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

CIVIL REVISION APPLICATION NO.77 OF 2024

Aditya Birla Housing Finance Limited, a Financial Institution having one of its Branches at 701/A, Shree Ram Shyam Towers, LIC Square, Sadar Nagpur acting through one of its Authorised officer, having authority to file the application which includes the authority to verify and sign the application. ….. **Applicant.**

:: **V E R S U S** ::

1. Shri Rajeev s/o Late Shri Chunnilal Agrawal, aged about 60 years, occupation : business, r/o 301, Ashirwad Enclave, 222 Khare Town, Dharampeth, Nagpur-440 010.

2. Shri Durwas s/o Shrawanji Vaidya, aged about 62 years, occupation: service, r/o plot No.46, flat No.101 Shravaan Apartment, Vidhya Nagar, Pandhan Road, Wathoda, Nagpur-441 107.

3. Shri Rahul s/o Prabhakar Chole, aged about 44 years, occupation: not known, r/o house No.990, Tulsibagh Road, Chitnavispura, opposite Chhatrapati High School,

Mahal, Nagpur-440 032.

4. Shri Saddan Alia Javed Ali,
aged about 32 years, occupation:
private, r/o plot No.46, flat No.401,
Shravaan Apartment,
Vidhya Nagar, Pandhan Road,
Wathoda, Nagpur-441 107
and also at Navaj Nagar,
Uppalwadi, Nagpur-440 008. ..... **Non-applicants**.

Shri M.Anilkumar, Counsel for the Applicant.
Shri Sahil Dewani, Counsel for NA No.1.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 17/02/2025
PRONOUNCED ON : 28/03/2025

JUDGMENT

1. Challenging the order passed by learned 8th Joint Civil Judge Senior Division, Nagpur in SCS No.1040/2023 below Exh.15 by which application for rejection of plaint under Order VII Rule 11 of the CPC which is rejected by order dated 1.11.2023, the present revision application is preferred.

2. The applicant is original defendant No.4, a Financial Institution registered as the Securitization and Reconstruction Company pursuant to Section 3 of the The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The non-applicant No.1 is the original plaintiff who filed the suit for declaration, permanent injunction, and cancellation of sale deed. As per the contention of the plaintiff, he is owner of structure comprising apartment/flat No.401, situated at 4th floor of the building to be known as “Shraawan Apartment” admeasuring 820 square feet and part and parcel of land khasra No.49/4 of mauza Wathoda. Original defendant No.1 Durwas Vaidya has purchased land bearing plot No.46 from Kailash Sahakari Gruh Nirman Sanstha vide sale deed dated 6.9.1985. Defendant No.1 who was owner of the said plot developed the said plot by constructing building. The

plaintiff approached the defendant No.1 to purchase a flat and entered into registered agreement of sale for consideration of Rs.30.00 lacs on 15.11.2019. Since the construction work was in progress, it was agreed between the plaintiff and defendant No.1 that the sale deed would be executed on completion of remaining work. Defendant No.1 also executed power of attorney in favour of the plaintiff for executing sale deed on 15.11.2019. As per the plaintiff, though the sale deed was not executed in his favour, possession was handed over to him on 15.11.2019. The sale deed was executed in his favour on 8.7.2021. It is alleged by the plaintiff that on 7.2.2023 he came to know that the applicant who is original defendant No.4 issued possession notice. On enquiry, it revealed that defendant No.1 fraudulently executed power of attorney in favour of defendant No.2 dated 6.7.2020 authorizing defendant No.2 to sale the suit property. The defendant No.2 executed sale deed of suit property in favour of defendant No.3 on 20.5.2021. Defendant No.3 mortgaged the suit flat availing loan of Rs.27,42,291/- from defendant No.4 that is the present applicant. As the defendant No.3 committed defaults in repayments, the present applicant had classified the loan account as non performing assets (NPA) and consequently took the recourse of provisions of the SARFAESI Act against the defendant No.3. The applicant issued possession letter on 7.2.2023. It is alleged by the plaintiff that defendant No.3 had availed the loan facility by mortgaging the said flat on 20.5.2021 although plaintiff was legal and absolute owner of the said flat and was in possession since 15.11.2019. It is further alleged that applicant who is defendant No.4 governed by the RBI and was under legal obligation to verity or scrutinize or proper verification before sanctioning the loan which is not followed by the applicant and, therefore, the plaintiff issued notice to the applicant on 9.6.2023. As per the contention of the plaintiff, the said flat cannot be subject-matter of possession under the SARFAESI Act. The plaintiff already approached to the Debt Recovery Tribunal and challenged the notice under Section 17 of the SARFAESI Act and the present suit is filed for declaration and injunction.

3. On service of the notice, the present applicant appeared and filed an application under Order VII Rule 11 of the CPC on the ground that in view of Section 34 of the SARFAESI Act, the civil court has no jurisdiction to try and entertain the suit. The further ground raised is that the plaintiff has already initiated the action under Section 17 of the SARFAESI Act and on the similar cause of action, the suit is not maintainable. It is further contended that in fact no cause of action arose against the

applicant as the suit property is lawfully mortgaged by the owner. Defendant No.4 has taken the possession of the property on 7.2.2023 pursuant to the provisions of the SARFAESI Act. Learned CJSD by observing that civil court has jurisdiction to decide the civil rights of the plaintiff who is neither borrower nor guarantor to the loan advanced by the applicant to the defendant No.3 and, therefore, the suit is not maintainable and rejected the application.

4. Being aggrieved and dissatisfied with the same, the present revision application is preferred.

5. Before considering the submissions, it is necessary to reproduce the admitted facts, as under:

(1) original defendant No.1 Durwas Vaidya was original owner who had purchased the plot No.46

from Kailash Sahakari Gruh Nirman Sanstha vide sale deed dated 6.9.1985;

(2) defendant No.1 developed the plot and constructed building. The plaintiff approached to him to purchase the flat and registered agreement of sale dated 15.11.2019 was executed between them;

(3) defendant No.1 also executed power of attorney in favour of plaintiff for executing a sale deed on 15.11.2019. The possession was also handed over to the plaintiff on 15.11.2019;

(4) the sale deed was executed in favour of plaintiff on 8.7.2021;

(5) the defendant No.1 executed power of attorney in favour of defendant No.2 on 6.7.2020 to sale the suit property;

(6) defendant No.2 executed sale deed of the suit flat in favour of defendant No.3 on 20.5.2021;

(7) defendant No.3 mortgaged the suit flat availing loan of Rs.27,42,291/- from the present applicant, and

(8) defendant No.3 committed defaults in repayment and, therefore, the applicant has initiated the action under the Rs.27,42,291/- and issued possession letter on 7.2.2023.

6. Heard learned counsel Shri M.Anilkumar for the applicant who submitted that the application is filed under Order VII Rule 11 especially on the ground that in view of Section 34 of the SARFAESI Act, no civil court has jurisdiction to entertain any suit or proceeding in respect of any matter which Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to

determine and no injunction shall be granted by any court or by any authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Section 34 of the SARFAESI Act provides that the said Act would have overriding effect. The plaintiff has already initiated an action and challenged the notice under Section 17 of the SARFAESI Act which confers right of appeal to any person including borrower, if that person is aggrieved by any of "measures" referred to in Sub-section (4) of Section 13 taken by the secured creditor. The expression "any person" has wide import and takes within its scope not only the borrowers but also the guarantor or any other person who may be affected by action taken under Section 13(4) of the SARFAESI Act. He further submitted that a Debt 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 the SARFAESI Act. The civil courts' jurisdiction is completely barred so far as measures taken by the secured creditor under Sub-section (4) of Section 13 of the SARFAESI Act against which an aggrieved person has right of appeal before the DRT or the Appellate Tribunal to determine as to whether there has been any illegality in the measures taken. The said action is already taken by the plaintiff. He further submitted that as far as the cause of action against the present applicant is concerned, the plaintiff nowhere discloses the same. On the contrary, the documents filed by the plaintiff itself shows that it nowhere reflects that the applicant was aware as to the earlier transaction by the defendant No.1 with the plaintiff. The title documents and the search report obtained by the present applicant nowhere disclose that on the basis of the agreement of sale, possession was handed over to the plaintiff and he obtained the title. Thus, no cause of action arose as far as the present applicant is concerned and, therefore, the plaint deserves to be rejected against the present applicant.

7. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

(1) Sunil Kumar Jain vs. Kishan, reported in 1995 LawSuits (SC) 573;

(2) Standard Chartered Bank vs. Dharminder Bhohi and ors, reported in 2013 LawSuit (SC) 913;

(3) Jagdish Singh vs. Heeralal and ors, reported in 2013 LawSuit (SS) 1010;

(4) Savita Bhagwantrao Patil and ors vs. Shyam Pukhraj Asopa and ors, reported in 2014 LawSuit (Bom)678;

(5) Bank of Rajasthan vs. Suryakant Sukhdeo Gite and ors, reported in 2014 LawSuit (Bom) 763;

(6) Axis Bank Limited vs. Madhav Prasad Aggarwal and ors, reported in 2018 LawSuit (Bom) 2051;

(7) State Bank of India vs. Allvvyn Alloys Pvt.Ltd. and ors, reported in 2018 LawSuit (SC) 517;

(8) State Bank of India vs. Aurelio Jose DA Costa, reported in 2017 LawSuit (Bom) 280;

(9) Bank of Baroda vs. Paramount Conductors Limited, reported in 2019 DGLS (Bom) 1589;

(10) Punjab and Sindh Bank vs. Frontline Corporation Ltd., reported in 2023 LawSuit (SC) 427;

(11) Charu Kishan Mehta vs. Prakash Patel, reported in 2020 LawSuit (SC) 1369;

(12) Union Bank of India vs. M/s.Gnandrum Enterprises, reported in 20234 LawSuit (Bom) 129;

(13) G.Vikram Kumar vs. State Bank of Hyderabad, reported in 2023 LawSuit (SC) 485;

(14) Smita vs. Jitendra, reported in 2022 DGLS (Bom) 1693, and

(15) Madhav Prasad Aggarwal and anr vs. Axis Bank Ltd. and anr, reported in 2019 LawSuit (SC) 1268.

8. Learned counsel for non-applicant No.1 also filed his written submissions and submitted that it is well settled principle of law that only on the basis of the averments made in the plaint, it could be ascertained as

to whether cause of action is made out or not. In fact, the entire pleading in the plaint will have to be read and that too at its face value and defence taken by the defendants cannot be looked into. The applicant being a non-banking financial institution regulated by the RBI has clearly omitted in its obligation to carry out due diligence while advancing the loan. It was also specifically pointed out that the reliefs which were claimed by the answering non-applicants herein could only granted by the civil court and not by the Debt Recovery Tribunal. The trial court while considering, categorically concluded that civil rights of the plaintiff who is neither the borrower nor the guarantor are affected and rightly rejected the application. He further submitted that the decisions relied upon by the applicant are judicial precedent as to the nature and extent of bar under Section 34 of SARFAESI Act. There are certain reliefs which only can

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be granted by the civil court and, therefore, the revision application is devoid of merits and liable to be dismissed.

9. In support of his contentions, learned counsel for non-applicant No.1 placed reliance on following decisions:

> **(1) Eldeco Housing and Industries Limited vs. Ashok Vidyarthi and ors, reported in 2023 SCC OnLine SC 1612;**
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> **(2) Bank of Baroda, thr.its Branch Manager vs. Gopal Shriram Panda and anr, reported in 2021 SCC OnLine Bom 466;**
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> **(3) Civil Appeal No.1876/2016 (Central Bank of India and anr vs. Smt.Prabha Jain and ors) decided by the Hon'ble Apex Court on 91.2025, and**
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> **(4) Bank of Rajasthan Limited vs. VCK Shares and Stock Broking Services Limited, reported in (2023)1 SCC 1.**

10. In view of the admitted position, the suit is filed for declaration and injunction as the action is taken by issuing the notice of possession by the applicant as the

defendant No.3 has committed default in payment of the loan amount. As far as the applicant who is defendant No.4 is concerned, allegation in the plaint is that the applicant had legal duty and obligation to check, scrutinize and perform proper verification of the security before sanctioning any loan against it. The defendant No.4 has failed to perform and not followed the rules and regulations and by joining hands in glove to cause the loss to the plaintiff initiated the action against the plaintiff. The cause of action shown against the applicant is that the plaintiff received notice from the applicant under Section 13(2) of the SARFAESI Act. The cause of action as per the plaintiff arose as fraud is played by the defendant in respect of the said flat which he is in possession. The application is filed by the applicant for rejection of the plaint under Order VII Rule 11(a) and (d) of the CPC on the ground that no cause of action arose against the applicant and the suit is barred in view of Section 34 of the SARFAESI Act.

11. Before entering into the merits of the case, it would be relevant to refer the relevant provisions of the SARFAESI Act.

12. Section 13(2) of the SARFAESI Act reads as follows:

> **Section 13. Enforcement of security interest.**
>
> (1) Notwithstanding anything contained .....
>
> (2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, 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).

13. Section 17 of the SARFAESI Act confers a right of appeal to any person including borrower, if that person is aggrieved by any of the measures referred to in Sub-section (4) of Section 13 taken by the secured creditor. Section 17 is reproduced for the reference as under:

> **"17. [Application against measures to recover secured debts.] [Substituted 'Right to appeal' by Act No. 44 of 2016.]**
>
> (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application alongwith such fee, as may be prescribed,] [Substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 ofr 2004), Section 10, for "may prefer an appeal" (w..e.f. 21.6.2002).] to the Debts Recovery Tribunal having jurisdiction in

the matter within forty-five days from the date on which such measures had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.] [Inserted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30of 2004), Section 10 (w.r.e.f. 21.6.2002).]

[Explanation. For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.] [Inserted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 10 (w.r.e.f. 11.11.2004).]

(1A) [An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

(2) [The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.] [Sub-sections (2) and (3) substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 10, (w.e.f. 11-11-2004)]

(3) [If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to

the borrower or other aggrieved person, it may, by order,-

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

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(4A) [Where-

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,-

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882; or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and

(ii))the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder."

14. Section 34 of the SARFAESI Act oust civil court jurisdiction. For reference, Section 34 is reproduced as under:

"34. Civil Court not to have jurisdiction.

No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."

15. The above said Section 34 deals with that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The scope of Section 34 was considered by the Hon'ble Apex court in the case of **Mardia Chemicals Limited UOI and ors, reported in (2004)4 SCC 311** and held that 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

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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 34. 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 34.

16. Various decisions relied upon by the applicant and the non-applicant are based on the observation of the

Hon'ble Apex Court in the case of **Jagdish Singh vs. Heeralal and ors** *supra* wherein the Hon'ble Apex Court extensively dealt with Sections 13, 17 and 34 of the SARFAESI Act. Section 13 deals with the circumstance of enforcement of security interest. In view of Section 13(4), in case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset; (b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

Proviso to sub clause (2) of sub section (4) of Section 13 provides that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt.

Second proviso to sub clause (2) of sub section (4) of Section 13 states that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt.

17. Section 17 of the SARFAESI Act deals with the right of the appeal which states that Any person aggrieved by any order made by the DRT under Section 17 may also prefer an appeal to the Appellate Tribunal under Section 18 of the Act.

18. The Hon'ble Apex Court in the case of **Jagdish Singh vs. Heeralal and ors** *supra* interpreted the

expression “any person” and observed in para Nos.17 and 18 as follows:

> “17. The expression ‘any person’ used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13(4) of the Securitisation Act. Reference may be made to the Judgment of this Court in **Satyavati Tondon’s** case (supra).
>
> 18. Therefore, the expression ‘any person’ referred to in Section 17 would take in the plaintiffs in the suit as well. Therefore, irrespective of the question whether the civil suit is maintainable or not, under the Securitisatoin Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the Securitisation Act, in case the bank (secured creditor) adopt any measure including the sale of the secured assets, on which the plaintiffs claim interest.”

19. Sub-section (2) of Section 17 of the SARFAESI Act cast a duty on the tribunal to consider whether measures taken by the the secured creditor for enforcement of security interest are in accordance with the provisions of the Act and Rules made thereunder. If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower. On the other hand, if the tribunal finds that the recourse taken by a secured creditor under sub-section (4) of Section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other

law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of Section 13 to recover his secured debt.

20. Thus, the right of appeal is provided when any person besides the borrower or guarantor who is aggrieved by the action taken by the secured creditor in view of Section 13(2) or 13(4) of the SARFAESI Act.

21. Here, in the present case, the plaintiff has already filed an appeal by invoking the provisions of the SARFAESI Act. One of the contentions raised by the applicant is that there is express bar under Section 34 as to the jurisdiction of the civil court. Section 34 of the SARFAESI Act is having overriding effect. The purpose behind the establishment of the tribunal is to put the controversy to resolve between the banks and the

borrowers and any third party who acquired any interest. They have been conferred jurisdiction by special legislation to exercise a particular power as provided under the Act. It cannot assume the role of a court of different nature which really can grant liberty to initiate any action against the bank.

22. Thus, the civil court's jurisdiction is barred so far as the measures taken by the secured creditor under Sub-section (4) of Section 13 of the SARFAESI Act against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal to determine as to whether there has been any illegal measures taken.

23. This aspect is considered by the Hon'ble Apex Court in the cases of **Standard Chartered Bank vs. Dharminder Bhohi and ors** *supra*; **Jagdish Singh vs. Heeralal and ors** *supra*; **Savita Bhagwantrao Patil and ors**

vs. Shyam Pukhraj Asopa and ors *supra*; **Bank of Rajasthan vs. Suryakant Sukhdeo Gite and ors** *supra*, **Axis Bank Limited vs. Madhav Prasad Aggarwal and ors** *supra;* **State Bank of India vs. Aurelio Jose DA Costa** *supra;* **Bank of Baroda vs. Paramount Conductors Limited** *supra*; **Punjab and Sindh Bank vs. Frontline Corporation Ltd** *supra* **Charu Kishan Mehta vs. Prakash Patel** *supra;* **Union Bank of India vs. M/s.Gnandrum Enterprises** *supra;* **G.Vikram Kumar vs. State Bank of Hyderabad** *supra,* **Smita vs. Jitendra, reported in 2022 DGLS (Bom)** wherein the aspect as to the jurisdiction of the civil court in view of Section 34 is extensively dealt with. The legal position settled is that the object of the SARFAESI Act is very good aiming at reducing "non performing asset". The constitutional court had to interpret provisions of the Act dealing with many complicated issues and keeping in view the interest of borrowers. Many issues under the provisions of the SARFAESI Act are settled now. In two important decisions in the cases of **Mardia Chemicals Limited UOI and ors** *supra* and **M/s.Transcore vs. Union of India and ors, reported in 2007 AIR (SC)712,** the Hon'ble Apex Court has settled the legal position with regard to the SARFAESI Act. The Hon'ble Apex Court has settled legal position with regard to the SARFAESI Act and made the rigor of the SARFAESI Act for recovery of NPAs effective in letter and spirit. When the statute creating rights and obligations constituted the form to enforce them, such special forum ordinarily are considered right over the above the general law. Section 9 of the CPC makes the intention of the legislature clear. Civil court does not have plenary jurisdiction to try all civil suits unless barred expressly or by necessary implication.

24. It is well settled that Ouster of the jurisdiction is not to be readily inferred. But, at the same time,

jurisdiction cannot be conferred where there is none. When the special Statute has provided the adequate or sufficient alternative efficacious remedy, jurisdiction of the Civil Court is excluded expressly or by necessary implication.

25. When the special Statute has provided the adequate or sufficient alternative efficacious remedy, jurisdiction of the Civil Court is excluded expressly or by necessary implication.

26. Section 34 of the SARFAESI Act mentions expressly that the Civil Court has no jurisdiction to entertain the Civil Suit in relation to the matter required to be determined by the Debt recovery Tribunal or the Appellate Tribunal. The Civil Court cannot grant injunction against an action under the SURFAESI Act or its Rules.

27. Section 35 of the SARFAESI Act states about the non-obstante clause which has overriding effect. If remedy is available to get the right or obligation adjudicated under the special Act, the suit would not be entertained by the Civil Court as it would not lie in the Civil Court. Plenary jurisdiction of the Civil Court under general law could be resorted to when the statutory Authorities/Forum/Tribunal have acted without jurisdiction or when fundamental principles of the judicial procedure was not complied with.

28. A Constitution Bench of the Hon'ble Apex Court in the case of **Firm and Illuri Subbayya Chetty and sons vs. The State of Andhra Pradesh, reported in 1964 AIR SC 322** relied upon the decisions of he case of Privy Council **The Secretary Of State vs Mask And Co., reported in (1940) 42 BOM LR 767** and **Reliegh Investment Co. Ltd. vs. Governor General in 'Council', 1947 AIR (PCO)** held

that, “there is a general presumption that there must be a remedy in the ordinary civil courts to a citizen claiming that an amount has been recovered from him illegally and such a remedy could be held to be barred only on very clear and unmistakable indications to the contrary. The exclusion of jurisdiction of civil courts to entertain civil causes will not be assumed unless the relevant statute contains an express provision to the effect or leads to a necessary and inevitable implication of that nature.:

29. The Constitution Bench of the Hon’ble Apex Court in the case of **Lala Ram Swarup and ors vs. Shikar Chand and anr, reported in 1966 AIR 893** held that the jurisdiction of the civil courts to deal with civil causes be excluded by the Legislature by the Special Act which may dealt with special subject matter, but the exclusion of the jurisdiction of the civil courts must be made by a statutory

provision which expressly provides for it, or which necessarily and inevitably leads to that inference. However, the said bar would not be relevant if the plea before the civil court goes to the root of the matter and if upheld, leads to the conclusion that the impugned order is a nullity.

30. The Hon'ble Apex Court in the case of **Punjab and Sindh Bank vs. Frontline Corporation Ltd.** *supra,* relied upon by the applicant, by taking into consideration catena of decisions observed in para No.12 that, the issue as to the exclusion of the jurisdiction of a civil court is no more res integra. The provisions of Section 34 of the SARFAESI Act have been considered by a Bench of three Judges of this Court in the case of **Mardia Chemicals Limited and Others v. Union of India and Others** *supra*. It will be relevant to refer to the following observations of this Court in the said case

"50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. 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."

31. The Division Bench of this Court in the case of **Bank of Baroda, thr.its Branch Manager vs. Gopal Shriram Panda and anr** *supra* wherein the reference was made for answering the following question:

Whether the jurisdiction of the civil court to decide all the matters of civil nature excluding those to be tried by the DRT under Section 17 of the SARFAESI Act in relation to enforcement of security interest of secured creditor is barred by Section 34 of the SARFAESI Act and while answering the same, observed that:

(A) Jurisdiction of the Debts Recovery Tribunal, to decide all matters relating to Sections 13 and 17 of the SARFAESI Act, is exclusive.

(B) 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.

(C) The jurisdiction of the Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Sections 13 and 17 of the SARFAESI Act, in relation to enforcement of security interest of a secured creditor, is not barred by Section 34 of the SARFAESI Act.

(D) 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.

32. Thus, the consistent view in various decisions is that the civil court's jurisdiction is completely barred so far as measures taken by the secured creditor under Sub-section (4) of Section 13 of the SARFAESI Act against which an aggrieved persons has right of appeal before DRT or the Appellate Tribunal to determine as to whether there has been any illegality in the measures taken.

33. The Bank in the instant case has proceeded only against the secured assets of the borrowers on which the

plaintiff has claimed the rights on the basis of agreement to sale executed in his favour before creating security interest in respect of the secured assets.

34. Looking to the entire purpose and object of the Act, it is evident that the Act provides for various remedies to the secured creditors for recovery of the dues. An effective remedy of the application to DRT is also provided to the aggrieved person under Section 17(1) of the Act and as per Section 34 of the Act therefore the jurisdiction of the civil court is expressly barred in respect of any matter which the DRT is empowered to determine. It is also specifically provides that no injunction can be granted by any court in respect of any action taken in pursuance of any act due to the Banks and Financial Institutions Act. As observed earlier, Section 35 of the Act shall have overriding effect, on provisions of any other law time being in force. Thus, it can be seen that the

SARFAESI Act is complete code in itself which provides effective measures for the banks and financial institutions to recover their dues without intervention of the court and adequate remedies are also provided in the Act itself to the persons aggrieved by those measures.

35. Thus, consistent view is that the civil court has no jurisdiction to entertain the suit as far as the action or measures taken by the financial institutions are concerned. Even, the Division Bench of this court in the case of **Bank of Baroda, thr.its Branch Manager vs. Gopal Shriram Panda and anr** *supra,* while considering the reference on 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, held that

the jurisdiction of the Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Sections 13 and 17 of the SARFAESI Act, in relation to enforcement of security interest of a secured creditor, is not barred by Section 34 of the SARFAESI Act. Thus, in the reference, the Division Bench of this court clarified that excluding the issue lies under Sections 13 and 17 of the SARFAESI Act cannot be questioned as it is barred under Section 34 of the SARFAESI Act.

36. While considering the interpretation of “barred by any law” the Hon’ble Apex Court in **Prem Lala Nahata and anr vs. Chandi Prasad Sikaria, reported in (2007)2 SCC 551** held that, “Order VII Rule 11 (d) speaks of the suit being "barred by any law". According to the Black's Law Dictionary, bar means, a plea arresting a law suit or legal claim. It means as a verb, to prevent by legal objection.

According to Ramanatha Aiyar's Law Lexicon, 'bar' is that which obstructs entry or egress; to exclude from consideration. It is therefore necessary to see whether a suit bad for misjoinder of parties or of causes of action is excluded from consideration or is barred entry for adjudication. As pointed out already, on the scheme of the Code, there is no such prohibition or a prevention at the entry of a suit defective for misjoinder of parties or of causes of action. The court is still competent to try and decide the suit, though the court may also be competent to tell the plaintiffs either to elect to proceed at the instance of one of the plaintiffs or to proceed with one of the causes of action. On the scheme of the Code of Civil Procedure, it cannot therefore be held that a suit barred for misjoinder of parties or of causes of action is barred by a law. This may be contrasted with the failure to comply with Section 80 of the Code. In a case not covered by sub-section (2) of Section 80, it is provided in sub-section (1) of Section 80 that "no suit shall be instituted". This is therefore a bar to the institution of the suit and that is why courts have taken the view that in a case where notice under Section 80 of the Code is mandatory, if the averments in the plaint indicate the absence of a notice, the plaint is liable to be rejected. For, in that case, the entertaining of the suit would be barred by Section 80 of the Code. The same would be the position when a suit hit by Section 86 of the Code is filed without pleading the obtaining of consent of the Central Government if the suit is not for rent from a tenant."

37. By applying these principles, if the facts and the pleadings of the present case are taken into consideration, it reveals that by the suit, the plaintiff has challenged notice issued by the present applicant for possession of the suit property. Thus, admittedly, the measures taken

by the applicant against the borrower is challenged by the plaintiff by filing the suit. In the suit, in fact, no prayer is made against the present applicant.

38. As far as the cause of action raised by the plaintiff is that the present applicant has issued the notice of possession against borrower and the plaintiff has also challenged the execution of the sale deed in favour of defendant No.3 by the defendant No.1 when the agreement of sale was executed in his favour. As observed earlier, the plaintiff has an alternative remedy to challenge the action of the present applicant by invoking the provisions under Section 17 of the SARFAESI Act.

39. The expression ‘any person’ used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13(4) of

the Securitisation Act. Reference may be made to the Judgment of this Court in **United Bank of India vs. Satyavati Tondon and ors, reported in (2010)8 SCC 110** case. Thus, while interpreting the expression "any person" referred to in Section 17, the Hon'ble Apex Court held that besides the borrower and guarantor any other person who affected by action or measures taken under Section 13(4) of the SARFAESI Act can challenge the legality or illegality of the action before the DRT or the Appellate Tribunal as Section 17 confers right of appeal to any person if that person is aggrieved by any or measures referred to in Sub-section (4) of Section 13 of the SARFAESI Act taken by the secured creditor.

40. In the present case, the plaintiff has already filed an appeal under Section 17 before the Appellate Aribunal or DRT.

41. The application has been filed by the applicant under Order VII Rule 11 of the CPC on the ground that no cause of action arose and the suit is barred in view of Section 34 of the SARFAESI Act.

42. In view of the above discussion, admittedly, jurisdiction of the civil court is barred under Section 34 of the SARFAESI Act when the action of taking measures under Section 13 are challenged. The consistent view is that civil court's jurisdiction is completely barred so far as measures taken by a secured creditor under Sub-section (4) of Section 13 of the SARFAESI Act is concerned against which an aggrieved person has right of appeal before the DRT or the Appellate Tribunal to determine whether there has been illegality in the measures taken.

43. Under Order VII Rule 11 of the CPC, duty casts upon a court to determine whether the plaint discloses a

cause of action by scrutinizing the averments in the plaint read in conjunction with the documents relied upon or whether the suit is barred by any law. While considering an application, under Order VII Rule 11 of the CPC, it is not only the plaint averments but also the documents annexed with the plaint can be looked into for the purposes of determining whether requirements under Order VII Rule 11 of the CPC are satisfied. The logic on which it is based appears to be that the documents annexed with the plaint are relied upon by the plaintiff for the purposes of the plaint averments and thus formed an integral part of the plaint. The matter, therefore, has to be viewed in the light of the above legal position. Even, the decision in **Eldeco Housing and Industries Limited vs. Ashok Vidyarthi and ors** *supra* relied upon by learned counsel for the plaintiff also by referring various judgments held that the law applicable for deciding an application under Order VII Rule 11 of the CPC was summoned up by this court in **Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra), dead through legal representatives and others , reported in AIR 2020 SC 3310.** The remedy under Order VII Rule11 CPC is an independent and special remedy where the court is empowered to summarily dismiss the suit at the threshold without proceeding to record evidence and conducting trial on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of grounds contained in this provision.

44. The decision in **Bank of Rajasthan Limited vs. VCK Shares and Stock Broking Services Limited,** relied upon by learned counsel for the plaintiff, is not helpful as the same is not identical with the present case.

45. Now, only question whether the plaint can be rejected against some of the defendants or it is to be rejected as a whole.

46. In **Sejal Glass Limited vs. Navilan Merchants Private Limited, reported in (2018)11 SCC 780** and **Madhav Prasad Aggarwal and anr vs. Axis Bank Ltd. and anr** *supra* wherein it is held that it is not permissible to reject plaint qua any particular portion of a plaint including some of defendants and continued the same against the others.

47. In the case of **The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s.Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, reported in (2012)8 SCC 706** which is a prior decision of **Madhav Prasad Aggarwal and anr vs. Axis Bank Ltd. and**

anr *supra* wherein the Hon'ble Apex Court had ruled that the plaint as a whole can be rejected against some of defendants in terms of Order VII Rule 11 of the CPC. On going through the decision in the case of **The Church of Christ Charitable Trust & Educational Charitable Society** *supra* it is ruled that a plaint as a whole can be rejected against some of defendants. The said decision was rendered by two judges bench of the Hon'ble Apex Court. The later decision in **Madhav Prasad Aggarwal and anr** *supra* is also rendered by two Judges bench of the Hon'ble Apex Court wherein the earlier decision in the case of **The Church of Christ Charitable Trust & Educational Charitable Society** *supra* was not considered. In this context, the Hon'ble Apex Court in the case of **Sundeep Kumar Bafna vs. State of Maharashtra and anr, reported in (2014)16 SCC 623** observed that he decision rendered by co-equal bench or larger bench earlier in time would prevail. The relevant observations in this regard are as follows:

The Constitution Bench in **Union of India vs. Raghubir Singh, 1989(2) SCC 754**, has come to the conclusion extracted below:

"27. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the Rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. …”

48. In view of the foregoing settled position of law, I am of the view that earlier decision rendered by the Hon’ble Apex Court in the case of **The Church of Christ Charitable Trust & Educational Charitable Society** *supra* needs to be followed which has laid down that the plaint as a whole can be rejected against some of defendants. This position has also been considered by the Division Bench of this Court in the case of **Sheela Ram Vidhani and ors vs. S.K.Trading Company and ors, reported in 2021(4) ABI 713**.

49. Looking to the entire purpose and object of the Act, it is evident that the Act provides various remedies to the secured creditor for recovery of dues. An effective remedy of making an application to DRT or the appellate tribunal is also provided to the aggrieved persons under Section 17 of the SARFAESI Act and as per Section 34 of the Act, the jurisdiction of the civil court is expressly barred in respect of any matter which DRT is empowered to determine. It also specifically provides that no injunction can be granted by any court in respect of any action taken in pursuance of the Act under the The Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Section 35 of the Act further provides that the provisions of the SARFAESI Act shall have overriding effect. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

50. Thus, it can be seen that the SARFAESI Act is complete self contained code in itself, which provides effective measures for the banks and financial institutions to recover their dues without intervention of the courts and adequate remedies are also provided in the act itself to the persons aggrieved by those measures.

51. The facts of the present case, if taken into consideration, by which the action of the present applicant is questioned, learned trial court has not considered this aspect and rejected the application. The settled position of law laid down by the Hon'ble Apex Court and now the issue as to the exclusion of jurisdiction of the civil courts is no more *res integra*.

52. Learned counsel counsel appearing for the applicant bank is justified in contending that in what essence the challenge raised by the plaintiff is the action

undertaken by the applicant under Section 13(4) of the SARFAESI Act. The question as to whether the action taken is legal or not can clearly be agitated under Section 17 of the SARFAESI Act which the court below completely failed to consider while passing the impugned order. The trial court also failed to consider the words used in Section 34 of the SARFAESI Act which states that no civil courts shall have jurisdiction to entertain any suit or proceeding in respect of any matter, which the tribunal is empowered to entertain under the provisions of the SARFAESI Act.

53. In the present case, the nature of grievances sought to be raised by the non-applicant could have been agitated only under Section 17 of the SARFAESI Act and the DRT and Appellate Tribunal have powers to grant relief to the plaintiff. The plaintiff has already filed appeal before the said tribunal and, therefore, no cause of

action arose to the plaintiff to proceed against the present applicant. Whether the action taken by the applicant was not in consonance with the provisions of the SARFAESI Act and the rules framed thereunder, the tribunal has power to grant relief to the plaintiffs.

54. As observed earlier, applying the law laid down by the Hon'ble Apex Court in the case of **The Church of Christ Charitable Trust & Educational Charitable Society** *supra* to the facts of the present case and accepting the contentions raised by the applicant which is justified and amounts to rejection of plaint as a whole, it cannot be said that the plaint is being split and that only a part of plaint is being rejected which is not permitted.

55. In view of the above, the impugned order passed by the trial court is unsustainable. As such, following order is passed:

ORDER

(1) The Civil Revision Application is **allowed**.

(2) The order impugned passed by learned 8th Joint Civil Judge Senior Division, Nagpur in SCS No.1040/2023 below Exh.15 by which application for rejection of plaint under Order VII Rule 11 of the CPC which is rejected by order dated 1.11.2023 is quashed and set aside.

(3) The application filed by the applicant under Order VII Rule 11 of the CPC for rejection of the plaint is allowed to the extent of applicant-defendant No.4.

The Civil Revision Application stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!

Signed by: Mr. B. R. Wankhede
Designation: PS To Honourable Judge
Date: 02/04/2025 11:14:48