

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

**CIVIL REVISION APPLICATION NO. 05/2021
AND
CIVIL REVISION APPLICATION NO. 04/2021**

CIVIL REVISION APPLICATION NO. 05/2021

- 1) **The Regional Manager,**
Union Bank of India, Ashirwad Complex,
Opp. Kalpana Bldg., Central Bazar Road,
Ramdaspath, Nagpur
- 2) **The Assistant General Manager,**
Union Bank of India, Branch at Civil Lines,
Ravindranath Tagore Road, Nagpur

...APPLICANTS
(ORG. DEFENDANTS)

.. VERSUS ..

- 1) **M/s Punya Coal Road Lines,**
A proprietorship concern,
Plot No. 50-51, Baji Prabhu Nagar,
Near Sarveshwar Temple, Ramnagar,
Nagpur 440033
- 2) **Yugpradhan S/o Pannalal Mehta,**
Aged 64 years, Occ. Business,
R/o. 50-51, Baji Prabhu Nagar,
Behind Sarveshwar Temple,
Nagpur 33
- 3) **Smt. Ramila W/o Yugpradhan Mehta,**
Aged 57 years, Occ. Business,
Both R/o. 50-51, Baji Prabhu Nagar,
Behind Sarveshwar Temple, Nagpur 33

- 4) **M/s Nifty Chemicals Pvt. Ltd.,**
15-B, Pushpakunj Commercial Complex
Farm Land, Central Bazar Road, Ramdaspath,
Nagpur – 10, Through its Directors

...RESPONDENTS
(ORG. PLAINTIFFS)

AND

CIVIL REVISION APPLICATION NO. 04/2021

- 1) **The Regional Manager,**
Union Bank of India, Ashirwad Complex,
Opp. Kalpana Bldg., Central Bazar Road,
Ramdaspath, Nagpur
- 2) **The Assistant General Manager,**
Union Bank of India, Branch at Civil Lines,
Ravindranath Tagore Road, Nagpur

...APPLICANTS
(ORG. DEFENDANTS)

.. VERSUS ..

- 1) **M/s Ashul Impex Pvt. Ltd.,**
A Private Limited Company registered
under the Companies Act,
15-B, Pushpakunj Commercial Complex
Farm Land, Central Bazar Road, Ramdaspath,
Nagpur – 10, Through its Directors
- 2) **Yugpradhan S/o Pannalal Mehta,**
Aged 64 years, Occ. Business,
R/o. 50-51, Bajji Prabhu Nagar,
Behind Sarveshwar Temple, Nagpur 33

- 3) **Smt. Ramila W/o Yugpradhan Mehta,**
Aged 57 years, Occ. Business,
Both R/o. 50-51, Baji Prabhu Nagar,
Behind Sarveshwar Temple, Nagpur 33
- 4) **M/s Nifty Chemicals Pvt. Ltd.,**
15-B, Pushpakunj Commercial Complex
Farm Land, Central Bazar Road, Ramdaspath,
Nagpur - 10, Through its Directors

...RESPONDENTS
(ORG. PLAINTIFFS)

Shri C.S. Kaptan, Sr. Advocate a/b Shri S.D. Ingole, Adv
for the Applicants
Shri Anand Jaiswal, Sr. Advocate a/b Shri J.M. Gandhi,
Adv for the Respondents

CORAM : SMT. M.S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT: 04/05/2023

DATE OF PRONOUNCING JUDGMENT:- 05/06/2023

JUDGMENT

. Heard.

(2) Since the subject matter of both the Revision Applications are same, both are disposed of by common judgment.

(3) Since the Civil Revision Application No. 05/2021 is treated as lead Revision Application, the facts and contentions of the said Revision Application are set out hereunder for proper adjudication of the issue involved in both the Revision Applications.

(4) The present Revision Applications is filed by original Defendant - Union Bank of India being aggrieved by the order dated 11/11/2020 passed by the learned 10th Joint Civil Judge, Senior Division, Nagpur below Exhibit 23 in Special Civil Suit No.69/2020.

(5) The brief facts for filing of present Revision Application are as under:-

The Applicant No.1 is the Regional Manager, original Defendant No. 1 and Applicant No. 2 is Assistant General Manager of Union Bank of India - Defendant No.2. The Respondents herein are the original Plaintiffs in the Special Civil Suit No.69/2020. It is submitted that Respondent No.1 is a proprietary concern of Respondent No.2.

Respondent No.4 is a Company registered under the Companies Act. Respondent Nos. 2 and 3 are the Directors and Promoters of Respondent No.4. It is the case of the Applicants herein that Respondent No.1 concern had availed various credit facilities from the Applicant - Bank since the year 2010 and the same were renewed and enhanced time to time and it was lastly sanctioned, renewed and enhanced to the extent of Rs.40 Crores (Rupees Forty Crores) by way of sanction letter dated 24/05/2015. In order to secure the said credit facilities, the Respondents had executed various security documents and the loan agreements in favour of Bank and also secured the said credit facilities by mortgaging their immovable properties by executing a simple Registered Mortgage dated 26/05/2015 and thereby created the security interest of the Applicant - Bank over their immovable properties. After availing and utilizing the aforesaid credit facilities of Rs.40 Crores (Rupees Forty Crores), the Respondents had committed default in operating the loan accounts as per the terms and conditions of the sanction letter and loan

agreements. As a result of which, the loan accounts of the Respondent No.1 became N.P.A. as on 30/11/2017, as per directives and guidelines issued by Reserve Bank of India and the amount of Rs.20,36,06,163.24 was due and outstanding against the Respondents as on 30/11/2017. Left with no alternative, the Bank initiated the action for the recovery of its outstanding dues by exercising rights available against the Respondents under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"). Accordingly, the Bank issued a demand notice under Section 13(2) of the SARFAESI Act to the Respondents on 27/12/2017 and thereby called upon the Respondents to make outstanding payment within a period of 60 days. As there was no compliance of the said notice, the Applicant - Bank moved an Application under Section 14 before the District Magistrate Nagpur for grant of assistance for taking the physical possession of the mortgaged properties. The said Proceedings are pending before the District Magistrate,

Nagpur. The Applicant - Bank, apart from this Application, filed a recovery suit before the Debts Recovery Tribunal, Nagpur for recovery of Rs.19,67,50,000/- against the Respondents vide original Application LODG No.871/2019 which is pending before the Debts Recovery Tribunal, Nagpur.

(6) It is submitted that the outstanding amount of Rs.20 Crores against Respondents is the public money and the Applicant - Bank wants to recover it by adopting the legal and proper procedure as laid down under the provisions of SARFAESI Act. After initiation of the said recovery Proceedings, the Respondents have filed a Suit for declaration, permanent injunction and damages against the Applicant - Bank before the learned 10th Joint Civil Judge, Senior Division, Nagpur vide Special Suit No.69/2020. The Suit is filed alleging that Bank has acted illegally as against the Respondents by classifying the loan account of Respondent No.1 as N.P.A. as on 30/11/2017. It is further alleged that the Applicant - Bank has committed string of

illegalities in their dealings and operations with the Respondents and contravened the specific Reserve Bank of India's Circulars. The Bank has contravened the guidelines on Fair Practices Code for lenders and has also contravened the specific Fair Lending Practices Code. It is also alleged in the Suit that Applicant - Bank has obtained signatures on numerous blank documents during these years. It is alleged that Respondents have caused acute prejudice, loss and harassment. It is further specific allegation that inspite of specific request made by them to the Bank to restructure the loan account, the Bank has not restructured the same. It is alleged by the Respondents/Plaintiffs in the Suit that Bank has committed illegalities in classifying their loan account as N.P.A. as well as not sanctioned their proposal for restructuring of loan account and not granting them the permission of holding on operation in the loan account, therefore, they had caused damages and hence Rs.10 Lacs is claimed by the Plaintiffs against Applicant - Bank towards damages.

(7) Shri C.S. Kaptan, learned Senior Advocate for the Applicants submitted that for the relief claimed, the Civil Court has no jurisdiction to entertain the Suit. It is pointed out that in view of the Section 13(2) of the SARFAESI Act after the debt is classified by the Secured Creditor as non-performing asset, the Secured Creditor may require the borrower by notice in writing to discharge in full his liabilities to the Secured Creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4). Section 13(3-A) entitles the borrower after receipt of notice to make any representation or raise any objection and the Secured Creditor shall consider such Representation or objection. If the Secured Creditor comes to the conclusion that such Representation or objection is not acceptable or tenable, he shall communicate within 15 days of receipt of such Representation or objection reasons for non acceptance of the Representation or objection to the borrower.

(8) Learned Senior Advocate for the Applicants vehemently submitted that in view of the Section 34, the jurisdiction of the Civil Court is barred. There is no fabrication of any document as alleged nor any contravention of any Rule. Once the borrower's loan account classified as non-performing asset it amounts to initiation of action under the SARFAESI Act. There is no whisper about notice under Section 13(2) by the Plaintiff. By the said notice, the loan account of the Respondents have been classified as N.P.A. and therefore the Applicant – Bank had initiated the action for recovery of its dues payable by the Respondents by exercising the powers available to it under the provisions of the SARFAESI Act.

(9) Learned Senior Advocate for the Applicants Shri C.S. Kaptan, in support of his contentions, relied on the following judgments:-

(a) **Mardia Chemicals Ltd & others vs. Union of India & others (2004) 4 SCC 311;**

- (b) **Electrosteel Castings Limited vs. UV Asset Reconstruction Company Limited & others (2022) 2 SCC 573;**
- (c) **C.S. Ramaswamy vs. V.K. Senthil & others in Civil Appeal No. 500/2022 2022 LiveLaw (SC) 822;**
- (d) **Punjab National Bank, Ballarpur vs. Shaikh Jumman Shaikh Guljar 2010(4) Mh.L.J. 133;**
- (e) **Jagdish Singh vs. Heeralal & others (2014) 1 SCC 479;**
- (f) **Sree Anandhakumar Mills Limited vs. Indian Overseas Bank & others (2019) 14 SCC 788;**
- (g) **Allahabad Bank, Kolkata vs. Hemantkumar S/o Omprakash Malpani 2017(6) Mh.L.J. 252;**
- (h) **Yuth Development Co-operative Bank Ltd., Kolhapur vs. Balasaheb Dinkarrao Salokhe & others 2008(5) Mh.L.J. 326;**
- (i) **Saleem Bhai & others vs. State of Maharashtra & others (2003) 1 SCC 557;**
- (j) **Sree Surya Developers and Promoters vs. N. Sailesh Prasad & others (2022) 5 SCC 736;**
- (k) **Church of Christ Charitable Trust and Educational Charitable Society represented by its**

Chairman vs. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee (2012) 8 SCC 706; and

(l) ICICI Bank Ltd. Mumbai vs. Anil Printers Ltd. & another 2016(1) Mh.L.J. 111;

(10) Learned Senior Advocate Shri Anand Jaiswal for the Respondents drawn my attention to the various communications from 2014 to 2019 by which repeated requests made to the Bank for enhancement of loan, for allowing holding on operations, for issuing fresh Bank Guarantee, for holding encashment of Bank Guarantee and request to reduce the rate of interest, request to revert in loan account to the standard category by removing the same from N.P.A. classification. Some queries were raised which were duly complied, however, no decision informing the rejection of Representation or request is being communicated to the Plaintiffs. It is further submitted that if timely action on the part of the Defendant would have been taken and if the Defendant would have acceded to the genuine demand of the Plaintiffs in time, the

Plaintiffs would not have suffered financial loss. The Defendant – Bank acted totally contrary to the guidelines issued by the RBI as well as the Fair Lending Practice Code. It is submitted that the Defendant – Bank acted unethically, unfairly and destructive to the interest of the parties, committed various irregularities and fabricated the documents.

(11) Shri Anand Jaiswal, learned Senior Advocate for the Respondents, in support of his contentions, relied on the following judgments:-

- (a) **P.V. Guru Raj Reddy represented by GPA Laxmi Narayan Reddy & another vs. P. Neeradha Reddy & others (2015) 8 SCC 331;**
- (b) **Saleem Bhai & others vs. State of Maharashtra & others (2003) 1 SCC 557;**
- (c) **Pawan Kumar vs. Babulal since deceased through legal representatives & others (2019) 4 SCC 367;**
- (d) **Madhav Prasad Aggarwal & another vs. Axis Bank Limited & another (2019) 7 SCC 158;**

(e) Bank of Baroda vs. Gopal Shriram Panda & another in Civil Revision Application No. 29/2011 and connected matters

(12) Shri J.M. Gandhi, learned Counsel for the Respondents reiterated what learned Senior Advocate Shri Jaiswal submitted. In addition to this, he vehemently contended that in the Complaint, it is clearly mentioned how the Bank acted illegally. The entire Suit is based on breach of Contract. It is his contention that many requests and communications placed on record whereby the Plaintiffs requested the Defendants – Bank Authorities to enhance the loan. Request was also made for allowing holding on operation, for reducing the rate of interest in the backdrop of the Covid pandemic. Not only this, all the queries raised by the Defendant – Bank were duly answered and satisfied. Even after classifying of loan account as NPA, repayment were made by M/s Puniya Coal Roadlines to the Bank. As per the SARFAESI Act, after receipt of notice, the borrower is entitled to make Representation or raise

objection and which has to be decided by the Secured Creditor by assigning the reasons thereof. However, the Defendant – Bank has not taken any decision nor communicated to the Plaintiffs. The Defendant – Bank has committed breach of RBI's Circulars as well as the guidelines for Fair Practice Code for lenders. As such, the jurisdiction lies with the Civil Court as the Plaintiffs are claiming damages and injunction as well as the declaration. The DRT has no jurisdiction to grant any relief of declaration or damages.

(13) Shri J.M. Gandhi, learned Counsel for the Respondents, in support of his contentions, relied on the following judgments:-

(a) **Mardia Chemicals Limited vs. Union of India (2004) 4 SCC 311;**

(b) **Nahar Industrial Enterprises Limited vs. Hong Kong & Shanghai Banking Limited (2009) 8 SCC 646;**

- (c) **Mrs. Leelamma Mathew vs. M/s Indian Overseas Bank & others 2022 LiveLaw (SC) 973;**
- (d) **Shakti Bhog Food Industries Limited vs. Central Bank of India (2020) 17 SCC 260;**
- (e) **State Bank of India vs. Sagar Deshmukh & others 2011 (3) Mh.L.J. 71;**
- (f) **Padma Bhatt vs. Orbit Corporation 2017(6) Mh.L.J. 102;**
- (g) **Venture Global Engineering vs. Satyam Computer Services Limited (2010) 8 SCC 660;**
- (h) **Sudhir Mehta vs. C.B.I. (2009) 8 SCC 1;**
- (i) **Assistant Conservator of Forest vs. State of Maharashtra & another in C.R.A. No. 140/2022;**
- (j) **Mayar Ltd. vs. Owners & others (2006) 3 SCC 100;**
- (k) **Bank of Baroda vs. Gopal Panda & another in C.R.A. No. 29/2011;**

(14) I have heard both the parties at length, perused the impugned order, contents of the Complaint and considered the citations relied on by both the parties.

(15) There is no dispute over this settled law position that while deciding the Application under Order VII Rule 11, only the contents in the Plaint need to be looked into. Learned Senior Advocate for the Applicants took me through the entire Plaint and pointed out that there is no pleading that the Defendants have played any fraud on the Plaintiffs. The words used by the Plaintiffs if seen are that, the Defendant – Bank has not followed the Fair Lending Practice Code and the RBI's Guidelines, committed illegal acts and the Bank acted negligently, irresponsibly, malice, given illegal threats, prepared fabricated document, obtained signature on blank papers etc. There is no word 'fraud' used by the Plaintiffs against the Bank to take advantage of the exception carved out in **Mardia Chemicals Ltd (supra)**. There has to be fraud pleaded by the Plaintiffs in the Plaint and it is not only the pleadings but there has to be some prima-facie evidence with the Plaintiffs in support of their contention.

(16) Learned Senior Advocate for the Applicants Shri C.S. Kaptan drawn my attention to Paragraph 50 of **Mardia Chemicals Ltd (supra)** wherein the Hon'ble Apex Court held as under:-

"A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debt Recovery Tribunal or 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 Debt 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 Debt Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13."

(17) In Paragraph 51, the Hon'ble Apex Court held as under:-

"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 their 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."

(18) My attention is also drawn to Paragraph 80 wherein the Hon'ble Apex Court held as under:-

"80. Under the Act in consideration, we find that before taking action a notice of 60 days is required to be given and after the measures under Section 13(4) of the Act have been taken, a mechanism has been provided under Section 17 of the Act to approach the Debt Recovery Tribunal. The above noted provisions are for the purposes of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows :-

1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceeding to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under Section 17 of the Act, at that stage.
2. As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debt Recovery Tribunal.
3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition at it may deem fit and proper to impose.
4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court."

(19) It is vehemently submitted that thus once the notice is made classifying the loan account as NPA and the demand is made, action under the SARFAESI Act has to be treated as initiated and thereafter the jurisdiction of the Civil Court is ousted.

(20) Learned Senior Advocate for the Applicants Shri C.S. Kaptan also placed reliance on **Electrosteel Casting Limited (supra)** in support of his contentions that mere allegations of fraud in Suit without the material particulars of fraud as required in terms of the Order VI Rule 4 of the Civil Procedure Code is not maintainable. In view of the Section 34 of SARFAESI Act, there is a bar of jurisdiction of the Civil Court except for the reason given in **Mardia Chemicals Ltd (supra)**. The Hon'ble Apex Court held that

“whether there shall be legally enforceable debt so far as the plaintiff - appellant herein is concerned even after the approved resolution plan against the corporate debtor still there shall be the liability of the plaintiff and/or the assignee can be said to be secured creditor and/or whether any amount is due and payable by the plaintiff, are all questions which are required to be dealt with and considered by the DRT in the proceedings initiated under the SARFAESI Act.” Before the Hon’ble Apex Court, the Civil Suit inter-alia challenging possession notice given by assignee of the secured debt was in question, claiming to be Secured Creditor, *vis-a-vis* the Appellant – Plaintiff guarantor of the loan in question.

(21) Learned Senior Advocate for the Applicants placed reliance on **C.S. Ramaswamy (supra)** wherein the Hon’ble Apex Court held as under:-

“Even the averments and allegations in the plaint with respect to fraud are not supported by any further averments and allegations how the fraud has been

committed/played. Mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely by using the word "fraud", the plaintiffs would try to get the suits within the limitation, which otherwise may be barred by limitation. Therefore, even if the submission on behalf of the respondents – original plaintiffs that only the averments and allegations in the plaints are required to be considered at the time of deciding the application under Order VII Rule 11 CPC is accepted, in that case also by such vague allegations with respect to the date of knowledge, the plaintiffs cannot be permitted to challenge the documents after a period of 10 years. By such a clever drafting and using the word "fraud", the plaintiffs have tried to bring the suits within the period of limitation invoking Section 17 of the limitation Act."

(22) Learned Senior Advocate for the Applicants submitted that there is no word used 'fraud' in the entire Plaint, however, the Trial Court on its own inserted this word in the order.

(23) Learned Senior Advocate for the Applicants also placed reliance on **P.N.B., Ballarpur (supra)** wherein this Court while discussing Section 34 of SARFAESI Act held as under:-

“Bare perusal of the aforesaid provision reveals that it is in two parts to be read disjunctively. The first part states that no civil court shall have jurisdiction to entertain the suit or proceeding in respect of any matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine. The second part of the provision, prohibits the Court from granting injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under the said Act or under the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993. As pointed out earlier, the suit filed by plaintiff being simpliciter for injunction, the same is, therefore, covered by the second part of section 34, which prohibits the Court or other authority from granting injunction in respect of an action taken or to be taken in pursuance of the power conferred by or under the Act. The issuance of notice is the exercise of power conferred upon the defendant/Bank under Section 13(2) of the said Act and hence the jurisdiction of the Civil Court is barred.

Further, it is the action to be taken by the defendant Bank in pursuance of power conferred upon the secured creditor under Section 13(4) of the said Act and hence the jurisdiction of Civil Court, to grant injunction sought for, restraining the defendant Bank from taking measures against the plaintiff, is barred under section 34 of the said Act. Anyway the suit as framed is barred by law as contemplated under Order VII, Rule 11(d) of the Code of Civil Procedure and hence the plaint is liable to be rejected. The trial Court was right in its view."

(24) Learned Senior Advocate for the Applicants Shri C.S. Kaptan also relied on **Allahabad Bank, Kolkata (supra)** and **Jagdish Singh (supra)** wherein similar view is taken by this Court. In the case of **Jagdish Singh (supra)**, **Mardia Chemicals Ltd (supra)** was also considered. The Hon'ble Apex Court held that:-

"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. It is held that the High Court was in error in holding that only civil court has jurisdiction

to examine as to whether the “measures” taken by the secured creditor under sub-section (4) of Section 13 of the Securitisation Act were legal or not.” The Hon’ble Apex Court held that “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 held 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.”

(25) Learned Senior Advocate for the Applicants also relied on **Sree Anandhakumar Mills Limited (supra)**

wherein the Hon'ble Apex Court following the ruling in

Jagdish Singh (supra) held as under:-

"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 proceedings under the SARFAESI Act lies under Section 17."

(26) In a matter before the Hon'ble Apex Court, while closing the Suit Proceedings, liberty was given to the Respondent who had filed the Suit for partition to have recourse to the remedies available under Sections 17 and 18 of the SARFAESI Act and agitate before the learned Debts Recovery Tribunal all issues that may be open in law.

(27) Learned Senior Advocate for the Applicants also placed reliance on **Yuth Development Co-operative Bank Ltd (supra)** wherein this Court, relying on the judgment of the Hon'ble Apex Court in **Mardia Chemicals Ltd., (supra)** held as under:-

“8. From these observations, it is clear that the Civil Court has no jurisdiction to entertain the matter where an action has been taken or even in matter in respect of which an action may be taken later on. In the present case, even though the action under section 13(4) under the Securitisation Act was not taken, such action could be taken in future in view of the notice, which was issued under sections 13(2) and (3) of the Securitisation Act. In view of the observations of the Supreme Court and in view of language of section 34, it is clear that the jurisdiction of the Civil Court is barred in respect of any action taken or to be taken in pursuance of any powers under the Securitisation Act. Merely because no action was yet taken under section 13(4), the Civil Court could not have the jurisdiction.”

(28) Learned Senior Advocate for the Applicants also placed reliance on **Saleem Bhai (supra)** in support of his contention that while deciding the Application under Order VII Rule 11, the averment in the Complaint and not the pleas taken in the written statement are looked into. There is no dispute over this position of law.

(29) Learned Senior Advocate for the Applicants also relied on **Sree Surya Developers and Promoters (supra)** in support of his contention that mere clever drafting would not permit the plaintiff to make the suit maintainable which otherwise would not be maintainable and/or barred by law. It has been consistently held by this Court that if clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage. In the said judgment, the Hon'ble Apex Court relied on **Ram Singh v. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364** wherein the Hon'ble Apex Court held 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."

(30) It is contended by the learned Senior Advocate for the Applicants that by asking multiple reliefs, the Plaintiffs by clever drafting want to get their Suit maintainable, which otherwise would not be maintainable.

(31) Learned Senior Advocate for the Applicants also placed reliance on **Church of Christ Charitable Trust and Educational Charitable Society (supra)** in support of his contention that the Plaint can either be rejected as a whole or not at all.

(32) Learned Senior Advocate for the Applicants also relied on **ICICI Bank Ltd (supra)** wherein this Court relied on **Mardia Chemicals Ltd (supra)** and held in Paragraph 12 as under:-

“12. The judgment of the Apex Court in Mardia Chemicals Limited's case (supra) is an exposition in the Apex Court insofar as the SARFAESI Act and the powers of the Tribunals under the said Act and the bar of jurisdiction postulated in the said SARFAESI Act is concerned. The Apex Court in paragraph 51 has stated that only in the cases where there is a fraud alleged that a suit would be maintainable before the Civil Court.”

(33) Shri Anand Jaiswal, learned Senior Advocate for the Respondents, in support of his contentions, relied on the

judgment in **Civil Revision Application No. 29/2011 (Bank of Baroda vs. Gopal Shriram Panda & another)** and other Civil Revision Applications wherein reference was made for answering the following question:-

“Whether the jurisdiction of a Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Section 17 of the Securitisation Act, in relation to enforcement of security interest of a secured creditor, is barred by Section 34 of the Securitisation Act?”

(34) It is held in this matter while answering the reference that the civil rights of person other than the borrowers or guarantors are involved, the Civil Court would have jurisdiction, that too, when it is *prima-facie* apparent from the record that the relief claimed, is incapable of being decided by the DRT, under Section 17 of the Debts Recovery Tribunal Act read with Sections 13 and 17 of the SARFAESI Act. It is held that even in the cases where the enforcement of security interest involves the issues as indicated in **Mardia Chemicals Ltd (supra)** of fraud as

established within the parameters laid down in **Ayyasamy**, as claim of discharge by a guarantor under Sections 133 and 135 of the Contract Act; a claim of discharge by a guarantor under Sections 139, 142 and 143 of the Contract Act; Marshaling under Section 56 of the Transfer of Property Act, the Civil Courts shall have jurisdiction. However, in the said matter itself, while answering the reference, the Division Bench of this Court held that “the law is therefore well settled that where any person is aggrieved by any notice or action pursuant thereto under the provisions of the SARFAESI Act, only available remedy to such person would be to approach the DRT by filing an appropriate Application under the provisions of the SARFAESI Act.

(35) Learned Senior Advocate for the Respondents also relied on **P.V. Guru Raj Reddy (supra)** and **Saleem Bhai (supra)** wherein the Hon’ble Apex Court held that the rejection of Complaint is of drastic nature and therefore while exercising the power under Order VII Rule 11 of the Civil

Procedure Code, only the averments in the Plaint have to be read as a whole. The stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial at that stage. It is only if the averments in the plaint *ex facie* do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected.

(36) Learned Senior Advocate for the Respondents further submitted that if some of the reliefs cannot be granted by the DRT, the Suit cannot be rejected under Order VII Rule 11(d) of the Civil Procedure Code. In support of this contention, he relied on **Madhav Prasad (supra)** wherein the Hon'ble Apex Court held that "relief of rejection of plaint in exercise of powers under Order VII Rule 11(d) of CPC cannot be pursued only in respect of one of the defendant(s) i.e. the plaint has to be rejected as a whole or not at all, in exercise of such power. If the plaint survives against certain defendant(s) and/or properties, Order VII Rule 11(d) of CPC will have no application at all, and the

suit as a whole must then proceed to trial.” In other words, the Plaint as presented must proceed as a whole or can be rejected as a whole but not in part.

(37) It is further submission of the learned Senior Advocate for the Respondents that as disputed question of fact raised by the Plaintiffs, the matter requires full and final consideration after the evidence was led by the parties. In support of this contention, learned Senior Advocate for the Respondents relied on **Pawan Kumar (supra)** wherein the Hon’ble Apex Court held that “test is whether from statement made in the Plaint, it appears without doubt or dispute that the Suit is so barred.” In the said matter, the Plaintiff raised controversy that the Suit is saved by Section 4(3) of the Benami Transactions (Prohibition) Act. It is held that:-

“Such disputed question of fact has to be adjudicated on the basis of evidence and cannot be decided at the stage of consideration of Application under Order VII Rule 11”.

(38) Learned Senior Advocate for the Respondents vehemently argued that there is no remedy available to the borrower when the Bank is not following or complying with the guidelines issued by the RBI and the guidelines for Fair Practice Code for lenders inspite of repeated requests for re-construction and allowing holding on operation was not considered by the Defendant – Bank. Though many queries were raised after issuance of request letters by the Plaintiffs and those were duly satisfied with, still the Bank has not taken any concrete decision and communicated to the Plaintiffs due to which heavy loss is caused to the Plaintiffs and for that reason, damages are claimed. The Plaintiffs would be entitled to file appropriate Proceedings before the DRT only after measures under Section 13(4) would be taken by the Bank. Section 13A is added by way of amendment in 2004. In view of this Section, on receipt of notice under Sub-Section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the

conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower. Proviso to this Section clearly says that at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under Section 17 or the Court of District Judge under Section 17A. As such, there is no remedy available to the borrower to challenge any communication rejecting Representation or objection. In the present matter, there is no communication whatsoever of rejection of objection by the Defendant – Bank to the Plaintiffs. As such, there is no bar to file the Suit in such situation before the Civil Court.

(39) Learned Counsel for the Respondents Shri J.M. Gandhi also relied on **Mardia Chemicals Ltd (supra)** in support of his contention that when there is pleading that the documents are fabricated, the Civil Court would only

have jurisdiction to entertain the Suit, in such circumstances, bar under Section 34 of the SARFAESI Act will not be made applicable.

(40) Learned Counsel for the Respondents relied on **Nahar Industrial Enterprises Limited (supra)** wherein the Hon'ble Apex Court held that "DRT is neither Civil Court nor Court subordinate to High Court. Hence, the provisions of Sections 22 to 24 of the Civil Procedure Code (transfer of matters) not applicable." In the said matter, the Appellant filed Civil Suit seeking declaration of two foreign exchange derivative contracts entered into with the Respondent - Bank as void and illegal. The Civil Court granted status-quo pending adjudication. The Respondent - Bank filed Application before the DRT for recovery of dues under the two other Foreign Exchange Derivative Contracts (other than the one sought to be avoided in the Civil Court). DRT by order restrained Appellant from alienating or creating third party interest in its fixed asset. Therefore, the Respondent - Bank filed Applications before

High Court seeking transfer of Suit of the Appellant before the Civil Court to DRT. The Single Judge of the High Court transferred the Suit to DRT in the form of counter claim. It is held that “unless the jurisdiction of Civil Court is ousted expressly or by necessary implication, Civil Court will have jurisdiction to try all types of Suits. If Suit filed by debtor is transferred from Civil Court to DRT, he would lose his unconditional right of Appeal before a higher court in terms of Sections 96 and 100 of the Civil Procedure Code. The order transferring the Suit to DRT is held unsustainable. It is held that “the DRT cannot be treated as Civil Court. It was constituted with specific purpose and has limited jurisdiction. It can neither pass a decree nor can debtor seek declaratory relief from DRT. It can issue only recovery certificates. DRT is not a high powered Tribunal though it has jurisdiction to decide the jurisdictional issues. No independent Proceedings can be initiated before it by a debtor. The Application before the Debtor would lie only at the instance of the Bank or financial institution for recovery of its debt. The Debtor can file counter claim only.

The Hon'ble Apex Court further held that Section 22 provides for procedure applicable to DRT and extent to which it governed by Civil Procedure Code". It further differentiated features of the Civil Courts and Tribunals and held that:-

"If the DRT was to be treated to be a civil court, the debtor or even a third party must have an independent right to approach it without having to wait for the Bank or Financial Institution to approach it first. The continuance of its counter-claim is entirely dependent on the continuance of the applications filed by the Bank. Before DRT no declaratory relief can be sought for by the debtor. It is true that claim for damages would be maintainable but the same has been provided by way of extending the right of counter-claim. DRT cannot pass a decree. It can issue only recovery certificates. Concededly, in the proceeding before the DRT detailed examination, cross-examinations, provisions of the Evidence Act as also application of other provisions of the Code of Civil Procedure like interrogatories, discoveries of documents and admission need not be gone into. Taking recourse to such proceedings would be an exception. Entire focus of the proceedings before the Debt Recovery Tribunal

centers round the legally recoverable dues of the bank."

(41) In the matter of **Nahar Industries (supra)**, the question involved was that whether High Court or Supreme Court has the power to transfer suit from a Civil Court to DRT and whether it could be tried as counter claim. The facts involved in the matter before the Hon'ble Apex Court in **Nahar Industries (supra)**, are distinguishable. The Suit was filed seeking declaration that two Foreign Exchange Derivative Contracts were void as being illegal and violative of Foreign Exchange Management Act. Whereas, Bank filed application before DRT for recovery of dues under two other Foreign Exchange Derivative Contracts (other than the once sought to be avoided in the Civil Court). DRT restrained the Appellant from alienating or creating third party interest in its fixed asset. Bank applied for transfer of Civil Suit to DRT. The Hon'ble Apex Court held that DRT was constituted with a specific purpose. In the said Suit, fraud

and misrepresentation claimed by the Plaintiff. It is held that a Debtor under the common law of contract and also in terms of loan agreement may have an independent right. However, a Debtor cannot initiate independent proceeding before DRT. Hence, so long as no forum is created for endorsement of that right, Debtor is not precluded from filing suit before Civil Court. As such, Suit was filed for declaration that two Foreign Exchange Derivative Contracts were void as being illegal and violative of foreign exchange. It is also claimed that those were executed by playing fraud and misrepresentation exercised by the bank. The proceeding before DRT was in respect to some other contract. Therefore, Hon'ble Apex Court held that Suit cannot be transferred to DRT and will be tried by Civil Court.

(42) Learned Counsel for the Respondents further relied on **Mrs. Leelamma Mathew (supra)** in support of his contention that Section 34 of the SARFAESI Act shall be applicable only in a case where DRT and / or Appellate

Tribunal is empowered to decide the matter under the SARFAESI Act. However, the facts are distinguishable in the matter before the Hon'ble Apex Court in **Mrs. Leelamma Mathew (supra)**. The Plaintiffs were not challenging the Sale Certificate and the Plaintiffs claimed damages and compensation with respect to the balance land which could not have been decided by DRT. Here in the present matter classification of loan account as NPA itself is under challenge by the Plaintiffs.

(43) Learned Counsel for the Respondents relied on **Shakti Bhog Food Industries Limited (supra)** wherein the Hon'ble Apex Court held that "Order VII Rule 11 of the CPC gives ample power to the Court to reject the plaint, if from the averments in the plaint, it is evident that the suit is barred by any law including the law of limitation..... The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law."

(44) Similar view is taken in **State Bank of India vs. Sagar Deshmukh (supra)**. This Court held that “In order to consider the question of rejection of the plaint under Order VII, Rule 11(d) of the Civil Procedure Code, the facts as are appearing from bare reading of the plaint are required to be considered and not the facts stated in the defence by the defendants.” In the said matter, on the question of ouster of the jurisdiction of the Civil Court it is held that “The Debts Recovery Tribunal is a Court of limited jurisdiction, which cannot be enlarged beyond the examination of validity of the action of a secured creditor under Section 13. The extent of jurisdiction of the Debts Recovery Tribunal under Section 17 of the SARFAESI Act shall decide the extent of exclusion of the jurisdiction of the Civil Court to decide the dispute in respect of the suit property.” In the said matter, the Plaintiffs have filed the Suit for declaration, partition, separate possession and injunction. There is no provision in the SARFAESI Act conferring upon the Debts Recovery Tribunal or its Appellate Authority, the jurisdiction to pass a decree for partition

and separate possession of the suit property.

(45) Learned Counsel for the Respondents Shri J.M. Gandhi placed reliance on **Padma Bhatt (supra)** in support of his contention that the Plaint cannot be rejected partially on the ground that part does not disclose any cause of action or that part of Suit is barred by law against any Defendant. In other words, it is not permissible to split the cause of action brought before the Court by a Plaintiff and based on such splitting, reject the Plaint partially. This Court further held that “If a claim made by the parties to Suit is outside the jurisdiction of DRT or Appellate Tribunal and any disputes raised by parties in that behalf cannot be adjudicated by them, right of parties to approach Civil Court for appropriate relief in that behalf cannot be said to be deprived or taken away.” However, the facts involved before this Court in **Padma Bhatt (supra)** are distinguishable. All five Suits seek specific performance of agreements for sale of flats, respectively, entered into between the Plaintiffs and a developer in respect of certain

property. Bank has been arraigned as a party Defendant on the ground that there is a collusive mortgage between the Developer and Bank, by which they have sought to defeat the Plaintiffs' right.

(46) Learned Counsel for the Respondents Shri J.M. Gandhi further relied on **Mayar (H.K.) Ltd (supra)**. Rejection of Complaint for suppression of material fact is permissible only if the suppressed fact is material in the sense that had it not been suppressed, it would have had an effect on the merits of the case, whatever view the Court may have taken. To obtain such rejection, the Defendant must show that the Plaintiff could not possibly succeed on the basis of pleadings and in the circumstances of the case, given the suppression of the facts in question. It needs to be noted that Bank raised objection that the Plaintiffs suppressed the fact of receipt of notice under Section 13(2) of the SARFAESI Act.

(47) Learned Counsel for the Respondents further relied

on **Venture Global Engineering (supra)** in support of his contention that expression 'fraud' may include the facts suppressed. The facts suppressed amounting to fraud are within the ambit of public policy. In the citation referred above, the Hon'ble Apex Court held that "different countries have different concepts of public policy. "Fraud, in the contemplation of a civil court of justice, may be said to include properly all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another."

(48) Learned Senior Advocate for the Applicants Shri C.S. Kaptan vehemently submitted that the said judgment is not at all relevant in the matter and the same is out of context.

(49) Learned Counsel for the Respondents Shri J.M. Gandhi further placed reliance on **Sudhir Shantilal Mehta**

(supra), however, in my considered view, the same is not at all relevant. Without there being any instance of criminal breach of trust by the Bank Officials, it is not applicable.

(50) Learned Counsel for the Respondents Shri J.M. Gandhi further relied on **Assistant Conservator of Forest (supra)**, however, the facts involved in the said matter are different. There was Representation pending and without deciding the same, the notice of removal of encroachment was issued. The Forest Department filed an Application under Order VII Rule 11(d) of the Civil Procedure Code as the Suit is barred by Section 2(5) of the Indian Forest Act. Based on the protection granted to the tribals, it was held that the Civil Court has jurisdiction as decision on Representation was not communicated to the Applicants/Plaintiffs.

(51) Learned Counsel for the Respondents relied on the judgment in the case of **Bank of Baroda (supra)** which was also relied on by Shri Jaiswal, learned Senior Advocate.

The same is already discussed earlier.

(52) On perusal of the Prayer Clause (i) sub-clauses (a) to (f), it appears that they relate to the classification of loan account as NPA. **Prayer Clause (i)** seeks decree of declaration on the ground that Bank acted illegally against the Plaintiffs by (a) not deciding the restructuring proposal of loan; (b) not deciding the proposal for permitting holding on operation; (c) not deciding the proposal for release of the mortgaged properties; (d) failing to communicate their decision to the Plaintiffs; (e) by classifying the loan account of the Plaintiffs as NPA on 30/11/2017 pending proposals; and (f) Bank breached Fair Lending Practice Code.

Prayer Clause (ii) is in respect of direction to release the mortgaged properties.

Prayer Clause (iii) seeks direction to the Bank to remove the loan account of the Plaintiffs from NPA classification and

Prayer Clause (iv) seeks to permanently injunct the Bank

from acting on the classification of the loan account as NPA and from taking any action on the basis of NPA. The fifth relief of damages is ancillary to the relief claimed in Prayer Clauses (i) to (v). The relief claimed in Prayer Clauses (i) to (v) are within the domain of DRT. All these points can be raised in a defence in the Application filed by the Bank before the DRT. In view of the citations referred above, the jurisdiction of the DRT is to decide all the matters relating to Sections 13 and 17 of the SARFAESI Act is exclusive. In all cases, where the title to the property, in respect of which a 'security interest', has been created in favour of the Bank or Financial Institution, stands in the name of the borrower and/or guarantor, and the borrower has availed the financial assistance, it would be only the DRT which would have exclusive jurisdiction to try such matters, to the total exclusion of the Civil Court. Any pleas as raised by the borrowers or guarantors, vis-a-vis the security interest, will have to be determined by the DRT. Where civil rights of persons other than the borrower(s) or guarantor (s) are involved, the Civil Court would have

jurisdiction, that too, when it is *prima facie* apparent from the face of record that the relief claimed, is incapable of being decided by the DRT, under Section 17 of the DRT Act, 1993 read with Sections 13 and 17 of the SARFAESI Act. As held in **Mardia Chemicals Ltd (supra)** even in the cases where the enforcement of security interest involves the issues as indicated i.e. fraud as established within the parameters laid down in **Ayyasamy**, as claim of discharge by a guarantor under Sections 133 and 135 of the Contract Act; a claim of discharge by a guarantor under Sections 139, 142 and 143 of the Contract Act; the Civil Courts shall have jurisdiction. When there is a Suit for partition and separate possession, the DRT has no jurisdiction to decide the shares of the parties, if any daughter claiming after amendment in Hindu Succession Act, her right in the property which was secured asset, she will have remedy open before the Civil Court. As such, what is beyond jurisdiction of DRT are amenable to the jurisdiction of the Civil Court. As discussed in **Nahar Industrial Enterprises Limited (supra)**, the difference in Civil Court and Tribunal

is that the Court can pass different declaration and decree which Tribunal cannot.

(53) As held in **Electrosteel Casting Limited (supra)** that mere allegations of fraud in Suit without the material particulars of fraud as required in terms of the Order VI Rule 4 of the Civil Procedure Code are made with a view to get out of the bar under Section 34. In the present matter, as already discussed in the whole Plaint, there is no word used as 'fraud'. As held in **PNB, Ballarpur (supra)**, Section 34 prohibits the Court from granting injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under the SARFAESI Act or under the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993. Issuance of notice is the exercise of power conferred upon the defendant/Bank under section 13(2) of the SARFAESI Act and hence the jurisdiction of the Civil Court is barred. As such, in the present matter, notice was issued on 27/12/2017 in C.R.A. No. 05/2021 and on 29/12/2017 in C.R.A. No. 04/2021. As soon as this notice is

issued, any challenge to the notice comes within the domain of DRT. The reliefs claimed in the Suit are definitely comes within the jurisdiction of DRT and not the Civil Court. So far as the damages are concerned, it is ancillary relief and unless there is any decision by the DRT on these reliefs i.e. (i) to (iv), claim of damages cannot be considered. As such, the order passed by the learned Trial Court is liable to be set aside as it has not considered at all whether there was any pleading of fraud in the whole Plaint and what is the effect of notice under Section 13(2) classifying the loan account as NPA.

(54) In my considered view, the Plaintiffs are having remedy and they can raise these grounds in defence in the Application filed by the Bank before the DRT. If there is any claim of defying any guidelines of RBI or any other Rules, Circulars, it is not the case that the Plaintiffs were not having any remedy, they may raise this ground in defence. Hence, Applications are liable to be allowed.

(55) Hence, I proceed to pass following order:-

ORDER

(a) Civil Revision Application Nos. 05/2021 and 04/2021 are **allowed**.

(b) The orders passed by the learned 10th Joint Civil Judge, Senior Division, Nagpur in Special Civil Suit Nos. 69/2020 (below Exh. 23) and 68/2020 (below Exh. 21) dated 11/11/2020 are hereby quashed and set aside.

(c) Special Civil Suit No. 69/2020 and Special Civil Suit No. 68/2020 are hereby rejected.

The Civil Revision Applications stand **disposed of** in the above terms. Pending Application(s), if any, stand(s) disposed of. No order as to costs.

[SMT. M.S. JAWALKAR, J.]

At this juncture, learned Counsel for respondents seeks six weeks' time to challenge the order before the

Hon'ble Apex Court. As there are vacations ahead to the Hon'ble Apex Court and to grant fair opportunity, six weeks' time is granted.

In the meanwhile, there will be stay to the effect and operation of present order.

[SMT. M.S. JAWALKAR, J.]

R.S. Sahare/Ansari