IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO.109/2024

1. Hinduja Finance Limited
having Registered Office at:
Gawande Layout, Near Hotel
Kanhaiya Kunj, Ravi Nagar to
Sai Nagar Road, Amravati,
Tq. and Distt. Amravati.

2. Hinduja Finance Limited,
Branch Office at: 2nd Floor,
Shreejee Complex, Station Road,
Gondia.

Both the applicants are represented by its
Cluster Legal Manager and Authorised
Officer Shri Rahul Madhukar Nikure,
Aged about 34 years, R/o. Nagpur. ..(Ori. Deft Nos.3 & 4)
... Applicants

- Versus -

1. Indira Harishchand Katre
Aged about 54 years,
Occupation : Housewife,
R/o. Near Santoshi Daily Needs,
Fulchurpeth, Gondia,
Tah. and District Gondia.

2. Hemlata Mulchand Rahangdale
Aged about 47 years, Occupation: Housewife,
R/o. Godbole Layout, Jambhrun Road,
Buldhana, Tq. and District Buldhana. ..(Ori. Plft. Nos.1 & 2)

3. Pritam Mulchand Rahangdale
Aged about 50 years,
Occupation: Business,
R/o Rajgopal Ward. Gondia,
Tah. and Distt. Gondia. ..(Ori. Deft No.1)

4. Mohini W/o Umed Bopche,
Aged about 48 years,
Occupation : Housewife,
R/o. Near Sai Mandir, Govindpur
Road, Gondia, Distt. Gondia. ..(Ori. Deft No.2)

... Non-applicants

Mr. Krishna S. Motwani, Advocate for the applicants.
Mr. Aniket Narendra Rangari, Advocate for non-applicant Nos. 1 and 2.

CORAM: MRS.VRUSHALI V. JOSHI, J.
DATE OF RESERVING THE JUDGMENT : 16.07.2025.
DATE OF PRONOUNCING THE JUDGMENT : 05.08.2025.

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by consent of learned Advocates for the parties.

2. The applicants have approached this Court being aggrieved and dissatisfied by the impugned order below Exh.22 dated 14.05.2024 in Regular Civil Suit No.41/2024 passed by

the learned I/c. Joint Civil Judge, Junior Division, Gondia thereby rejecting the application filed by the applicants-original defendant Nos.3 and 4 under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "Act of 2002") read with Section 151 of the Code of Civil Procedure seeking rejection of plaint for want of jurisdiction.

3. The facts, in brief, are as follows:-

The applicant-Hinduja Finance Limited is a non-banking financial and registered company, engaged *inter alia* in the business of rendering financial facilities in the form of loan etc. to intending borrowers. The said company is represented by its authorized officer Mr. Rahul Madhukar Nikure. The non-applicant Nos.1 and 2 in the Regular Civil Suit No.41/2024 sought declaration that the mortgage of the property in favour of defendant Nos.3 and 4 is null and void *ab initio*. They further sought injunction restraining the applicants from taking possession of the suit property. The applicants, in response, filed an application under Section 34 of the Act of 2002 read with Section 151 of the Code of Civil Procedure, 1908 seeking rejection of the plaint for want of jurisdiction. It is pointed out by the applicants that since the bank loan account of original defendant No.1 was classified as Non-Performing Assets (N.P.A.) on account of default committed by him, the applicants initiated recovery proceedings and filed a Miscellaneous Criminal Application No.794/2022 before the Chief Judicial Magistrate, Gondia.

4. Some of the major grounds on which the impugned order rejecting the plaint is challenged are as under:-

(a) The suit in question is barred as per Section 34 of the Act of 2002 which provides that the appropriate Authority empowered to determine the jurisdiction under the said Act is any Appellate Tribunal such as the Debt Recovery Tribunal and not a Civil Court or other Authority.

(b) The Regular Civil Suit No.41/2024 filed by the non-applicants-original plaintiffs in collusion with defendant Nos.1 and 2 is nothing but an effort to stall and defeat the recovery proceedings which ultimately were certified by the learned Chief Judicial Magistrate, Gondia, vide order dated 01.12.2022.

5. Learned Advocate for the applicants Mr. Motwani, submitted that the suit filed by the non-applicant Nos.1 and 2 is not only frivolous but also barred by non-disclosure of the actual cause of action which is different altogether. It is vehemently argued by the learned Advocate that the learned trial Court committed an error in passing impugned order holding that the suit property being ancestral one, the plaintiffs are heirs of deceased Vimalabai Rahangdale and the trial Court committed an error in holding that the defendant No.1 is not an exclusive owner of the suit property and had no right to mortgage the same with the present applicants.

6. Learned Advocate for the non-applicants/original plaintiffs Mr. Rangari strongly opposed the contentions made by the applicants-original defendants. He contended that there is no bar to file the suit. In view of the settled proposition of law and guidelines laid down, the third party whose rights are infringed can bring up a suit. He further submitted that the suit property was ancestral property of the non-applicants and defendant Nos.1 and 2 have right in the same. Vimlabai Rahangdale was not alive in the year 2013 when the suit property was mortgaged by defendant No.1. Defendant Nos.3 and 4 have not taken consent of the plaintiffs for the use of disbursement of loan amount to the defendant No.1. On the date of loan agreement, the suit property was not mutated in the name of defendant No.1. Defendant No.1 was not an exclusive owner of the suit property. Defendant No.1 has relinquished his right in the suit property in favour of the plaintiffs. Defendant Nos.1, 3 and 4 have committed a fraud on the plaintiffs.

7. The application under Section 34 of the Act of 2002 is filed claiming that the Civil Court's jurisdiction is ousted by the provisions under Section 34 of the Act of 2002.

8. The learned Advocate for the applicants has relied on the judgment of the Hon'ble Apex Court in the case of *Central Bank of India and another V/s. Smt. Prabha Jain and others reported in* ***2025 SCC OnLine 121*** wherein the Hon'ble Apex Court has observed that the Act of 2002 has not been enacted for providing a mechanism for adjudicating upon the validity and documents or to determine question of title finally. The Debt Recovery Tribunal does not have jurisdiction to grant a declaration with respect to the mortgage deed or the sale deed as sought by plaintiffs. The jurisdiction to declare a sale deed or a mortgage deed being illegal is vested with the Civil Court under Section 9 of the Code of Civil Procedure. Therefore, the Civil Court has jurisdiction to finally adjudicate upon first two reliefs. The reliance is also placed on the judgment passed by this Court

in the case of *Bank of Baroda, through its Branch Manager V/s. Gopal Shriram Panda and another* reported in **2021 SCC OnLine 466** wherein same question is referred before this Court i.e. whether the jurisdiction of a Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debt Recovery Tribunal under Section 17 of the Securitization Act, in relation to enforcement of security interest of a secured creditor, is barred by Section 34 of the Securitization Act. In this case this, Court has observed as under:-

> *"23. Keeping in mind the principles as laid down in Dhulabhai (supra), and what we have considered and discussed above, when we ask ourselves a question as to whether the DRT exercising jurisdiction under Sections 13 and 17 of the SARFAESI Act, has the power, nay jurisdiction to determine the Civil Law rights, which may be available to a person, in the security interest, in the same manner as a Civil Court could ? or in other words, can a person who claims a right of partition, specific performance, reliefs under Sections 31 and 34 of the Specific Relief Act, preemption, redemption, declaration in respect of a property which is a security interest, approach the DRT for claiming adjudication of his such claim ? and can the DRT grant him such relief ? In our considered opinion, the answer has to be in the negative for the reason that it is not permissible for the DRT to embark on an adjudication of the civil rights claimed*

vis-a-vis the security interest, in light of the clear, precise and specific language of Section 17(1) and 18 of the DRT Act read with Sections 13, 17 and 34 of the SARFAESI Act, as already discussed above."

9. While discussing the question this Court in the above-said case has observed as under:-

"22.3. A security interest may at times also involve the common law rights of a citizen, who is not a party to its creation. In such a circumstance, can it be said that merely because a security interest has been created and it has to be enforced in a particular Forum in a particular manner, the citizen whose common law right has been infringed, would have to approach the Forum which has no jurisdiction and wherewithal to decide and enforce such violation. The following could be considered as examples of this :-

(a) In Vineeta Sharma Vs. Rakesh Shrama and others, (2020) 9 SCC 1, the Hon'ble Apex Court, while considering the amendment to Section 6 of the Hindu Succession Act, 1956, whereby a daughter was recognised as a coparcener, has held that such recognition would give her right in the coparcenary property by her birth in the coparcenary and not from the date of death of her father or the amendment. In such a matter if the male members of the family have already created a security interest in such coparcenary properties in favour of the Bank and for non payment of dues, if the same are being sought to be taken possession of and sold by auction, under Section 13 of the SARFAESI Act, can the

Special Forum, DRT herein, which is undertaking this exercise, on being approached by the daughter who now due to the amendment to the Hindu Succession Act, 1956, has a share therein which stands recognised retrospectively by the Apex Court, decide and determine the rights of such daughter and grant a preliminary decree delineating her share and take further action to separate her share ? If it cannot, then could it be said that the Civil Court does not have the jurisdiction to do so, in view of the bar created under Section 34 of the SARFAESI Act? But if it is so held then the daughter in spite of having a right in the CRA 29 of 2011.odt property duly recognised by law, would be left remediless, as she cannot go to the Civil Court nor the Special Forum, the DRT, has any authority to determine the extent of her right and grant her the relief which she would be entitled to.

(d) Where on a prima facie demonstrable case, the person who has created the security interest, was not having any legal right in the property in respect of which security interest is created.

(e) Where the Bank is aware from documents on record that the borrower/mortgagor is not having any absolute right in the property or is having a limited right, contrary to which the security interest is created in the whole of the property vis-a-vis the CRA 29 of 2011.odt borrower/mortgagor who is having only defined or undefined undivided share/interest in the property and the entire property is mortgaged.

(f) Where right of inheritance is claimed in the property, in respect of which a security interest is created."

10. The Court has further observed that these conditions are indicative and point towards existence of Civil Court's jurisdiction, even in cases, where the security interest could also become the subject matter of a litigation involving rights available under the Civil law, and therefore each case has to be tested on its own merits.

11. On perusal of plaint, it appears that the plaintiffs have prayed for permanent injunction against the defendant No.3-finance company claiming that the mortgage of the property is null and void and to restrain the defendant No.3 from taking the possession of the suit property. The remedy to seek such relief is under the Act of 2002 before the Debt Recovery Tribunal. The plaintiffs have stated that the defendant No.3 is not the owner of the suit property, it is ancestral property and defendant Nos.1 and 2 have relinquished their rights and, therefore, the defendant No.1 has no right to mortgage the said ancestral property. It appears from the record that the property

was mortgaged in the year 2019. The relinquishment deed is of the year 2023 and the plaintiffs and defendant Nos.1 and 2 are the brother and sisters and the legal heirs of the original owner of the suit property. The mother of plaintiffs Nos.1 and 2 and defendant Nos.1 and 2 has purchased the said property. The names were mutated in the year 2022 after the death of their mother and the property was mortgaged in the year 2019. The plaintiffs are directly challenging the order passed by the Magistrate and praying for stay. The plaintiffs and defendants are in relation. The sale deed of suit property is mortgaged by the defendant No.1. The plaintiffs have stated that the suit property is not the property which was mortgaged by the defendant No.1 as the alleged mortgage document or memorandum is in respect of Gat No.144 whereas the publication is made in respect of the suit property. All these questions can be raised before the Debt Recovery Tribunal. No civil right is infringed in this case. Therefore, though the defendants have relied on the judgments of the Hon'ble Apex Court and this Court, wherein the observations are made that Civil Court is having jurisdiction if the civil rights are infringed, as in the plaint, prayer is about the declaration of the mortgage deed as null and void and whether the property mentioned in mortgage deed is the same will be decided by the Tribunal as it has the jurisdiction to decide the same. Therefore, as no civil right is infringed in this case the civil Court has no jurisdiction to entertain the suit filed by the non-applicant No.1. Hence, interference at the hands of this Court is required. Accordingly, I pass the following order:-

i) The civil revision application is allowed.

ii) The order dated 14.05.2024 below Exh.22 passed by I/c. Joint Civil Judge, Junior Division, Gondia is hereby quashed and set aside with no orders as to costs.

iii) Rule accordingly.

(MRS.VRUSHALI V. JOSHI, J.)

Tambaskar.