IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 41 OF 2026

J. C. Flower Asset Reconstruction Pvt. Ltd. ..Applicant
Versus
Jogeshwar Pakhandu Yadav & Ors. ...Respondents

Mr. Shadab Jan a/w Mr. Kshitij Parekh & Mr. Vinod Kothari i/by Apex Law Partners, for the Applicant.

CORAM: N. J. JAMADAR, J.
DATE : 27th JANUARY 2026

ORDER:

1. Heard the learned Counsel for the Applicant.

2. This Revision Application is directed against a judgment and order dated 26th September, 2025 passed by the learned Civil Judge, Vadgaon - Maval, Pune, whereby an application preferred by the applicant – Defendant No. 1 for rejection of the plaint in Special Civil Suit No. 96/2025 under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908, came to be rejected.

3. The Respondent No. 1 – plaintiff has instituted a suit *inter alia* for a declaration that, the applicant – Defendant No. 1 has acquired no right, title and interest in the land admeasuring

26.64 Ares equivalent to 2664 Sq. Mtrs., bearing Survey No. 39, Hissa No. 2/1A situated at village Mundhaware (the suit land) and for delivery of vacant possession of the suit land. The Respondent No. 1 claimed to be the owner of the suit land.

4. The plaintiff claimed, the Respondent No. 3 – Defendant No. 3 had fraudulently obtained sale deed in respect of the said land. The plaintiff had thus instituted a suit for a declaration that, the sale deed dated 19th November, 2013 purportedly executed in favour of the Defendant No.3, was obtained by practicing fraud and misrepresentation. By an *ex-parte* judgment and decree dated 03rd July 2013 passed in Special Civil Suit No. 619/2017, the learned Civil Court declared that, the said sale deed was obtained by practicing fraud and misrepresentation, and set aside the said sale deed and declared that, the Defendant No. 3 has acquired no right, title and interest in the suit land by virtue of the said sale deed. The Defendant No. 3 and Ganesh Yadav (Defendant No. 2 therein) were also restrained from disturbing the possession of the plaintiff over the suit land.

5. In the meanwhile, on 15th February, 2014, Karnataka Bank Limited, the assignor in interest of the applicant –

Defendant No. 1, had sanctioned financial facilities in favour of the Defendant Nos. 2 to 4. The Defendant No. 3 had created security interest in the suit land by executing a registered mortgage deed dated 19th February, 2014. On account of the default in repayment of the loan, the secured creditor initiated measures under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act, 2002). Under an Assignment Agreement dated 04th March, 2024, Karnataka Bank Limited assigned the loans including the loan advanced against the security of the suit land, to the Defendant No. 1.

6. Hence, the applicant – Defendant No. 1 filed an application for rejection of the plaint contending *inter alia* that, the Defendant No. 1 had obtained an ex-parte decree without impleading the secured creditor as a party defendant, and by the instant suit, the plaintiff directly and substantially sought to injunct the Defendant No. 1 from enforcing its security interest in the suit land and from taking measures under Section 13 of the SARFAESI Act, 2002.

7. By the impugned order, the learned Civil Judge rejected the application observing, *inter alia*, that, in view of the decree passed in Special Civil Suit No. 619/2017, the validity of the mortgage created by the Defendant No. 3 in favour of the Defendant No. 1 had been jeopardized, and since the civil rights of a person other than borrower are involved, the Civil Court would have jurisdiction.

8. Mr. Shadab Jan, the learned Counsel for the applicant would submit that, the learned Civil Judge has misdirected himself in rejecting the application for rejection of the plaint. Laying emphasis on the prayers in the instant suit that, it be declared that, the Defendant No. 1 has not acquired any interest in the suit property and be restrained from creating any third party interest in the suit property or changing the nature of the suit property, Mr. Shadab Jan would urge that, the jurisdictional bar under Section 34 of the SARFAESI Act is clearly attracted. Mr. Shadab Jan further submitted that, the observations of the learned Civil Judge that, there was a cloud over the title of the borrower and, therefore, the Civil Court would have jurisdiction are erroneous as when the security interest in the suit land was created, even the Special Civil Suit No. 619/2017 was not instituted.

9. I am unable to agree with the submissions of Mr. Shadab Jan. Evidently, the sale deed on the strength of which the Defendant No. 3 created security interest in the suit land in favour of the predecessor in interest of the Defendant no. 1, has itself been declared to have been obtained by fraud and misrepresentation and thus cancelled and set aside. The plaintiff is not the borrower. Nor the plaintiff is claiming through the borrower. The decree passed in Special Civil Suit No. 619/2017, albiet *ex-parte*, is in force and lends *prima facie* credence to the claim of the plaintiff that, the security interest in the suit land was fraudulently created, and, thus, subsequent instruments do not bind the plaintiff. In such a situation, the allegations of fraud and the consequences that emanate therefrom cannot be legitimately inquired into by the tribunal which is a creature of statute with limited jurisdiction.

10. A useful reference, in this context, can be made to a Division Bench Judgment of this Court in the case of ***Bank of Baroda Vs. Gopal Shriram Panda & Anr.***[1], wherein the Division Bench, on a reference, considered the following 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*

1 2021 SCC OnLine Bom 466

enforcement of security interest of a secured creditor, is barred by Section 34 of the Securitisation Act?"

11. After an elaborate analysis, the Division Bench answered the above question as under:

"Answer:

The answer, looking to the nature of the question, in our view, is in parts:-

(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.

(E) Even in cases where the enforcement of a security interest involves issues as indicated in Mardia Chemicals (supra) of fraud as established within the parameters laid down in A. Ayyasamy (supra); a claim of discharge by a guarantor under Sections 133 and 135 of the Contract Act [Mardia Chemicals (supra)]; a claim of discharge by

a guarantor under Sections 139, 142 and 143 of the Contract Act; Marshaling under Section 56 of the Transfer of Property Act [J.P. Builders (supra)]; the Civil Court shall have jurisdiction.

(F) Examples as indicated in para 22.3, are illustrative of the Civil Court's jurisdiction.

(G) The principles laid down in para 33(i) to (ix) of Sagar Pramod Deshmukh (supra) are in accordance with what we have discussed and held above." *(emphasis supplied)*

12. The Division Bench has held in clear and explicit terms that the jurisdiction of the Civil Court to decide all the matters of Civil nature, excluding those to be tried by the Tribunal under Sections 13 and 17 of the SARFAESI Act, 2002, in relation to enforcement of security interest of a secured creditor, is not barred by Section 34 of the SARFAESI Act, 2002. Where civil rights of persons other than the borrowers or guarantors are involved, the Civil Court would have jurisdiction, that too when it is *prima facie* apparent from the face of the record that the relief claimed is incapable of being granted by the Tribunal under Section 17 of the Recovery of Debts and Bankruptcy Act, 1993 ("the RDB Act") read with Sections 13 and 17 of the SARFAESI Act, 2002. Likewise, the Civil Court would have jurisdiction to decide the issue of fraud as indicated in ***Mardia Chemicals Ltd. & Ors. Vs. Union of India & Ors***[2].

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2 (2004) 4 SCC 311

13. The aforesaid being the position in law, the learned Civil Judge was fully justified in rejecting the application for the rejection of the plaint. There is no legal infirmity in the impugned order which would warrant interference in exercise of revisional jurisdiction.

14. The Revision Application thus stands dismissed.

15. It is, however, clarified that the observations in the impugned order and this order are confined to determine the prayer for rejection of the plaint, and the Trial Court shall adjudicate the suit on its own merits and in accordance with law, without being influenced by any of those observations. Nor those observations can be used in any other collateral proceedings.

[N. J. JAMADAR, J.]