



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 219 OF 2023

1. HDB Financial Services Limited,
Through its Authorized Officer
Vijaykumar s/o. Bhimrao Sapkal

... PETITIONER

(Ori. Defendant No.2)

VERSUS

1. Dattatraya s/o. Asaram Jagtap
2. Umesh s/o. Ramakant Nimbalkar

... RESPONDENTS

...

Mr. Mrigesh D. Narwadkar – Advocate for Petitioner

Mrs. Charuta S. Deshmukh – Advocate for Respondent No.1

....

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 9th October, 2024

ORDER :

1. Heard learned Counsel for the rival parties.
2. The petitioner who is original defendant No.2 in Special Civil Suit No. 209 of 2022 has challenged the legality of the order dated 21.09.2023 passed below application at Exhibit – 26 in the aforesaid suit by the learned 13th Jt. Civil Judge, Senior Division, Ahmednagar (*hereinafter referred to as, “the learned Trial Court”*). Under the aforesaid order the learned Trial Court has rejected the application filed by the present petitioner for rejection of plaint

under Order VII Rule 11(d) of the Civil Procedure Code.

3. **Backgrounds facts of the case are as under :**

The present respondent No.1 has filed the aforesaid suit against respondent No.2 for specific performance of contract i.e. agreement to sale executed by respondent No.2 in favour of him on 15.02.2013. The said agreement to sale was extended on 24.05.2017 and thereafter on 08.02.2018. In the said suit the petitioner is made party – defendant No.2. It is claimed by the petitioner that, it had advanced loan of Rs.1,02,17,901/- to respondent No.2 – owner of the suit property. The said loan was secured by mortgaging the suit property. Further, it is claimed that the possession of property has also been taken under the orders of District Collector. Thus, the petitioner is claiming that in view of specific bar under Section 34 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*the SARFAESI Act, for short*) the suit of respondent No.1 is not maintainable before the Civil Court. Under the impugned order the learned Trial Court rejected the application (Exhibit-26) and hence, this Civil Revision Application.

4. **Learned Counsel for petitioner – Financial Institute i.e.**

original defendant No.2 vehemently argued that, Section 34 of the SARFAESI Act clearly bars the remedy before the civil Court and therefore, the suit filed by respondent No.1 is not maintainable and therefore, under Order VII Rule 11(d) of the Civil Procedure Code, the plaint has to be rejected. He pointed out that, the possession of the suit property is already handed over by present respondent No.2 under orders passed by the District Collector.

5. On the contrary, learned Counsel for respondent No.1 – plaintiff supported the impugned order and submitted that, no relief claimed in the suit against the petitioner and it is for specific performance only and therefore, the Civil Court can entertain such dispute. According to her, D.R.T. is not having any power to deal with present dispute in the civil suit.

6. Heard rival submissions and also perused the documents on record. Respondent No.2 despite service by paper publication remained absent.

7. On going through the impugned order, it appears that the learned Trial Court has rejected the application mainly on the ground that, no relief is claimed against present petitioner and the alleged action under the SARFAESI Act initiated by the petitioner

against respondent No.2 is not subject matter of the suit. Admittedly, the petitioner has given loan to the respondent No.2 for which the suit property has been mortgaged. Further, the proceeding under the SARFAESI Act is not disputed. Moreover, it is not also disputed that, the possession of the suit premises is taken by petitioner/defendant No.2. However, on going through the plaint, it is clearly evident that, the suit is filed for specific performance of contract executed by present respondent No.2 in favour of respondent No.1. It is equally important to note that, no relief is claimed against the present petitioner. Further, the action of petitioner under the SARFAESI Act in respect of the suit property is also not challenged in the suit. It is extremely important to note that, the D.R.T. cannot decide the issue of specific performance of contract and that power is exclusively with Civil Court only.

8. It is settled that, the plaint cannot be rejected partly, that means against some of the defendants. Moreover, the language of Section 34 of the SARFAESI Act does not indicate that, the D.R.T. can deal with the prayer of granting specific performance under the Specific Relief Act. As such, considering all these facts the order of rejection of the application filed by the present petitioner

for rejection of plaint being barred by law, is definitely legal and proper in the peculiar circumstances of this case. As such, the same needs no interference and accordingly, the present Civil Revision Application stands dismissed.

9. The Civil Revision Application is accordingly disposed of alongwith pending Civil Application, if any.

[SANDIPKUMAR C. MORE]
JUDGE