancy of seats in DRAT had noted that 5 Debt Recovery Tribunals of the Country were non functional and in order to secure the interest of the litigants had stayed orders under challenge from the time the borrower makes a pre-deposit of at

least 25% of the debt as claimed by the secured creditor or determined by the DRT, whichever is less. It appears that the Recovery officer, DRT-1, Mumbai stayed the process of sale scheduled on 27.12.2021 in view of deposit of Rs.1.5 crores by the Plaintiff.

10. The order of Recovery Officer, was challenged by M/s. Phoenix ARC Pvt. Ltd. by filing a Writ Petition (L) No. 46 of 2022 before the Division Bench of this Court. The said Writ Petition came to be dismissed and the order dated 08.12.2021 passed by the Registrar, DRAT, Mumbai and the order dated 16.12.2021 passed by the Recovery officer were set aside and the stay on conducting of public auction was vacated. The challenge to the said Judgment was dismissed by the Hon'ble Apex Court in SLP(C) Nos. 2594-2595 of 2022.

11. The Sale Notice was issued on 24.02.2022. The Respondent No. 4 – Acrynova Pvt. Ltd. submitted its bid on 28.03.2022. E-auction for sale of the suit premises was scheduled on 31.03.2022. The Plaintiff filed the suit on 30/03/2022 against

Respondent Nos.1, 2 and 3 (hereinafter referred to as 'Defendant Nos.1, 2 and 3') for :-

(i) declaration that the Defendant Nos.1 and 2 are not entitled to participate in the auction proceedings conducted by DRT in respect of the suit premises,

(ii) to restrain Defendant Nos.1 and 2 from participating in the auction proceedings

(iii) To restrain Defendant Nos.1 and 2 from executing any documents from transfer of the suit premises in favour of their nominee or acquire any interest or right in the suit premises.

12. The Trial Court did not grant any ad-interim relief in favour of the Plaintiff. Aggrieved by the said order, the Plaintiff filed an appeal from order (lodging) No.8104 of 2022 before this Court. The said appeal was heard and this Court refused to interfere with the order passed by the learned Judge, City Civil Court. E-auction was conducted on in respect of the suit premises on 31/03/2022 and Respondent No.4-M/s. Acrynova Industries was declared as a highest bidder. The plaint thereafter came to

be amended and M/s. Acrynova Industries came to be impleaded as Defendant No.4. By way of amendment, without seeking any substantive relief against Defendant No.4 and /or challenging the auction, a prayer for temporary injunction came to be incorporated seeking to restrain Defendant Nos.1, 2 and 4 from making further payment towards auction sale of suit premises and to restrain them from executing or registering any deed or documents pertaining to the auction sale of the suit premises.

13. The Defendants filed a notice of motion under Order VII Rule 11 of CPC seeking rejection of the plaint in view of specific bar under Section 34 of the SARFAESI Act. The Plaintiff contested the said motion alleging that the secured creditor M/s. Pheonix ARC is not a party to the suit and that the orders passed by the Debt Recovery Tribunal and the auction sale has not been challenged in the suit. It is alleged that the relief is sought against Defendant Nos.1 and 2, who were not the parties before the DRT. Defendant No.2, who is the Secretary of Defendant No.3-Society has misused his position and in collusion and connivance with the secured creditor and other Defendants played fraud upon the

Plaintiff and sought to deprive her of her property rights. It is stated that DRT or any other authority under the SARFAESI Act has no jurisdiction to try and adjudicate such dispute. Hence, the bar under Section 34 is not applicable.

14. Learned Judge allowed the Notice of Motion and rejected the plaint inter alia on the ground that the Plaintiff had approached the DRT as well as the Deputy Registrar, Co-operative Societies raising objection to the auction proceeding as well as subsequent transfer of the suit premises in favour of Defendant No.4, the successful bidder. The learned Judge held that the Plaintiff is only trying to nullify the effect and operation of the auction proceedings conducted by the Recovery Officer, DRT under the provisions of the SARFAESI Act. Learned Judge therefore held that the bar under Section 34 of the SARFAESI Act is applicable and consequently civil court has no jurisdiction to try the suit.

15. Learned Judge has further observed that the Plaintiff has raised objections over the society's role in the proceedings

before the Deputy Registrar of the Co-operative Court. The learned Judge has also held that the grievance of the Plaintiff is well covered under the definition of 'dispute' in Section 91(1) of the Societies Act, 1960. Learned Judge held that the Court has no jurisdiction to entertain the suit in respect of any dispute referred to in sub-section (1) in view of bar Section 163 of the Maharashtra Co-operative Societies Act, 1960.

16. Mr. Anturkar, learned Senior Counsel submits that Clause (d) of Order VII Rule 11 of CPC would apply only when "from the statement made in the plaint" the suit appears to be barred by any law. He submits that the motion does not specify any such statement in the plaint which would attract bar of any law.

17. Mr. Anturkar, learned senior counsel further submits that the averments in the plaint clearly indicate that Defendant No.2 has misused his position as Secretary of Defendant No.3-Society and misled the bonafide purchasers, who would have offered higher price than offered by the Defendant No.4. He

submits that the suit is not for the purpose of objecting the auction but for prohibiting participation of Defendant in auction. He therefore submits that conditions in Section 17 of the SARFAESI Act, which cloth the jurisdiction to the DRT, are totally absent and hence the bar under Section 34 is not attracted. Learned senior counsel for the Plaintiff submits that the Plaintiff has raised the plea of fraud. He has relied on the decision of the Hon'ble Apex Court in the case of ***Mardia Chemicals Ltd. And Ors. Vs. Union of India And Ors.***, ***(2004) 4 Supreme Court Cases 311***, to contend that the jurisdiction of the Civil Court can be invoked when the action is alleged to be fraudulent.

18. Learned senior counsel for the Plaintiff submits that the dispute is not between the parties referred to in clauses (a) to (d) of Section 91. Furthermore, the dispute is not relating to the business of Defendant No.3-Society and that no relief is sought as against the Defendant No.3-Society. He therefore contends that the suit is not barred under the provisions of Section 163 of the Co-operative Societies Act. Reliance has been placed on the decision of the Apex Court in ***Deccan Merchants Cooperative Bank***

Ltd. Vs. Dalichand Jugraj Jain And Ors., reported in ***(1969) 1 SCR 887.***

19. Per contra, Mr. Narichaniyna, learned Senior Counsel for Defendant No.4 submits that having failed to get any relief from this Court and the Hon'ble Supreme Court, Plaintiff has filed the suit in an attempt to defeat the rights of the secured creditor. He submits that the Plaintiff has only sought permanent injunction against the Defendant Nos. 1 & 2 from participating in the auction sale initiated by the Recovery officer, DRT-1, Mumbai. He submits that the auction has been conducted as a consequence, the reliefs sought against Defendant Nos.1 and 2 have rendered infructuous. He submits that the Plaintiff has sought interim relief against Defendant No.4, without seeking any substantive relief. He therefore contends that the suit as filed is not maintainable.

20. Learned senior counsel further submits that the Plaintiff has not given any particulars in support of allegations of fraud. The pleadings do not satisfy the test of fraud and that fraud is alleged only to get over the bar of Section 34 of the

SARFAESI Act. Reliance has been placed on the decision of the Apex Court in ***Electrosteel Castings Limited v UV Asset Reconstruction Company Limited and Others, (2022) 2 SCC 573.***

21. I have perused the record and considered the submissions advanced by learned senior counsel for respective parties.

22. The only question for consideration in this appeal is whether the jurisdiction of the civil Court to try the suit is barred in view of a bar under Section 34 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). Section 34 of SARFAESI Act reads thus:-

> " **34. Civil court not to have jurisdiction.** - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."

23. There can be no dispute that the bar of the jurisdiction of Civil Court under Section 34 of the SARFAESI Act is only in respect of matters which a Debt Recovery Tribunal or the Appellate Tribunal is empowered to determine under the Act. In ***Mardia Chemicals Ltd.***(supra) the Hon'ble Supreme Court has held that :-

> *"50.......A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.*
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> *51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is*

> *alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages.”*

24. The dictum of the Apex Court is that the jurisdiction of the Civil Court is barred only in respect of matters which the Debt Recovery Tribunal or Appellate Tribunal is empowered to determine under the Act. The jurisdiction of the civil court in such matters can be invoked to a very limited extent, for instance when the action of the secured creditor is alleged to be fraud.

25. In the instant case it is not in dispute that the Plaintiff is the borrower and that the subject matter of the suit is the secured asset in respect of which proceedings were initiated under the provisions of SARFAESI Act. It is also not in dispute that the Plaintiff had unsuccessfully contested these proceedings before the Recovery Officer, DRT, the Appellate Tribunal under the SARFAESI Act as well as this Court and the Hon’ble Supreme Court. The Plaintiff having failed to get any order in her favour, the suit premises was put in auction, under the provisions of the

SARFAESI Act, to recover the outstanding dues. The Plaintiff failed to stall the auction. Even after dismissal of the writ petition No.46 of 2022 by the Division Bench of this Court and rejection of the challenge to the said judgment by the Hon'ble Supreme Court, the Plaintiff filed an appeal No.12 of 2022 before the Debt Recovery Appellate Tribunal, Mumbai with an interim application for stay of impending auction scheduled on 31/03/2022. The said stay application came to be dismissed by order dated 29/03/2022. While dismissing the application for stay, the Appellate Tribunal observed that the borrowers have been swimming against the tide though relentlessly. The Appellate Tribunal observed that borrowers cannot come up with repeated applications and appeals to thwart auction proceedings and that no indulgence can be shown to them since they have been fighting the case since two decades and failed miserably at every corner. The Appellate Tribunal observed that the application for the stay of the auction is yet another ruse to protract the litigation extending the suffering of the judgment debtors and that it cannot be a party in adding to the misery of the decree holders any further.

26. A day after the dismissal of the stay application, the Plaintiff filed the suit alleging fraud. It may be mentioned that Order VI Rule 4 of CPC mandates that the party alleging misrepresentation, fraud, breach of trust, willful default or undue influence, etc. must set forth the particulars of such misrepresentation, fraud, etc. In ***Electrosteel Castings Limited*** (supra) the Hon'ble Supreme Court has observed that :-

> "7.2…*It appears that by a clever drafting and using the words 'fraud' / 'fraudulent' without any specific particulars with respect to the 'fraud', the Plaintiff-Appellant herein intends to get out of the bar under Section 34 of the SARFAESI Act and wants the suit to be maintainable. As per the settled preposition of law mere mentioning and using the word 'fraud '/ 'fraudulent' is not sufficient to satisfy the test of 'fraud'. As per the settled preposition of law, such a pleading using the word 'fraud' / 'fraudulent' without any material particulars would not tantamount the pleading of fraud.*
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> *8. In Bishundeo Narain 1951 SCC 447 in para 22, it is observed and held as under*
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> > *"22. … Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to*

> *amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4, Civil Procedure Code."*

8.1. Similar view has been expressed in Ladli Prashad Jaiswal (1964) 1SCR 270 and after considering the decision of the Privy Council in Bharat Dharma Syndicate Ltd. v. Harish Chandra 1937 SCC OnLine PC 24 , it is held that a litigant who prefers allegation of fraud or other improper conduct must place on record precise and specific details of these charges. Even as per Order VI Rule 4 in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, particulars shall be stated in the pleading. Similarly in Union of India vs. K.C. Sharma & Co.(2020) 15 SCC 2009 it is held that "fraud" has to be pleaded with necessary particulars. In Ram Singh vs. Gram Panchayat Mehal Kalan (1986) 4 SCC 364, it is observed and held by this Court that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances by which the suit is barred by law of limitation."

27. In the instant case, a perusal of the plaint reveals that vide letter dated 12/08/2021 M/s. Phoenix ARC, the secured creditor had informed the Defendant No.3-Society not to entertain any application for transfer of the suit premises in view of the recovery certificate issued in their favour. The Defendant No.3

had rejected the request of the Plaintiff to transfer the suit premises in her exclusive name by referring to the letter addressed by the secured creditor. The plaint refers to the correspondence between the Plaintiff, Defendant No.3-Society and the secured creditor relating to transfer of membership. The Plaintiff has averred that she had made a complaint before the Deputy Registrar of Co-operative Society against Defendant No.3 for not complying with the provisions of Maharashtra Co-operative Societies Act, 1960. The Plaintiff claims that it was pointed out that Defendant No.3-Society does not have any right to entertain the request of the secured creditor when the dispute regarding the membership is pending with the society. The Plaintiff alleged that few members of the managing committee of the Society, in deliberate collusion with the secured creditor, are trying to defeat her rights. The plaint also makes a reference to order dated 08/10/2021 whereby the Deputy Registrar had directed the society not to entertain any transfer application in respect of the suit premises till the grievance of the Plaintiff is resolved.

28. The Plaintiff has averred that she had challenged the

auction sale of the suit premises before the Debt Recovery Appellate Tribunal and High Court and had shown her readiness and willingness to settle the dues and that she had made necessary application to the Recovery Officer and Debt Recovery Tribunal to allow her pay the dues and take over the suit premises.

29. The Plaintiff has disclosed that Recovery Officer -DRT1 had fixed the auction on 31/03/2021. The Plaintiff learnt that Defendant Nos.1 and 2 have paid earnest deposit and are participating in the said auction. She told the Defendant No.2 that he is not entitled to proceed with the auction when she is interested in settling the dues with the secured creditor. It is alleged that the Defendant Nos.1 and 2 have colluded with the other managing Committee members of the Society supporting the secured creditor to defeat her rights. That the Defendant No.2 is misusing his position as a Secretary for his personal gain to defeat her civil and property rights as a bonafide member of the Society.

30. The Plaintiff amended the plaint after the auction was conducted and the Defendant No.4 was declared to be the highest

bidder. In the amended pleadings it is alleged that the Defendant Nos.1 and 2 are the promoters /directors of the Defendant No.4 - Company and that the entire auction process is devised by the secured creditor and the Defendants in collusion with each other, which is a complete sham. It is alleged that the Defendant No.2 deliberately discouraged the other bidder from participating in the bidding and misled various interested bidder by conveying that the suit premises does not have good title. The Plaintiff has alleged that the secured creditor and Defendant Nos.1 and 2 had colluded with each other and Defendant Nos.1 and 2 applied for a loan in Kotak Mahindra Bank Ltd. in order to purchase the property. The Plaintiff has alleged that this is a complete fraud played upon the courts, whose sole intent is to grab the property and make huge profits collectively in due course.

31. The Plaintiff has averred that Defendant Nos.1 and 2 have been misleading and lying before the Court that the Plaintiff owns money when the audit report reveals that Rs.20 crores has been paid in excess to the secured creditor. The plaintiff has stated that the Defendants are guilty of forgery and are liable to

be prosecuted. It is on the basis of these pleadings that the Plaintiff sought a declaration that Defendant Nos.1 and 2 are not entitled to participate in the auction proceedings. The Plaintiff also sought to restrain these Defendants, the directors of the sole bidder(Defendant No.4), from participating in the auction proceedings and further from executing any documents for transfer of the suit premises in their favour or their nominee or to acquire any interest or right in the suit premises.

32. Indisputably, the suit premises were auctioned on 31/03/2022 wherein the Defendant No.4 was declared to be the highest bidder. The sale of the suit premises was confirmed in favour of Defendant No. 4 on 10.05.2022. The Defendant No. 4 paid stamp duty on the Sale Certificate on 17.05.2022. The Sale Certificate was registered with the office of the Sub-Registrar of Assurances on 23.05.2022. The title and property in respect of the suit premises has passed in favour of Defendant No.4-the auction purchaser.

33. It is true that the Plaintiff has not challenged the

validity of the auction proceedings or the orders passed by the authorities under the SARFAESI Act. The Plaintiff has also not sought any substantive relief against Defendant No.4, who is the highest bidder. However, a plain reading of the averments and the prayers in the plaint would indicate that the Plaintiff, under the guise of raising a membership dispute with the Defendant No.3 - Society, has in fact once again attempted to stall the auction proceedings conducted by the Recovery Officer under the provisions of SARFAESI Act. Though the Plaintiff has alleged fraud, the pleadings in this regard are vague, ambiguous and do not meet the requirement of Order VI Rule 4 of CPC and/or do not satisfy the test of fraud. The allegations of fraud and collusion is nothing but clever and ingenious drafting to get over the bar of Section 34 of the SARFAESI Act and to prevent the auction and the auction having been concluded, to prevent the Defendant No.4-auction purchaser from taking possession of the suit premises. The learned Judge was therefore perfectly justified in rejecting the plaint under Order VII Rule 11 of CPC.

34. It is also pertinent to note that the Plaintiff has not

stopped at filing the suit but after unsuccessfully contesting the recovery proceedings for over a decade, lodged a complaint against the secured creditor alleging forgery and fabrication of documents. This Court by order dated 26/04/2022 in Writ Petition No.7297 of 2022 directed the concerned police inspector not to take any action or coercive steps in respect of summons issued to the secured creditor. The challenge to this ad-interim order by the Plaintiff has been dismissed by the Hon'ble Supreme Court in Special Leave Petition (criminal) diary Nos.13227/2022 with liberty to pursue the appropriate remedies in accordance with law before the High Court. The Plaintiff thereafter filed interim application in Writ Petition No.7297 of 2022. A perusal of order dated 02/05/2022 reveals that in the said Writ Petition Plaintiff had made an attempt to pray for directions in the nature of not to create third party interest over the property in question. Aggrieved by rejection of such relief, the Plaintiff filed a Special Leave Petition before the Supreme Court, which was allowed to be withdrawn.

35. On 09/05/2022 one Chetan Joshi, who claimed to be

the family friend of the Plaintiff filed an application before the Recovery Officer showing his interest in purchasing the suit premises, which was already auctioned on 31/03/2022. The said application was dismissed by the Recovery Officer holding that the bidder i.e. the Defendant No.4 herein had already deposited the entire sale proceeds.

36. On 10/05/2022 the Plaintiff filed an application for stay of recovery proceedings alleging that signature on mortgage deed and letter of guarantee is forged and fabricated. While dismissing this application, the Recovery Officer has observed that the Plaintiff had tried her best to delay the recovery proceedings. He had observed that the mortgage was validated vide judgment dated 24/07/2005 and that the validity of the mortgage was never challenged before. This order was challenged before the Division Bench of this Court in Writ Petition No.6252 of 2022, which came to be dismissed on 25/05/2022.

37. The subsequent proceedings filed before different authorities after filing of the suit, are not relevant to decide the

issue of jurisdiction. Nevertheless, these proceedings show that the Plaintiff has left no stone unturned in attempting to prevent the Defendant No.4 from taking possession of the suit premises purchased in the auction proceedings. Filing of the present suit is one of such futile attempts in preventing Defendant No.4 from taking possession of the suit premises. This is nothing but sheer abuse of process of law.

38. Under the circumstances and in view of discussion supra, I do not find any merit in the appeal and hence the same is dismissed with costs of Rs. 5,00,000/-. The civil application (s) stand (s) disposed of in view of dismissal of the appeal.

39. Learned Senior Counsel for Defendant No. 4 states that till date, the Plaintiff has not paid costs imposed by the various Courts. He submits that considering the conduct of the Plaintiff, it is unlikely that the Plaintiff would pay costs as ordered. Suffice it to say that the Defendant No.4 is entitled to recover the costs in accordance with law.

40. During the pendency of the appeal, learned senior counsel for Defendant No.4 had made a statement that the Defendant No.4 would not act on the order dated 01/06/2022 till the next date. Since the appeal is now dismissed, the Receiver appointed by the DRT is directed to comply with the order dated 01.06.2022 passed by the Recovery Officer of DRT-1.

(SMT. ANUJA PRABHUDESSAI, J.)