

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

CIVIL REVISION APPLICATION NO.37 OF 2022

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State Bank of India and Ors.

..Applicants

Versus

Shri. Bhat Mahabaleshwara Edakkanan Sham
and Ors.

..Respondents

Mr. Drupad S. Patil a/w Suyash Sule, for the Applicants.

Mr. Ashutosh Gole a/w Avik Sarkar, Amit Nikam & Kamesh Gadia,
for the Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 27th APRIL, 2022

PC.

1. Heard.

2. The order impugned is passed below Exh.26 in Special Civil Suit No.295 of 2017 preferred by the respondent/plaintiff seeking cancellation of sale certificate issued by the applicants/defendants herein.

3. The contentions of the respondent/plaintiff are, the observations that at the behest of the respondent/plaintiff proceedings under Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short) are pending before Debt Recovery Tribunal is an incorrect observation, as no such proceedings are pending.

4. Apart from above, the Trial Court while dealing with the prayer of the applicants under Order VII Rule 11 of the CPC has considered the prayer clause in the said application which speaks of inviting the findings on preliminary issue as to maintainability of the suit having regard to the provisions of Sections 17 and 34 of the SARFAESI Act. While dealing with the said prayer, Trial Court has not recorded a finding as to whether the suit claim is hit by the provisions of Sections 17 and 34 of the SARFAESI Act so as to warrant rejection of plaint rightly so in view of contents and prayer in application Exh.26. .

5. That being so and in view of the consent extended by the plaintiff, the order impugned dated 30th October, 2021 passed below Exh.26 is restored to the file of the Trial Court with directions to decide the same in the light of embargo under Sections 17 and 34 of the SARFAESI Act, as has been claimed by the applicants within the scope of Order VII Rule 11 of the CPC. If so required, the parties hereto shall be at liberty to file additional pleadings in support of application Exh.26.

6. Let the aforesaid pleadings be completed within a period of four weeks from today.

7. The Trial Court shall make every endeavour to decide the application expeditiously.

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8. Needless to clarify that if such prayer is canvassed by the applicants, same be dealt with in accordance with law and without being influenced by the order passed herein.

9. The application as such stands disposed of in above terms.

[NITIN W. SAMBRE, J.]