



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

61 CRA NO. 219 OF 2025

ARUN SHRIKISHAN AGARWAL AND OTHERS
VERSUS
MANGALA RAMESHJI SARASWAT AND ANOTHER

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Advocate for the Petitioner : Mr. S.B. Deshpande, Senior Advocate, a/w Mr.
Sandeep Rebari, i/by Mr. Deshpande Shreyas Sanjeev

Advocate for Respondent nos. 1 & 2 : Mr. Sanket S. Kulkarni h/f Mr. Suvidh
S. Kulkarni.

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CORAM : SHAILESH P BRAHME, J.

DATE : 16.02.2026

PER COURT :

Heard both sides.

2. This revision is directed against order dated 29.09.2025 passed below Exh. 16 in Special Civil Suit No. 350/2025, refusing to reject the plaint by invoking powers under Order VII Rule 11 of the Code of Civil Procedure.

3. The applicants are original defendant nos. 5 to 9 in Special Civil Suit No. 350/2025 filed by the respondents-plaintiffs for partition, declaration and injunction. The applicants are the purchasers of the property mortgaged with respondent no. 3-bank, which was ultimately purchased by Bank in auction proceeding. Defendant nos. 1 and 2 borrowers of respondent no. 3 bank, were unable to pay the loan and proceeding for auction was taken out.

4. Respondent no. 3-Bank purchased the mortgaged property and sale certificate was issued in its favour. Thereafter bank sold those properties to the present applicants. In the interregnum period the borrowers had approached the Debt Recovery Tribunal under Section 17 of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter 'the SARFAESI Act'). Their Securitisation Application No. 165/2023 was dismissed on 11.06.2025. In this backdrop, Special Civil Suit No. 350/2025 came to be filed. The applicants submitted application Exh. 16 under Order VII Rule 11 of the CPC on the ground that suit preferred is barred by Section 34 of the SARFAESI Act, limitation, non payment of proper court-fees and valuation of the suit. By impugned order the application was rejected.

5. Learned Senior Counsel Mr. Deshpande, appearing for the applicants submits that impugned order is cryptic and bereft of any reasons. It is submitted that though 21 pages are devoted in rejecting the application, actually paragraph nos. 37 to 39 comprise of the reasonings. It is submitted that the submissions of the applicants and predominant ground of challenge have not been dealt with. The case laws are discarded by single line. It is submitted that impugned order is perverse at its threshold.

6. Learned counsel Mr. Sanket Kulkarni, appearing for the respondents-plaintiffs would support the order. It is submitted that the purport of the order has to be seen from its earlier part also. The judgments cited at the bar are elaborately considered in the order. It is not a rule of thumb that order should contain elaborate reasons and particular number of paragraphs. It is submitted that the rejection of the application presupposes that the judgment cited by the respondents-plaintiffs was accepted and the judgment cited by the defendants are discarded. It is further submitted that there is no point in remanding the matter to the Trial Court.

7. Perusal of the impugned judgment shows that the Trial Court considered the judgment cited by the present applicant and the respondent/plaintiff. Last three paragraphs of the judgment would reflect that the Court was not inclined to grant relief of rejection of plaint. The predominant ground raised by the applicants is barred under Section 34 of

the SARFAESI Act, has not been dealt with precisely. Both parties cited judgments to that effect. Those are also not considered.

8. It reveals that in paragraph no. 39 it is recorded in one line that the judgments cited by the defendants are not applicable to the present case. That much courtesy has not been shown to the judgments cited by the plaintiffs. I am of the considered view that core issue raised by the applicants for rejection of the plaint has not been dealt with. In such situation, this Court thinks it fit to relegate the parties to the Trial Court for decision of application Exh. 16 afresh. I, therefore, pass following order:

ORDER

(I) Civil Revision Application is allowed partly by quashing the impugned order passed below Exh. 16 passed in Spl. Civil Suit No. 350/2025. Parties are relegated to the Trial Court and they shall be at liberty to press their contention and submissions in respect of application Exh. 16.

(II) The Trial Court shall decide the application Exh. 16 on its own merits after extending opportunity of hearing to the parties. This Court has not expressed any opinion on the merits

(III) An endeavour shall be made to decide the application within period of two months from today.

(SHAILESH P. BRAHME, J.)

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