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

CIVIL REVISION APPLICATION NO.87 OF 2024

	The Yavatmal Urban Co-op Bank Ltd., Through Authorized Officer Mr. Anil Ramdas Walkondawar, Yavatmal, Dist Yavatmal.	Applicant. (Ori.Def.No.2) (On R.A.)

-Versus-

1.	Mrs. Asha Arunrao Barde, Aged About. 60 years, Occ: Housewife, R/o Zhadgaon, Tah- Ralegaon, Dist. Yavatmal.	(Ori. Plaintiff No.1) (On R.A.)
2.	Mr. Mahesh Arunrao Barde, Aged About: 41 years, Occ Business, R/o Zhadgaon, Tah- Ralegaon, Dist. Yavatmal	(Ori.Plaintiff No.2) (On R.A.)
3.	Ganesh Arunrao Barde, Aged About: 39 years, Occ.: Business, R/o Zhadgaon, Tah- Ralegaon, Dist. Yavatmal	(Ori. Defendant No.3) (On R.A.)
4.	The Collector, Yavatmal, Dist. Yavatmal	(Ori. Defendant No.1) (On R.A.)
5.	Nayab Tehsildar, Ralegaon, Tah. Ralegaon, Dist. Yavatmal	(Ori. Defendant No.4) (On R.A.) Non-applicants.

Adv. Shilpa O. Lohiya, for applicant.
Adv. S.O. Ahmed, for non applicant nos. 1 &2.
Ms. S.N. Thakur, AGP for non applicant nos. 4 &5.

CORAM : MRS. VRUSHALI V. JOSHI, J.

Judgment reserved on : 08.07.2025
Judgment pronounced on : 07.08.2025

JUDGMENT:-

1) **Heard.**

2) **Rule.** Rule made returnable forthwith. This Civil Revision

Application is heard finally with the consent of the learned counsel appearing for the parties.

3) The applicant prefers the present Civil Revision Application being aggrieved by the impugned order below Exh.14 dated 14.03.2024 passed by the learned 2nd Joint Civil Judge Senior Division, Yavatmal, in Regular Civil Suit No.08/2024, thereby rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

4) The impugned order dated 14.03.2024 has been passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002, (herein after referred to 'the SARFAESI Act") which is under challenge. In the matter of Regular Civil Suit No.08/2024 (Asha Barde vs. The Collector, Yavatmal and others) filed by non-applicant nos.1 and 2 herein, i.e. plaintiffs, have prayed for the injunction against the action taken by the applicant -original defendant no.2.

5) The non-applicant no.3 (herein referred as defendant no.3) borrowed loan from the applicant (herein referred as defendant no.2 - bank), The non-applicant nos. 1 and 2 i.e., the plaintiffs have claimed ownership of suit property over the part of 151.29 sq.mtrs by way of oral claim and alleged that the mortgage deed executed by the non-

applicant no.3, i.e., the defendant no.3 is only to the extent of 42.94 sq.mtrs out of total 194.23 sq.mtrs of the said property. The non-applicant nos.1 and 2 are claiming right over suit property through non-applicant no.3 - original defendant no.3.

6) The learned counsel on behalf of the applicant, Ms. Lohiya, strongly argued that, in any case, the civil suit without serving mandatory notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960 is barred. Moreover, the relief claimed by the Plaintiff Nos. 1 and 2 is in the nature of injunction against the action taken by the applicants under the SARFAESI Act and also in the nature of challenge to the said action, for which remedy under Section 17 of the SARFAESI Act is prescribed. Therefore, the suit in question is barred under Section 34 of the SARFAESI Act. It was further submitted by the advocate that the cause of action mentioned in the plaint is action under the SARFAESI Act.

7) The applicant - original defendant no.2 has relied upon the judgment of the Apex Court in the matter of ***Swamy Atmananda V/s Sri Ramakrishna Tapovanam*** *reported in* ***AIR 2005 SC 2392*** in which it is observed that, the cause of action must include right to sue under the law.

8) Learned advocate, Mr. Ahmed, vehemently opposed the submissions made on behalf of applicant-Bank.

9) He submitted that the relations are admitted. It is also admitted that defendant no.3 has borrowed loan from defendant no.2 - bank. It was submitted that the loan was borrowed on 42.94 sq.meters property out of the entire property of 194.23 sq.meters. The certified copy of mortgage deed confirms the same. The copy of mortgage deed filed by defendant no.2 - bank on 12/01/2024 shows the area as 194.23 sq.meters. It was specifically submitted that entire plot no.257 admeasuring 194.23 sq.meters does not belong to defendant no.3. It was purchased by husband of plaintiff no.1 who is also the father of plaintiff no.2 and defendant no.3. The above property is recorded in the name of plaintiffs and defendant no.3 in view of heirship certificate issued by the Court.

It was further stated that the plaintiffs have applied for exemption from issuing notice under Section 168 of the Maharashtra Co-operative Societies Act and it was allowed. The defendant no.2 - bank has no right to seize or to alienate the property mentioned above except 42.94 sq.meters as mentioned in the mortgage deed.

10) Heard the learned counsel appearing for the respective parties.

11) The suit is filed by the plaintiffs for declaration that order passed by the defendant No.1 is not binding upon them. The plaintiffs are directly challenging the order of Magistrate for taking the possession under the SARFAESI Act. The injunction is also prayed by the plaintiff stating that in the mortgage deed, the mortgage is shown of the entire property. In fact only 42.94 Sq.Meters area from the said property was mortgaged with defendant No.2-Bank. The plaintiff has relied on the certified copy of mortgage deed. As per certified copy, the mortgage property was admeasuring 42.94 sq. Mtrs. house No.596/3 in Ward No.3 of village Zhadgaon. There is a difference in the property mentioned in the mortgage deed filed by the Bank, which is admeasuring 194.23 sq. meters. House No. 596/3 in ward No.3 situated at Village Zadgaon. The plaintiff has stated that defendant No.3 is the owner of the only said portion as oral partition was there. As the bank has committed a fraud on the plaintiff and plaintiff is praying for declaration, the bar under Section 34 of the SARFAESI Act is not applicable. The plaintiff has relied on the judgment of this Court dated 12.08.2024 in Writ Petition ***No.1724 of 2023 (The Branch Manager, Bank of Baroda,***

Achalpur Branch Vs. Sau.Amruta Kumar Agrawal and ors.),wherein this court has relied on the judgment of the Hon'ble Apex Court in case of ***M/s Sree Anandhakumar Mills Ltd. Vs. Indian Overseas Bank and ors. AIR 2018 SC (supp) 2472*** to contend that the issue involved in the present case is no more *res integra*. He submits that the Supreme Court in identical situation has held that the person aggrieved by the proceedings under the SARFAESI Act should approach the Debts Recovery Tribunal (DRT) and that the Civil Courts jurisdiction in the matter is completely barred. The Court further held that the suit for partition was not maintainable. It is observed in paragraph No.4 of the said judgment thus:

> "***The matter need not engage the Court in any great detail as in view of the law laid down by this Court in Jagdish Singh vs. Heeralal and others1 it would clear and evident that the suit filed by the second respondent (i.e. O.S. No.106 of 2009) is not maintainable. In Jagdish Singh (supra) this Court after an elaborate consideration of the provisions of the SARFAESI Act, particularly, Section 2(zf), 2(zc), 13(1), 17, 18 and 34, took the view, on almost similar facts, that a suit for partition would not be maintainable in a situation where proceedings under the SARFAESI Act had been initiated. It was also held that the remedy of any person aggrieved by the initiation of proceedings under the***

SARFAESI Act lies under Section 1 (2014) 1 SCC 479 17 which provides for an efficacious and adequate remedy to a party aggrieved. Paragraph 24 of the report in Jagdish Singh (supra) which make the above position clear may be usefully extracted below:

"24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have the jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression "in respect of any matter" referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently, if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which

> ***fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well."***

12) In view of the judgment of the Hon'ble Supreme Court , the Court has taken aid of it's earlier judgment in the case of ***Jagdish Singh Vs. Heeralal and ors. AIR 2014, SC 371*** has categorically held that any person aggrieved by any of the measures referred to in Sub Section (4) of Section 13 of the SARFAESI Act has got statutory right of approaching the DRT under Section 17. The Court then taking aid of Section 34 of the SARFAESI Act, has held that the Civil Court shall have no jurisdiction to entertain any suit or proceeding, "in respect of any matter," which the DRT or an Appellate Tribunal is empowered by or under SARFAESI Act. Accordingly, the Supreme Court held that the suit for partition is also not maintainable.

13) Considering the view taken by the Hon'ble Apex Court, the plaintiff has a remedy available before the DRT. The plaintiff is directly challenging the order passed by the Magistrate.

As per Section 34 of the SARFAESI Act, it is mentioned that in respect of any matter, the DRT has jurisdiction to decide the said issue. As per Section 34 of the SARFAESI Act there is a bar as the order of the Magistrate of taking possession under the SARFAESI Act is challenged. In such circumstances, without delving into about the Maharashtra Co-operative Societies Act and considering whether the plaintiff is the member of the Co-operative society, bar under section 34 of the SARFAESI Act is sufficient to reject the plaint under Order VII Rule 11 of the Civil Procedure Code.

14) Resultantly, the Civil Revision Application is allowed.

15) The impugned order passed by the learned 2^{nd} Joint Civil Judge Senior Division, Yavatmal, in Regular Civil Suit No.08/2024 is hereby quashed and set aside.

16) Rule is made absolute accordingly.

17) Civil Revision Application stands disposed of.

(MRS.VRUSHALI V. JOSHI, J)

Signed by: Kavita P Tayade
Designation: PS To Honourable Judge
Date: 08/08/2025 10:27:03

Kavita.