Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO 14 OF 2026
WITH
INTERIM APPLICATION NO. 1607 OF 2026
WITH
INTERIM APPLICATION NO. 134 OF 2026
IN
APPEAL FROM ORDER NO.14 OF 2026

Samir Omesh Karnik .. Appellant (Org. Plaintiff)

Versus

Mohammad Aariz Aasif Kuresh & Ors. .. Respondents (Org. Defendants)

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- Mr. Anand Mishra a/w Ms. Priti Rao i/by Mr. Ashok M. Saraogi, Advocates for Appellant
- Mr. O.A. Das a/w Mr. Sudhir Kumar i/by M/s. O.A. Das & Associates, Advocate for Respondent No. 3

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 8, 2026

P. C.:

1. Heard Mr. Mishra, learned Advocate for Appellant i.e. Org. Plaintiff and Mr. Das, learned Advocate for Respondent No. 3 i.e. Bank.

2. For the sake of convenience, parties shall be referred to in terms of their status before the Trial Court i.e. Appellant as Plaintiff and the Respondents as Defendants.

3. Appeal from Order (AO) and Interim Applications are taken up for hearing by consent of the parties.

4. Present Appeal from Order assails order dated 29.11.2025 passed by learned Trial Court which is an ad-interim order rejecting ad-interim relief to the Plaintiff before the Trial Court. By order dated 03.12.2025, this Court granted ad-interim relief to the Plaintiff in the present AO proceedings.

5. Plaintiff is the Appellant before me. Respondent No. 3 - Bank is duly represented by Mr. Das, learned Advocate. Respondent No. 3 - Bank is vehemently opposing the AO and seeks its dismissal. Defendant No.1 is not present despite being served.

6. Briefly stated, Plaintiff is the owner of Flat No. 201, 2nd Floor situated at Saptarshi CHS Ltd., D.N. Nagar, Andheri (W), Mumbai - 400 053. Mr. Mishra, learned Advocate for Plaintiff would submit that on 04.04.2018, Plaintiff entered into an Agreement for Sale of the Suit flat to Defendant No. 1 and at the instance and behest of Defendant No. 1 and handed over all the original documents of the Suit flat to him. He would submit that Defendant No. 1 approached Defendant No. 3 - Bank for availing loan to purchase the Suit flat from Plaintiff. He would submit that on the basis of the original documents of the Suit flat and Agreement for Sale dated 04.04.2018, Defendant No. 1 borrowed Rs. 1,50,00,000/- from Defendant No. 3- Bank, but he did not complete the transaction with Plaintiff. In that view of the matter, he would inform the Court that on 12.05.2018, Plaintiff terminated the Agreement for Sale dated 04.04.2018. Mr. Mishra would contend that this termination of Agreement by the Vendor was duly informed to Respondent No. 3 - Bank as also to Defendant No. 1. However it appears that Defendant No.1 collected the loan amount or may be it was given to Plaintiff, but the Agreement stood cancelled. Nothing fructified thereafter until on 27.04.2022, Respondent No. 3 - Bank published a public notice seeking to take physical possession of the Suit flat in view of the default committed by Defendant No. 1 in repayment of the loan availed by him from the Bank. Order dated 11.01.2024 is passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short **"SARFAESI Act"**) by the CMM Esplanade Court, Mumbai for taking possession of the Suit flat after following the due process of law.

6.1. Mr. Mishra would contend that in view of the aforesaid steps taken by Respondent No. 3 - Bank, Plaintiff filed Securitisation Application under Section 17 of the SARFAESI Act to challenge the order passed under Section 14. According to him loan was sanctioned by Respondent No. 3 - Bank to Defendant No. 1 without taking cognizance of the original documents and therefore Respondent No. 3 - Bank had no right to seek possession of the Suit flat. He would submit that during pendency of Section 17 proceedings before the

DRT, on 30.09.2025 Respondent No. 3 - Bank took physical possession of the Suit flat and sealed the flat. In that view of the matter, he would contend that Plaintiff filed the present Suit proceeding before the Civil Court / Bombay City Civil Court seeking declaration and injunction.

7. Mr. Das, learned Advocate for Respondent No. 3 - Bank would vehemently oppose the filing of the Suit proceeding and present Appeal From Order as a sheer abuse of the due process of law on the ground of jurisdiction of the Civil Court to entertain the Suit. He would draw my attention to the proceedings adopted by Respondent No. 3 - Bank which are dealt with in the Affidavit filed by Bank dated 23.04.2026 (appended at page No. 67 of the present proceeding). He would submit that Respondent No. 3 - Bank has taken steps strictly in accordance with law for attachment and sale of the Suit flat in view of default committed by the borrower (Defendant No.1) with regard to the loan amount availed by him from the Bank. He would in fact persuade the Court to consider that all statutory documents executed by Defendant No.1 were given as security including demand promissory note, bearer letter, installment letter, affidavit-cum-undertaking, specimen undertaking. He would argue that to recover the outstanding amount due to the Bank, the flat has to be auctioned and request made by Plaintiff to stall sale of the Suit flat be rejected. However when Mr. Das is questioned by the Court as to what is the outstanding amount due to the Bank as on date, in his usual fair mindedness he would apprise the Court that total outstanding due to Bank is approximately Rs. 1.7 crore including interest amount. He would therefore persuade the Court to pass appropriate orders in view of non-maintainability of the Suit proceeding in view of the bar under Section 34 of the SARFAESI Act and direct the Plaintiff to approach the DRT and or DRAT in accordance with law with his grievance.

8. I have heard the rival submissions made by the respective learned Advocates at the bar and perused the record of the case with their able assistance. Submissions made by the Advocates have received due consideration of the Court.

9. At the outset, it is seen that Defendant No. 1 arrayed as Respondent No. 1 in the present AO, despite being repeatedly served has not remained present since inception when the present AO was heard for the first time on 03.11.2025. In such circumstances, all that will have to be seen is whether Respondent No. 3 - Bank is not at a loss since it deals with public money which are given as borrowings to the borrowers. Mr. Mishra persuaded the Court to allow the Plaintiff to deposit amount of Rs. 1,70,51,917/- in Court in order to secure the Bank's interest. His request was recorded in the order dated 08.01.2026 passed by this Court. On 09.01.2026 the aforesaid amount was deposited by Plaintiff to show Plaintiff's bonafide with request to the Court to stay the impugned order passed under Section 14 of the SARFAESI Act and not take any further steps for attachment and sale of the Suit flat. The entire outstanding amount of the Bank stands deposited and secured.

10. From the above facts, it is *prima facie* seen that insofar as Respondent No. 3 - Bank is concerned, it stands fully secured. Respondent No. 3 - Bank has pleaded that invocation of Civil Court jurisdiction by the Plaintiff is contrary to the bar under Section 34 of the SARFAESI Act. However, it is seen that the impugned order dated 29.11.2025, copy of which is appended at page No. 15 of the proceedings is an ad-interim order. In fact, it is a regular roznama order which does not even record any reasons whatsoever to refuse ad-interim relief. It is infact akin to a Farad order. But since ad-interim relief is not given and Bank has taken further coercive steps, Appeal From Order and Interim Application is filed. However considering that the Plaintiff has deposited amount of Rs. 1,70,51,917/- in this Court, Mr. Mishra in his usual fairness has attempted to persuade the Court to record the same and direct the learned Trial Court to dispose of the Notice of Motion in accordance with law after hearing the parties in the pending Motion.

11. In the above circumstances, since the Plaintiff has deposited the amount which is due to Respondent No. 3 - Bank and Respondent No.

3 - Bank is fully secured, I am inclined to accept the request made by Mr. Mishra and reject the submissions made by Mr. Das. Mr. Das's vehemence to sell the flat to recover Bank's dues is not appreciated by the Court once the Bank is fully secured. Instead of seeking withdrawal of the Bank's dues which stand deposited, this Court fails to understand as to why the Bank is insisting on sale of the flat. I completely fail to understand the functioning of the Bank altogether in these circumstances. Conduct of the Bank to foment litigation is deprecated by the Court. It seems that Bank wants to keep the embers burning. I am fully aware of the bar under Section 34, but Courts will have to rise above that in such type of matters where Bank's dues are deposited in Court. All that the Bank should do is to seek withdrawal of its outstanding dues and leave the Plaintiff and Defendant No.1 to litigate in appropriate proceedings. Needless to state that Respondent No. 3 - Bank is fully secured by virtue of deposit of Rs. 1,70,51,917/- in this Court on 09.01.2026. Further considering that the impugned order dated 29.11.2025 does not record any reasons whatsoever, same stands quashed and set aside with direction to the learned Trial Court to determine the Notice of Motion No. 4056 of 2025 after hearing all concerned parties in accordance with law. Learned Trial Court is directed by this Court to take into cognizance the case of all parties and more particularly Respondent No. 3 - Bank and pass appropriate

orders in accordance with law. Needless to state that until Notice of Motion No. 4056 of 2025 is determined and decided finally by the learned Trial Court, Respondent No. 3 Bank is precluded from taking any steps with regard to sale of the Suit flat in furtherance of the order passed on 11.01.2024 under Section 14 of the SARFAESI Act for recovery of its dues. The amount along with interest which has been deposited by Plaintiff in this Court stands transferred to the Bombay City Civil Court in the account of S.C. Suit No. 2854 of 2025 which is pending before the Trial Court. Learned Trial Court shall pass appropriate orders and finally determine Notice of Motion with regard to the said amount in accordance with law after hearing all concerned parties including Respondent No. 3 - Bank. Notice of Motion is directed to be decided by the Trial Court within four weeks as requested by Mr. Das from today.

12. All contentions of parties are otherwise expressly kept open in accordance with law.

13. With the above directions, present Appeal from Order stands partially allowed and disposed. Pending Interim Applications Nos.134 of 2026 and 1607 of 2026 are also disposed.

[MILIND N. JADHAV, J.]