

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 65 OF 2023
with
INTERIM APPLICATION NO.791 OF 2023

Indiabulls Commercial Credit Ltd. ... Appellant
Versus
Punit S. Goenka & Anr. ... Respondents

Mr. Sharan Jagtiani, Senior Advocate with Mr. Rohan Savant with Ms. Krushi Barfiwala, Ms. Sanaea Laskari i/b. Parinam Law Associates, for the Appellant.

Mr. Zal Andhyarujina, Senior Advocate with Ms. Maithili Parekh with Tasneem Zariwala with Mr. Saurabh Nikalje i/b. Vidhii Partners, for Respondent No.1.

CORAM: G. S. KULKARNI, J.

DATED: FEBRUARY 09, 2023

PC.

- 1.** Not on board. Upon mentioning taken on board on a praecipe as moved on behalf of the appellant.
- 2.** Heard Mr. Jagtiani, learned Senior Counsel appearing for the petitioner/defendant No.1 and Mr. Andhyarujina, learned Senior Counsel for respondent No.1/plaintiff. None appears for respondent No.2.
- 3.** This appeal from order is directed against an order dated 21 December 2022 passed by the learned Civil Judge (Senior Division), Alibag, whereby the ad-interim order was passed on the Exhibit 5 and Exhibit 13 applications filed by respondent No.1/plaintiff.
- 4.** Mr. Jagtiani has taken strong objection to the nature of the order

passed by the learned Civil Judge Senior Division, Alibag. His contention is that the impugned order directing the status quo, in fact, amounts to nullify the order passed by the Debt Recovery Tribunal and the consequent steps taken by the appellant/plaintiff under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Securitisation Act'). He submits that in view of clear position in law, such order could not have been passed and more particularly, when the appellant/defendant no.1 had already taken recourse to a remedy under the Securitisation Act, by approaching the tribunal, and the orders thereon are already passed. It is his submission that any contention on the mortgage deed are in the teeth of the provisions of the Securitisation Act and the proceedings adopted therein. Mr.Jagtiani has submitted that the suit itself was barred by the express provisions of Section 34 of the Securitisation Act which provides that 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. It is also his submission that all these vital considerations have missed the attention of the Court in passing the ad-interim order, which according to him, is quite casual ad-interim order.

5. Mr.Andhyrujina, learned Counsel for respondent No.1/plaintiff would contest such submission as made by Mr.Jagtiani. He submits that the appeal itself can be taken up for hearing after the pleadings on the appeal are completed. I do not agree.

6. Having heard learned Counsel for the parties and having perused the impugned order which is a short ad-interim order, in my opinion, considering the complexion of the case, it would be appropriate that a reply to the said applications (Exhibit 5 and Exhibit 13) be filed by the appellant/defendant No.1 within a period of one week from today before the learned Civil Judge, Senior Division, Alibag. Once such reply is filed, the learned Civil Judge, Senior Division, Alibag is directed to take up the these applications for adjudication and decide the same on their own merits and without being influenced by the impugned order, as expeditiously as possible and in any event within a period of two weeks from the reply being filed by the appellant/defendant No.1.

7. All contentions of the parties on such proceedings are expressly kept open.

8. It is clarified that the impugned ad-interim order not being disturbed, ought not to be construed to be any approval of the impugned order by this Court or any opinion on any of the contentions of the parties. Learned Civil Judge, Senior Division, Alibag shall decide the proceedings strictly on merits, considering the rival contentions of the parties.

9. Disposed of in the above terms. No costs.

10. In view of disposal of the Appeal from order, pending interim application would not survive, the same is disposed of.

(G. S. KULKARNI, J)