IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 124 OF 2023

1. The Assistant General Manager,
Stressed Assets Manager,
State Bank of India,
Administrative Office Building,
Plot No.1, Town Center,
CIDCO, Aurangabad.

2. State Bank of India,
Through it's Chief Manager,
Branch Stadium Complex,
Jawaharlal Nehru Road, Parbhani. Petitioners
(Original defendant
Nos.9 and 10)

VERSUS

1. Sow. Mangala w/o Pannalal Murkya,
Age : 60 Years, Occ. Household,
R/o. Kalyan Nagar, Parbhani.

2. Omprakash s/o Jagannathji Daga,
Age : 56 Years, Occ. Agriculture and
Business,
R/o. New Mondha, Parbhani.

3. Vijaykumar s/o Omprakash Daga,
Age : 34 Years, Occ. Agri and Business,
R/o. New Mondha, Parbhani,

4. Premkumar s/o Deelipkumar Daga,
Age : 36 Years, Occ. Agri and Business,
R/o. New Mondha, Parbhani.

5. Pawankumar s/o Deelipkumar Daga,
Age : 30 Years, Occ. Agri and Business
R/o. New Mondha, Parbhani.

6. Shankutala w/o Rameshwarlal Jaju,
Age : 63 Years, Occ. Household,
R/o. Vinayak Niwas, House No.3-3-461,
Chapal Bazar Road, Kachiguda
Hyderabad 500 027

7. Ushakiran w/o Kamalkishor Mantri,
Age : 57 Years, Occ. Household,
R/o. 4, Daubindu Housing Society,
Erandwana Near Sharada Center,
Karve Nagar Road, Pune.

8. Sheelabai w/o Omprakash Daga,
Age : 52 Years, Occ. Household,
R/o. New Mondha, Parbhani.

9. Kaushalayabai w/o Jagannathji Daga,
Age : 58 Years, Occ. Household,
R/o. New Mondha, Parbhani. .. Respondents
(Res. No.1 original plaintiff)

....

Advocate for the Applicants : S. R. Deshpande
Advocate for Respondent No.1 : Mr. Amit A.Yadkikar

....

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 27.06.2024

ORDER:-

1. The order dated 10.01.2023 passed by the learned Joint Civil Judge, Senior Division, Parbhani i.e. the learned trial Court in Special Civil Suit No. 35 of 2018 is challenged by the present petitioners i.e. original defendant Nos. 9 and 10. Under the aforesaid order, the application under Order VII Rule 11 of the Code of Civil Procedure filed by the petitioners for rejection of plaint filed by the present respondent No.1/plaintiff, has been rejected.

2. The background facts are as under :-

Loan accounts of Shree Ganesh Agro Industries and

Maheshwari Oil Industries of which the present respondent Nos. 2 to 9 are the partners, were not receiving the repayment, and therefore, the petitioners were constrained to initiate action under the Securitization Act against them. However, respondent No.1 filed Special Civil Suit No. 35 of 2018 for partition, possession and perpetual injunction against the present respondent Nos. 2 to 9 as well as the petitioners. Thus, the petitioners filed application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 for rejection of plaint, in view of the bar under Section 34 and 17 of the Secrutization Act, 2002. Since the learned trial Court has rejected the application at Exh.75, holding that the Civil Court has the jurisdiction to try the suit, the present application has been filed.

3. The learned counsel for the petitioners vehemently argued that as per Section 34 of the The Securitisation And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 (herein after referred to as 'SARFASI Act") there is bar for Civil Court to entertain the dispute wherein action under the said Act has been initiated by the Financial Institute. According to him, the petitioners have already initiated action under the provision of the

aforesaid Act before Debt Recovery Tribunal, but the learned trial Court, by ignoring all these facts, erroneously rejected application of the petitioners for rejection of the plaint. In support of his arguments, he relied upon the following judgments :-

(I) **M/s Sree Anandhakumar MILLS Ltd Vs. M/s Indian Overseas Bank and Others** reported in AIR 2018 Supreme Court 2472.

(II) **Jagdish Singh Vs. Heeralal and Others** reported in AIR 2014 Supreme Court 371

4. As against this, the learned counsel for respondent No.1 strongly opposed the submissions made on behalf of the petitioners. According to him, the Division Bench of this Court at Nagpur has clearly opined that despite their being proceeding under Debt Recovery Tribunal, the jurisdiction of Civil Court cannot be ousted in respect of the claims which do not fall under the provision of SARFAESI Act. He also pointed out that even the Hon'ble Apex Court has not excluded jurisdiction of Civil Court in respect of partition as claimed by the present respondent No.1 in the aforesaid suit. He also placed reliance on the following judgments :-

(I) High Court of Bombay Bench at Nagpur in the case of **Bank of Baroda and Others Vs. Gopal Shriram Panda**

and others decided on 25.03.2021 in Civil Revision Application Nos. 29 & 30 of 2011

(II) **Bank of Rajasthan Ltd Versus VCK Shares and Stock Broking Services Ltd** reported in MANU/SC/1477/2022.

5. When the matter was under consideration, the learned counsel for respondent No.1 produced on record order dated 15.04.2024 passed by the Debt Recovery Tribunal in Securtiziation Application No. 100 of 2020 filed by M/s. Shree Ganesh Agro Industries challenging the action. However, under the said order, the learned Debt Recovery Tribunal has set aside the securitization action initiated by the Bank with liberty to file it afresh. Learned counsel for respondent No.1 thus submitted that when there is no securitization action pending against respondent No.1 at present, there cannot be any bar to entertain the suit for the learned trial Court. On the contrary, the learned counsel for the petitioners produced on record copy of receipt mentioning that the aforesaid order of Debt Recovery Tribunal is challenged before the Appellate Tribunal i.e. D.R.A.T and the same is pending. He pointed out that apart from pendency of the appeal, the Civil Court is not having any power to entertain the dispute in respect of which Debt Recovery Tribunal only having the jurisdiction.

6. Heard rival submissions and also perused documents on record along with the citations relied upon by the rival parties.

7. It is significant to note that the present respondent No.1 who filed suit for partition, possession and injunction, is neither a borrower nor a guarantor to the loan secured by the aforesaid two institutions namely M/s Shree Ganesh Agro Industries and M/s. Maheshwari Oil Industries. It appears that she has filed suit for partition in respect of the properties which are mortgaged by the other respondent Nos. 2 to 9 being the partners/Directors of the aforesaid institutions. Admittedly, there are two prayers, one is for partition and possession and other is for injunction. Injunction prayer claimed by respondent No.1/plaintiff in the suit before the learned trial Court appears to be against the present petitioners for not to take any action pursuant to the provisions of SARFAESI Act. So far as prayer in respect of partition, it is not in dispute that Debt Recovery Tribunal is not having any jurisdiction to adjudicate claim of partition between the parties. Therefore, the jurisdiction aspect appears to be regarding only for prayer of injunction.

8. Learned counsel for the petitioners heavily relied on the

judgment of the Hon'ble Apex Court in the case of **<u>M/s Sree Anandhakumar Mills Ltd Vs. M/s. Indian Overseas Bank and Others</u>** (AIR 2018 SC (Supp) 2472) wherein following observations is made

> "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 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 because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securtisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which

takes in Section 9, CPC as well."

9. Further, same view appears in the case of **Jagdish Singh Versus Heeralal and others** (*AIR 2014 Supreme Court 371*) (supra) wherein the Hon'ble Apex Court has observed that any person aggrieved by the Enforcement of security interest has to file appeal to Debt Recovery Tribunal and Civil Courts jurisdiction in such matter is completely barred.

10. However, the Division Bench of this Court at Nagpur in the case of **Bank of Baroda and others Vs. Gopal Shriram Panda and others** decided on 25.03.2021 *(in Civil Revision Application Nos. 29,30/2011)* while discussing the scope of bar of Section 34, has clearly opined that where the civil rights of a person other than the borrower or guarantor is involved, the civil Courts would have jurisdiction to decide the same and therefore, for such adjudication of civil right, the bar under Section 34 of the SARFAESI Act would not apply. Further, the Hon'ble Apex Court in the recent judgment in the case of ***Bank of Rajasthan Ltd Vs. VCK Shares and Stock Broking Services Ltd*** (*decided on 10.11.2022 in Civil Appeal Nos. 8972-8973 of 2014*) has also opined that an independent suit filed by the borrower against the Bank or Financial Institution cannot be transferred to Debt Recovery Tribunal to be tried

along with the application under the Act, as it is a matter of option of the Defendant in claim under the Act. It is further observed that there are no restrictions on the power of Civil Court under Section 9 of the Code, unless expressly or impliedly excluded and Civil Court is definitely having jurisdiction to dispose all the suit of civil nature unless the same is barred under either expressly or by necessary implication.

11. Learned counsel for the petitioners tried to argue that observation of Hon'ble Apex Court in the case of **Bank of Rajasthan Ltd Vs. VCK Shares & Stock Broking Services Ltd** is not applicable, since it is not under the SARFAESI Act. However, on going through the said judgment, it appears that it is in respect of powers of DRT and it is ultimately held that Civil Court is having jurisdiction to entertain all the suits of civil nature.

12. It is extremely important to note that the present suit filed by respondent No.1 is in respect of partition and injunction. Obviously, the Debt Recovery Tribunal is not empowered to entertain the claim of partition raised by the respondent No.1 who is neither the borrower nor the guarantor. Therefore, in view of the observations of Division

Bench of this Court as well as Hon'ble Apex Court as referred above, the jurisdiction of Civil Court is not completely ousted, since partition issue is involved in the suit. Moreover, it is now settled that partial rejection of the plaint in respect of certain prayers or against certain persons is not permissible and, therefore, considering all these aspects, no perversity can be seen in the impugned order passed by the learned trial Court.

13. In the result, the present Civil Revision Application stands rejected.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni