**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

**APPEAL FROM ORDER NO.8 OF 2022**

Mrs. Smita W/o Sunil Wadalkar,
Aged about 55 years, Occupation:
Housewife, Resident of Shaniwara,
Rajputpura, Near Kalanka Mata Square,
Akot, Tahsil Akot, District Akola. **...APPELLANT**

**---VERSUS---**

1. Shri Jitendra s/o Vasantrao Kulkarni,
   Aged about 52 years, Occupation:
   Business, Resident of 6-B, P&T Colony,
   Ram Nagar, Telengkhedi, Nagpur
2. Mrs. Rasika W/o Hemant Kulkarni,
   And about 53 years, Occupation:
   Housewife, Resident of "Safalya", 171,
   Adarsh Nagar, Near D-Mart, Jalgaon
   (Khandesh), District Jalgaon.
3. Mrs. Aparna W/o Avinash Vekhande,
   Aged about 56 years, Occupation :
   Housewife, Resident of Shreyas
   Apartments, Behind Vidyadeep Hall,
   Laxmi Nagar, Wardha, District Wardha.
4. Mrs. Jyoti W/o Sunil Mahabal,
   Aged about 59 years, Occupation:
   Housewife, Resident of “Samarth”,
   Bhende Layout, Nagpur.
5. Canara Bank,
   Through its Authorized Officer, Regional
   Office No.1, CRM & R Section, First Floor,
   “Chandak Bhavan”, North Ambazari Road,
   Shankar Nagar, Nagpur. **...RESPONDENTS**

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Shri S.S. Ghate and Shri A.K. Choube, Advocates for the appellant.
Shri V.K. Kolte, Advocate for the respondent no.5.

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**CORAM : AMIT B. BORKAR, J.**
**RESERVED ON : 10th JUNE, 2022.**
**PRONOUNCED ON : 15th JUNE, 2022.**

**JUDGMENT :**

1. The appellant/original plaintiff whose application under Order XXXIX Rule 1 and 2 restraining a secured creditor from proceeding with auction under the provisions of Sections 13 and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") is approaching this Court by way of the present appeal.

2. The facts relevant for the adjudication of the issue involved are as under:

a) The appellant/original plaintiff has filed Regular Civil Suit No.223 of 2022 against co-sharers and respondent no.5-Bank seeking relief of declaration as regards will-deed allegedly executed on 06.08.2005 and for a decree of partition and separate possession. In addition, a permanent injunction is sought against co-sharers and secured creditor/defendant no.5 from creating third-party interest in the subject matter of the suit. In the said suit, the appellant applied a temporary injunction restraining co-sharers and the secured creditor from creating third-party interest either by themselves or acting on their behalf in relation to the subject matter of the suit.

b) The secured creditor/defendant no.5 contested the said suit and application by filing its written statement and say. Defendant no.5, by way of said reply, pointed out that the suit against defendant no.5 is barred by Section 34 of the SARFAESI Act. The secured creditor had invoked the provisions of the SARFAESI Act by issuing action under Section 13(2) and 13(4) of the Act against which the defendant no.1/original borrower approached the Debt Recovery Tribunal but could not get favourable relief. It is also stated that the borrower approached this Court by way of Writ Petition No.433 of 2022 but could not get favourable relief. It is therefore stated that no relief of injunction can be granted against the secured creditor by this Court.

c) After hearing both sides rejected the application for a temporary injunction, the learned Court held that the plaintiff has the remedy to approach the Debt Recovery Tribunal challenging the auction and therefore rejected the said application.

3. Being aggrieved by the said order, the appellant/original plaintiff approached this Court by present appeal.

4. I have heard Shri S.S. Ghate, learned Advocate for the appellant and Shri V.K. Kolte, learned Advocate for the respondent no.5.

5. Shri S.S. Ghate, learned Advocate for the appellant, submitted that in view of the judgment of this Court in the case of **Bank of Baroda Vs. Gopal Shriram Panda and others**[1] suit for partition challenging the action of a secured creditor is maintainable since only Civil Court has jurisdiction to decide the suit for partition. He relied on judgment in the case of **Mohan Lal & Anr. Vs. Dwarka Prasad & Ors.**[2] to urge that Civil Court has jurisdiction to entertain a suit restraining the secured creditor from proceeding with other measures under SARFAESI Act. He also relied on the judgment in the case of **The Authorised Officer Vs. Nandini** rendered by the High Court of Madras to urge that the Civil Court has jurisdiction to entertain the suit for partition,

1 Civil Revision Application No.29/2011
2 AIR 2007 Raj 129

particularly when the said suit is filed by neither guarantor nor borrower. The Advocate for the appellant, in support of his submission, relied on **Indian Bank Vs. ABS Marine Products (P) Ltd.**[1]**Padma Ashok Bhatt Vs. Orbit Corporation Ltd.& Ors.**[2]**, Tajunissa & Anr. Vs. Vishal Sharma & Ors**[3] **and Frontline Corporation Ltd. Vs. Punjab and Shind Bank**[4]

6. *Per contra*, Shri V.K. Kolte, learned Advocate for the respondent no.5, submitted that the respondent no.5 is not concerned with *interse* dispute between the plaintiff and defendant, but Civil Court has no jurisdiction to grant relief which has the effect of restraining the secured creditor from enforcing measures provided under Section 13(4) of the SARFAESI Act. He submitted that the Civil Court has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under Section 13(4) of the SARFAESI Act as those matters come within the jurisdiction of the Debt Recovery Tribunal.

7. I have carefully considered the submissions of both sides. On careful perusal of the impugned judgment, in my opinion, the learned trial Court was perfectly justified in rejecting the application for a temporary injunction restraining the secured

[1] (2006) 5 SCC 72
[2] 2017(6)Mh.L.J. 102
[3] CS(OS) 262/2019 (Delhi High Court)
[4] 2018(1) Civil LJ 2013

creditor from proceeding with the measures provided under Section 13(4) of the SARFAESI Act as the jurisdiction of the Civil Court is barred in view of Section 34 of the said Act. The Apex Court, in the case of **SBI Vs. M/s. Allwyn Alloys Pvt. Ltd. and Ors**[1] in paragraph 8 observed as under:

> *"8. After having considered the rival submissions of the parities, we have no hesitation in acceding to the argument urged on behalf of the Bank that the mandate of Section 13 and, in particular, Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the 2002 Act"), clearly bars filing of a civil suit. For, no civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under this Act to determine and no injunction can be granted by any Court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act."*

8. The Apex Court, in the case of **State Bank of Patiala Vs. Mukesh Jain and Ors.**[2] in paragraphs 16 to 19 observed as under:

> *"16. In view of a specific bar, no Civil Court can entertain any suit wherein the proceedings initiated under Section 13 of the Act are challenged. The Act had been enacted in 2002, whereas the DRT Act had been enacted in 1993. The legislature is presumed to be aware of the fact that the*

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1 2018(8) SCC 120

2 MANU/SC/1436/2016

*Tribunal constituted under the DRT Act would not have any jurisdiction to entertain any matter, wherein the subject matter of the suit is less than Rs.10 lakh.*

*17. In the aforestated circumstances, one will have to make an effort to harmonize both the statutory provisions. According to Section 17 of the Act, any person who is aggrieved by any of the actions taken under Section 13 of the Act can approach the Tribunal under the provisions of the DRT Act.*

*18. In normal circumstances, there cannot be any action of any authority which cannot be challenged before a Civil Court unless there is a statutory bar with regard to challenging such an action. Section 34 specifically provides the bar of jurisdiction and therefore, the order passed under Section 13 of the Act could not have been challenged by respondent no.1 debtor before any Civil Court.*

*19. In the aforestated circumstances, the only remedy available to respondent no.1 debtor can be to approach the Tribunal under the provisions of the DRT Act read with the provisions of the Act. But, one would feel that as per Section 1(4) of the DRT Act, provisions of the DRT Act would not apply where the amount of debt is less than Rs.10 lakh."*

9. In the case **Jagdish Singh vs Heeralal & Ors**[1] the Apex Court while considering the maintainability of civil suit seeking relief of partition in paragraphs 24 and 25 has observed as under:

*"24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured*

1 2014(1) SCC 479

*creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.*

*25.We are of the view that the civil court jurisdiction is completely barred, so far as the "measure" taken by a secured creditor under sub-section (4) of Section 13 of the*

*Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal. to determine as to whether there has been any illegality in the "measures" taken. The bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondent Nos.6 to 8 have been crystalised, before creating security interest in respect of the secured assets."*

10. The Apex Court in the case of **M/S. Sree Anandhakumar Mills Ltd. vs M/s. Indian Overseas Bank and Ors**[1] was considering the legality of the order passed by the High Court of Madras holding civil suit for partition and injunction maintainable notwithstanding the provisions of Section 34 of SARFAESI Act. The Apex Court by holding that suit for partition not maintainable observed in paragraph 4, which reads thus:

*"4. The matter need not engage the Court in any great detail as in view of the law laid down by this Court in Jagdish Singh vs. Heeralal and others1 it would clear and evident that the suit filed by the second respondent (i.e. O.S. No.106 of 2009) is not maintainable. In Jagdish Singh (supra) this Court after an elaborate consideration of the provisions of the SARFAESI Act, particularly, Section 2(zf), 2(zc), 13(1), 17, 18 and 34, took the view, on almost similar facts, that a suit for partition would not be maintainable in a situation where proceedings under the SARFAESI Act had been initiated. It was also held that the remedy of any person aggrieved by the initiation of*

[1] 2019(14) SCC 788

*proceedings under the SARFAESI Act lies under Section 1 (2014) 1 SCC 479 17, which provides for an efficacious and adequate remedy to a party aggrieved. Paragraph 24 of the report in Jagdish Singh (supra) which make the above position clear may be usefully extracted below:*

> *"24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section*
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> *17. The opening portion of Section 34 clearly states that no civil court shall have the jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression "in respect of any matter" referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently, if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act*

> *<u>because those matters fell within the jurisdiction of the DRT and the Appellate</u> Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well."*

11. The upshot of the position of law crystallized by the judgments of the Apex Court is that any person aggrieved against any measures under the provisions of the SARFAESI Act is entitled to approach the Debt Recovery Tribunal or Appellate Tribunal, and Civil Court has no jurisdiction to entertain such matters. SARFAESI Act overrides other laws in terms of Section 35; if they are inconsistent with the provisions of the Act, which takes relief is sweep Section 9 as well. It is not in dispute that in the present case, respondent no.5 has proceeded against secured assets of the borrower, i.e. respondent no.1. I am, therefore, of the considered view that the learned trial Court was justified in rejecting the application for a temporary injunction against the respondent no.5-secured creditor.

12. Insofar as the judgment in the case of **Indian Bank**(supra) relied on the appellant is concerned, the issue involved was regarding the maintainability of the suit by a borrower against the bank was for recovery of damages against

the bank, not for non-payment of sanctioned loan. In the facts of said case, the Apex Court held that the borrower's suit was independent, and the borrower could not be compelled to make his claim against the bank by counterclaim. Therefore, the said judgment does not apply to the facts of the present case.

13. In the next judgment in the case of **Bank of Baroda** (supra), this Court was concerned with the maintainability of the suit of partition in civil Court. The Division Bench held that the jurisdiction of the Civil Court to decide all matters of civil nature but excluding those to be tried by the Debt Recovery Tribunal under Sections 13 and 17 of the SARFAESI Act in relation to enforcement of security interest of the secured creditor. In the facts of the present case, the respondent no.5 is enforcing his right under Sections 13 and 14 of the SARFAESI Act and therefore, in my view, the law laid down by the Apex Court in the cases of **State Bank of Patiala**, **SBI**, **Jagdish Singh and M/S. Sree Anandhakumar Mills** (supra) injunction could not have been granted.

14. Insofar as the rest of the judgments relied upon by the appellant are concerned, in my view, in view of the authoritative position of law laid down by the Apex Court in the cases of **State Bank of Patiala**, **SBI**, **Jagdish Singh and M/S. Sree Anandhakumar**

**Mills** (supra), I am of the opinion that the Civil Court could not have granted an injunction restraining the secured creditor from enforcing measures under Section 13 of the SARFAESI Act. Therefore, there are no merits in the appeal. The appeal is **dismissed**. No costs. Pending civil application, if any, stands disposed of.

**JUDGE**

At this stage, the learned Advocate for the appellant seeks extension of interim relief. For the reasons stated in aforesaid paragraphs, no case for extension of interim relief is made out. Therefore, prayer of learned Advocate is rejected.

**JUDGE**

*Wagh*