

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

**F.M.A. No.196 of 2025
with
CAN 1 of 2024**

**Sandeep Goenka
Vs.
Yes Bank Limited and Others**

For the appellant/plaintiff	:	Mr. Pratyush Patwari, Mr. Arun Tanti
For the respondent no.1 (Yes Bank)	:	Mr. Sayak Ranjan Ganguly, Ms. Srijani Ghosh, Ms. Indrani Majumdar
Hearing concluded on	:	11.02.2025
Judgment on	:	17.02.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against the refusal of an *ad interim* prayer of injunction made by the plaintiff in a suit, *inter alia*, for declaration that the plaintiff/appellant is having 50% ownership right, title and interest in the suit property, a declaration that the claim asserted by the defendant no.1-Bank in its letter dated September 3, 2024 that loan and/or credit facility was granted in favour of the plaintiff is false, incorrect and *non est* in the eye of law, a declaration that the claim of equitable mortgage made by the defendant no.1-Bank in respect of the plaintiff's 50% share of in the suit property is false,

incorrect and *non est*, for declaration that written instruments being an agreement dated January 14, 2021, memorandum of entry dated February 15, 2021 and other documents relating to loan and/or credit facilities as referred to in the letter dated September 3, 2024 are void and be delivered up and cancel, and for perpetual injunction protecting the possession for the plaintiff in respect of the said property as well as restraining the defendant no.1 from alienating and/or creating any third party interest in respect of 50% ownership right for the plaintiff in the said property.

2. Learned counsel for the petitioner argues that the impugned order is devoid of reasons.
3. It is submitted that although in its letter dated September 3, 2024, the defendant no.1-Bank claims that the plaintiff/appellant and his brother, Hari Ram Goenka (since deceased), proprietor of Shree Bajrang Bhandar, jointly applied for loan/credit facility, the loan agreement does not contain any signature of the plaintiff. It is further argued that the memorandum of entry dated February 15, 2021 also contains no signature of either the appellant or the said Hari Ram. Furthermore, a magisterial declaration has been alleged to be executed by the owners of the property, namely, the appellant and the said Hari Ram, which declaration was, however, never produced in the court below.
4. In any event, the appellant alleges that the documents indicating a guarantee being furnished by the appellant in respect of the purported loan are manufactured and forged.

5. It is argued that the suit was filed on November 5, 2024 whereas a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, was received by the appellant on November 6, 2024. The said notice was waived by a subsequent notice under Section 13(2) dated December 24, 2024, issued during pendency of the suit. Till date, no measure under Section 13(4) of the SARFAESI Act has been taken by the defendant no.1/respondent no.1-Bank to the knowledge of the appellant and, as such, the appellant does not have any scope to approach the Debts Recovery Tribunal (DRT) under Section 17 of the SARFAESI Act. Hence, the Civil Court had full jurisdiction to grant the injunction as sought by the appellant.
6. Learned counsel for the appellant places reliance on an unreported judgment of the Supreme Court in the matter of *Central Bank of India and Another v. Smt. Prabha Jain and Others* [Civil Appeal No.1876 of 2016], for the proposition that the jurisdiction of the Civil Court is not ousted as regards an independent suit against the bank in the context of the provisions of the RDB Act, 1993. It was further held there that in a suit challenging the validity of a sale deed, the Debts Recovery Tribunal is not permitted to examine such question. It was further observed that the Tribunal does not have jurisdiction to decide questions which fall within the exclusive domain of the Civil Court and as such a civil suit in that regard is not barred by the provisions of the SARFAESI Act.

7. It is argued that the reliefs sought in the suit instituted by the appellant are beyond the competence and jurisdiction of the DRT to grant. As such, there is no alternative remedy before the appellant but to approach the Civil Court.
8. Learned counsel for the appellant next contends that the person affirming the affidavit-in-opposition to the application for injunction filed before this Court has described herself as the constituted attorney of the respondent no.1-Bank. Under Order XXIX Rule 1 of the Code of Civil Procedure, a pleading may be signed and verified on behalf of a corporation only by its Secretary, Director or other Principal Officer. Hence, the said signatory is incompetent to affirm the affidavit-in-opposition and as such, the averments made in the opposition ought to be ignored by this Court.
9. Learned counsel for the respondent no.1-Bank submits that there are several documents on record, including a letter of continuing guarantee dated January 14, 2021, a net-worth certificate issued by the appellant, agreeing to stand as guarantor for the loan, a letter of deposit of title deeds relating to the subject property and a declaration-cum-indemnity signed by the appellant in the capacity of guarantor which establish that the appellant stood as a guarantor in the loan taken by Hari Ram (since deceased) and offered his share of the suit property as security for the loan. Hence, the appellant is also subject to the jurisdiction of the DRT under Section 17 of the SARFAESI Act. Thus, no injunction can be granted by the Civil Court to restrain the

respondent no.1-Bank from taking measures under Section 13(4) of the SARFAESI Act.

10. It is next contended that the remedy of the appellant lies before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act and Section 34 of the said Act debars the Civil Court from assuming jurisdiction in the matter.
11. It is argued that the appellant, having executed several documents in the capacity of guarantor and/or borrower, cannot now resile from such position and seek injunction restraining the enforcement of the said loan agreement. Hence, it is argued that the appeal ought to be dismissed.
12. Upon hearing learned counsel for the parties, the first aspect of the matter which catches the eye is that the impugned order of refusal of *ad interim* injunction is absolutely devoid of reasons. After narrating the respective contentions of the parties, the learned Trial Judge, in a single sentence, held that considering the nature of the case, it appeared to him that in this nature of case, injunction should not be granted without hearing the other side. Under Order XXXIX Rule 3-A, it is incumbent upon the court to record its reasons for its inability to dispose of an injunction application within Thirty (30) days from the date on which *ex parte* injunction is granted without giving notice the opposite party. However, such reasons are confined to the inability of the court to dispose of the application within Thirty (30) days in case an *ad interim ex parte* injunction is granted. The said provision does not necessarily mean that either while granting or refusing *ad interim*

injunction, independent reasons for such grant or refusal is not required to be given. It is well-settled that reason is the soul of any judgment and any judicial order without cogent reasons is, on the face of it, bad in law. The order impugned herein suffers from such malady.

13. Coming to the merits of the matter, the court, by way of *prime facie* case, is only required to ascertain whether a triable issue has been made out by the plaintiff. *Prima facie* title need not be proved to the hilt at the stage of grant of *ad interim* injunction. Of course, maintainability of the suit also comes within the ambit of *prima facie* case.
14. Insofar as the facts of the present case are concerned, sufficient doubt has been raised by the plaintiff/appellant in the pleadings made in his plaint as well as injunction application in the court below as to whether there is inherent contradiction in the stand taken by the Bank itself. Whereas in the letter dated September 3, 2024, the Bank alleges that the appellant jointly applied for financial assistance with his brother Hari Ram Goenka, since deceased, the stand taken by the respondent no. 1-Bank before this Court during arguments and in its affidavit-in-opposition is otherwise, to the effect that the appellant was a guarantor of the loan. Even the loan agreement does not contain any signature of the appellant. A memorandum of entry dated February 15, 2021 annexed to the affidavit-in-opposition by the Bank in support of its case does not bear the signature either of the appellant or of the said Hari Ram. Moreover, it transpires from the purported declaration/letter issued by Hari Ram along with the appellant, which is produced by the

Bank, that the Bank had obtained a magisterial declaration from the owners, including the appellant. However, such declaration has not been produced by the respondent no. 1-Bank, thereby constraining the court to draw adverse inference against the Bank on such count. That apart, the appellant has alleged in his pleadings that the documents produced by the Bank are forged and manufactured insofar as any continuing guarantee having been granted by the appellant is concerned.

- 15.** In view of the above facts, sufficient doubt as to the veracity of the Bank's claim of the appellant being either a borrower or a guarantor has been raised.
- 16.** In any event, the 50% share of the appellant in the subject-property, which is shown to be a security of the purported loan by the Bank, is undisputed. Thus, a strong *prima facie* case has been made out on facts by the appellant.
- 17.** The recurring notices issued by the Bank under Section 13(2) of the SARFAESI Act also indicate the extreme urgency involved. In the event coercive measures under Section 13(4) of the SARFAESI Act are taken by the Bank against the appellant, the appellant might suffer irreparable injury. As a whole, the balance of convenience and inconvenience is, thus, in favour of the appellant since if the suit property is disposed of in favour of third parties or the appellant is ousted from the suit property prior to the disposal of the suit, it would affect the plaintiff/appellant irreversibly, whereas the suffering of the

Bank would not be of such magnitude even if its action for recovery of the loan is deferred.

- 18.** Hence, all the ingredients for grant of *ad interim* injunction are satisfied in the present case.
- 19.** With regard to the maintainability of the suit, it is an admitted position that the suit was filed on November 5, 2024, whereas the first notice under Section 13(2) of the SARFAESI Act was received by the appellant only subsequently, on November 6, 2024. In any event, the said first notice was waived by the respondent no.1-Bank by issuance of a subsequent notice under the self-same provision on December 24, 2024, that is, after the filing of the suit. Hence, at the juncture when the suit was filed and the *ad interim* prayer of injunction was moved, no notice even under Section 13(2) of the said Act had been served on the appellant by the Bank, let alone subsequent follow-up measures being taken under Section 13(4) of the SARFAESI Act.
- 20.** Importantly, the remedy of a borrower and/or any person aggrieved by the actions of the Bank under Section 17 of the SARFAESI Act is available only upon measures being taken under Section 13(4) of the said Act. In the present case, there is nothing on record to show that any such measure has been taken by the Bank till date or at least that any such measure had been taken till the date of passing of the impugned order.
- 21.** Thus, the remedy of the appellant under Section 17 of the SARFAESI Act is not only illusory but also non-existent.

- 22.** Another aspect of the matter cannot also be overlooked. The respondent no.1-Bank argues that the appellant, who comes within the broad definition of “borrower”, being a guarantor, could have made a representation or raised objection under Section 13(3-A) of the SARFAESI Act. However, the said representation would only culminate in a consideration and decision being taken by the secured creditor itself and if the secured creditor/Bank does not accept the same, it merely has to communicate the same and follow up by taking measures under sub-section (4) of Section 13. Hence, such remedy in the present case is ineffective.
- 23.** It has to be kept in mind that the principal reliefs claimed in the suit are beyond the competence or the jurisdiction of the DRT to grant. For example, the plaintiff/appellant has sought declaration of his 50% title in the suit property, which cannot be granted by the Tribunal.
- 24.** Also, the very basis of the claim of loan and equitable mortgage of the Bank has been challenged, in view of the reliefs sought to the effect that the documents relating to the purported loan/guarantee are forged and manufactured documents. The foundational claim of equitable mortgage has also been sought to be declared to be false, incorrect and *non est* by the plaintiff/appellant. The Bank also claims the appellant to be a borrower, having applied jointly for the loan/credit facilities, which is belied by the loan agreement produced by the Bank itself, which contains no signature of the appellant at all.
- 25.** A proper appreciation of Section 17 of the SARFAESI Act shows that when an application is filed under the said provision by a borrower or

any person aggrieved by any of the measures taken by the secured creditor/Bank under Section 13(4), the limited scope of consideration by the Tribunal is as enumerated under Section 17(2), which is to consider whether any of the measures referred to in Section 13(4) are in accordance with the provisions of the Act and the Rules made thereunder. The substantive relief of declaration of title and/or the issue of authenticity and legal validity of the documents pertaining to the loan cannot be adjudicated upon by the Tribunal under the said provision.

- 26.** Under sub-section (3) of Section 17, the Tribunal, after examining the facts and circumstances on the evidence before it, may come to the conclusion that any of the measures referred to in sub-section (4) of Section 13 are not in accordance with the provisions of the Act and the reliefs to be granted by the Tribunal are entirely premised on such limited consideration. Under Clauses (i) and (ii) of sub-section (4-A) of Section 17, the Tribunal can at best look into the claims of tenancy or lease-hold rights, but cannot decide any question of title or validity or authenticity of the foundational documents of the loan itself and/or grant any declaration in respect thereof.
- 27.** Section 34 of the SARFAESI Act bars the jurisdiction of a Civil Court not in any and every matter but only in respect of matters which the Debts Recovery Tribunal or the Appellate Tribunal are empowered by or under the SARFAESI Act to determine, which, thus, circumscribes the parameters of the limited powers of the Tribunal under Section 17.

- 28.** The second limb of Section 34 debars a Civil Court from granting injunction. By the very language of Section 34, the bar to grant of injunction has to relate to the first part of Section 34 and emanates from the Tribunal having jurisdiction to entertain the reliefs claimed in the suit for the bar to operate. Although Section 34 also prevents a Civil Court from granting any injunction in respect of any action not only taken but “to be taken” in pursuance of any power conferred by the said Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, “the 1993 Act”), as discussed above, none of the provisions of the SARFAESI Act or the 1993 Act empowers the Tribunal to go beyond the limited consideration of whether the measures under Section 13(4) have been taken by the secured creditor/Bank in accordance with the Act and the Rules prescribed thereunder.
- 29.** The reliefs claimed by the plaintiff in the present suit goes much beyond the same and the Tribunal does not have power to decide those or grant the reliefs claimed in the suit. Accordingly, the bar under Section 34 is not attracted to the present case at all.
- 30.** Considered from a different perspective, the injunction sought by the plaintiff/appellant is in aid of the principal final reliefs sought in the suit, independent of the provisions of the SARFAESI Act. Hence, since the power of the Civil Court emanates from Section 9 of the Code of Civil Procedure and it is well-settled that presumption would lie in favour of the jurisdiction of the Civil Court unless any specific express or implied bar is shown, it has to be observed that the bar of the

jurisdiction of the Civil Court has not been established in the present case.

- 31.** Insofar as the primary reliefs claimed in the suit are concerned, those pertain to the 50 per cent title of the plaintiff in the suit property, the adjudication of which falls squarely within the domain of the civil court. No provision of the SARFAESI Act confers power on the Tribunal to decide such issue. As such, the ratio laid down in *Prabha Jain's case (supra)*, cited by the plaintiff/appellant is applicable to the present case.
- 32.** The injunction sought by the plaintiff is not on the strength of any substantive right conferred by the SARFAESI Act, which might have empowered the Tribunal to decide such issue, but from the general law as well as the Transfer of Property Act, which confers title on the appellant to the extent of 50% in respect of the immovable property which is the subject-matter of the suit, by virtue of a registered deed of conveyance. Hence, the relief sought by way of injunction is a relief sought consequent to the principal relief of the suit and not an offshoot of any right under the SARFAESI Act.
- 33.** We cannot also lose sight of the fact that the plaintiff/appellant has no right to approach the Tribunal under Section 17 of the SARFAESI Act before any measure is taken by the Bank under Section 13(4) of the SARFAESI Act. Such an approach at this juncture would be premature and, hence, the suit and the prayer for injunction are very much maintainable before the Civil Court. Apart from any remedy before the Tribunal on such count at this stage being non-existent, the reliefs

claimed in the suit, if subjected to the jurisdiction of the Tribunal, would be rendered illusory in view of the lack of jurisdiction of the Tribunal to decide the issues involved in the suit. The Tribunal, as discussed earlier, is not competent in law to grant the principal reliefs claimed in the suit, in aid of which the temporary and ad interim injunction has been sought before the competent civil court.

- 34.** Insofar as the question of *locus standi* of the signatory to the affidavit-in-opposition of the injunction application is concerned, the appellant has also made out a strong case on such aspect, since the expression “corporation” under Order XXIX of the Code of Civil Procedure has to be deemed to be a body corporate, incorporated under any law in India. Seen from such perspective, the respondent no.1-Bank is a company which is incorporated under the governing law and as such, is a body corporate, coming within the purview of the expression “corporation” used in Order XXIX of the Code. Rule 1 of Order XXIX clearly stipulates that in a suit by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the Secretary or by any Director or other Principal Officer of the corporation who is able to depose on the facts of the case. As per the averment in the affidavit-in-opposition, the signatory thereto merely claims herself to be a “constituted attorney” of the Bank and not a Secretary/Director/Principal Officer thereof. Hence, the necessary ingredients of Order XXIX Rule 1 are not satisfied. There is no reason as to why the principle incorporated in Order XXIX, although applicable

in terms to a suit, should not also be borrowed in connection with an application filed in an appeal arising out of a suit.

- 35.** Be that as it may, even without going into such technical consideration, the learned Trial Judge erred in law in refusing *ad interim* injunction without assigning any reason and/or adverting to the materials on record and by overlooking the salient features of the case and the moot questions involved, which have been discussed at length hereinabove.
- 36.** Thus, we find from the above observations that the plaintiff/appellant has met all the relevant yardsticks and parameters entitling him to grant of *ad interim* injunction as prayed for.
- 37.** Accordingly, F.M.A. No.196 of 2025 is allowed on contest, thereby setting aside the impugned order bearing Order No.2 dated November 5, 2024 passed by the learned Judge, VIIth Bench, City Civil Court at Calcutta in Title Suit No.1804 of 2024.
- 38.** The respondent no.1-Bank and its men, agents and officers are hereby restrained by an order of *ad interim* injunction from dispossessing the plaintiff/appellant and his men and agents from the suit property as well as from transferring, alienating and/or creating third-party rights and/or interest in respect of the 50% ownership right of the plaintiff in the suit property till disposal of the injunction application pending in the trial court.
- 39.** The respondent no.1 shall file its written objection to the injunction application in the Trial Court, if not already filed, within three (03) weeks from date. It is expected that the learned Trial Judge shall dispose of the injunction application, upon giving adequate opportunity

of hearing to both sides, as expeditiously as possible thereafter, as far as the business of the said court permits.

- 40.** It is, however, made clear that the findings and observations made in this order have been arrived at for the purpose of considering the plaintiff/appellant's *ad interim* prayer of injunction and shall not be conclusive at the stage of final hearing of the injunction application and/or any further stage of the suit. The learned Trial Judge shall independently decide the injunction application and the suit without being unnecessarily influenced by any of the observations above on merits.
- 41.** CAN 1 of 2024 is disposed of accordingly in the light of the above observations.
- 42.** There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)