



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3272 OF 2025**

Tourism Finance Corporation of India Limited
A company incorporated under the
Companies Act, 1956 and having its
registered office at 4th Floor, Tower-1,
NBCC Plaza, Pushp Vihar, Sector-5,
Saket, New Delhi – 110017 through
its authorized Signatory Rudra
Nath Jha, Age: 55 Years

... Petitioner

versus

1) Aishwarya Chetan Khedkar @ Aishwarya
Sanjay Mali,
Age-28 Years, Occupation-Housewife,
Residing at Flat No. 202, Lebram Park,
Magarpatta City, Hadapsar,
Pune – 411 013.

2) Sanjay Dynanoba Mali
Age 53 Years, Occupation-Business

3) Rupali Sanjay Mali
Age 47 Years, Occupation – Housewife

4) Siddharth Sanjay Mali
Age 23 Years, Occupation-Student

5) Utkarsh Sanjay Mali
Age 25 Years, Occupation – Student
All residing at Malvadi, Talegaon Dabhade,
Maval, Pune – 410 507.

6) District Collector, Pune
Collector's Officer, Near Sasson Hospital
Pune – 411 001.

7) Hon Executive Magistrate and Resident

Deputy Tehsildar Maval
Tehsil Office, Tal. Maval,
Pune.

8) Eastman Garment Pvt Ltd.
A company incorporate under the
Having its registered office at; 10, 12,
Kumara Nagar (South) 2nd street, Tirpur,
Tamil Nadu – 641 603
And having present address at:
Hotel Aishwarya Regency,
Post-Malawadi, Tal. Talegaon,
District: Pune

... Respondents

**WITH
INTERIM APPLICATION NO.8693 OF 2025
IN
WRIT PETITION NO.3272 OF 2025**

Eastman Garments Pvt. Ltd.	...	Applicant
and		
Tourism Finance Corporation of India Ltd.	...	Petitioner
versus		
Aishwarya Chetan Khedkar and Ors.	...	Respondents

**WITH
INTERIM APPLICATION NO.9086 OF 2025
IN
WRIT PETITION NO.3272 OF 2025**

Aishwarya Chetan Khedkar	...	Applicant
and		
Tourism Finance Corporation of India Ltd.	...	Petitioner
versus		
Aishwarya Chetan Khedkar and Ors.	...	Respondents

Mr. Naushad Engineer, Sr. Advocate with Mr. Siddharth Samantaray, Mr. Vinod Kothari, Mr. Kshitij Parekh i/by Apex Law Partners, for Petitioner.
Mr. Surel Shah, Sr. Advocate with Mr. Sagar Kasar, Mr. Rishabh Tiwari, for Respondent No.1.

Mr. Amol Wagh, for Respondent Nos.2 and 3.
Mr. V.V.Krishnan, for Respondent No.5.
Mr. Hamid Mulla, AGP for Respondent Nos.6 and 7.
Mr. R.V.Pai, Sr. Advocate with Ms. Renuka Anturkar, Ms. Siddhi Bhosale, Ms. Prajakta Shringapure for Applicant in IA No.8693 of 2025 and for Respondent No.8 in WP.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 25 NOVEMBER 2025
PRONOUNCED ON : 24 JANUARY 2026

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
2. The Petitioner – Defendant No.5 questions the legality, propriety and correctness of a judgment and order dated 24 January 2025 passed by the learned District Judge, Vadgaon – Maval, Dist. Pune, in Misc. Civil Appeal No.47 of 2023, whereby the appeal preferred by the Respondent No.1 – Plaintiff against an order dated 14 December 2023 passed by the learned Civil Judge, Sr. Division, Vadgaon, thereby rejecting the application for temporary injunction in RCS No.305 of 2023, came to be allowed by setting aside the said order and restraining the Petitioner – Defendant No.5 and Defendant Nos.1 to 4 from creating third party interest in the property bearing Survey Nos.1/1/A/1, 1/1/A/6 and 1/1/A/7 with the building housing Hotel Aishwarya Regency (the suit property), without due process of law, to the

extent of the share of the Plaintiff therein, till the final disposal of the suit.

3. The Petitioner is a public limited Company. The Petitioner had sanctioned financial facilities to Aishwarya Regency LLP, a limited liability Partnership. Defendant Nos.1 and 2 were the partners of the said firm. Defendant Nos.1 and 2 also stood guarantors for the due repayment of the credit facilities extended by Defendant No.5. Security interest in the suit property was also created in favour of Defendant No.5.

4. In the wake of the default in the discharge of the liabilities, Defendant No.5 initiated measures under Section 13 of the the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002). Eventually, on 15 March 2023, Defendant No.5 took symbolic possession of the suit property. The District Magistrate, Pune passed an order under Section 14 of the SARFAESI Act, 2002 for delivery of physical possession of the suit property. The challenges to the action initiated under the SARFAESI Act, 2002 at the instance of Defendant Nos.1 and 2 failed. As there was resistance to the physical delivery of the possession of the suit property, Defendant No.5 was constrained to approach this Court by filing Writ Petitions.

5. The Petitioner asserts, to obviate the sale of the secured property, the Plaintiff, who is the daughter of Defendant Nos.1 and 2, instituted RCS No.305 of 2023 purportedly for the partition and separate possession of her

share in the suit property. An application preferred by the Plaintiff, seeking temporary injunction to restrain Defendant No.5 from selling the suit property to enforce its security, with a view to thwart recovery of the legal dues, came to be rejected by the trial Court by an order dated 14 December 2023.

6. The Plaintiff filed Misc. Civil Appeal No.47 of 2023 before the District Court at Vadgaon. By the impugned judgment and order dated 24 January 2025, the learned District Judge allowed the said appeal holding that the Plaintiff was entitled to enforce her right as a coparcener qua the suit property and her interest in the suit property was required to be protected till the final disposal of the suit, lest the Plaintiff would suffer an irreparable loss.

7. Being aggrieved, the Petitioner – Defendant No.5 has invoked the writ jurisdiction.

8. It would be contextually relevant to note that, after the impugned order came to be passed on 24 January 2025, Defendant No.5 sold the suit property to Respondent No.8 by accepting anchor bid vide communication dated 28 January 2025. Respondent No.8 thus sought impleadment in the Writ Petition as the Respondent No.8 had acquired right, title and interest in the suit property. By an dated 16 October 2025, the said Intervention Application came to be allowed.

9. I have heard Mr. Naushad Engineer, learned Senior Advocate for the Petitioner, Mr. Surel Shah, learned Senior Advocate for Respondent No.1 –

Plaintiff, Mr. R.V.Pai, learned Senior Advocate for Respondent No.8, Mr. Amol Wagh, learned Counsel for Respondent Nos.2 and 3, Mr. Krishnan, learned Counsel for Respondent No.5, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

10. Mr. Engineer mounted a multi-fold challenge to the impugned order. Firstly, Mr. Engineer would urge, the liability towards financial facilities extended by the Petitioner, a secured creditor to Aishwarya Regency, of which the Defendant Nos. 1 and 2 are the the partners, is not disputed. The security interest created by defendant nos. 1 and 2 has been duly registered with CERSAI, which constitutes a notice to the public at large and demolishes the claim of the plaintiff that she was unaware of creation of security interest in the suit properties. Once this position remains uncontroverted, the bar under Section 34 of the SARFAESI Act operates and the Civil Court's jurisdiction to entertain the suit gets ousted. The learned District Judge thus committed a manifest error in law in granting injunction in teeth of statutory prohibition. The net effect of the injunction was to restrain the secured creditor from taking the measures to enforce the security under the provisions of SARFAESI Act.

11. Mr. Engineer submitted that, the legal position is no longer *rest integra*. A very strong reliance was placed by Mr. Engineer on the judgment of the

Supreme Court in the case of **Jagdish Singh Vs Heeralal and Ors.**¹

Reliance was also placed by Mr. Engineer on an order passed by this Court in the case of **Satyajit Balasaheb Kadam and Anr Vs Balasaheb A Kadam and Ors.**²

12. Secondly, Mr. Engineer would urge, the instant suit was a desperate attempt to prevent the secured creditor from enforcing its security, after previous multiple attempts by Defendant Nos. 1 and 2 did not yield any result. The borrower had resorted to unlawful means to dispossess the secured creditor after the possession of the secured assets was delivered under Section 14 of the SARFAESI Act. Inviting attention of the Court to an order dated 20th October 2023 in Writ Petition No. 12478 of 2023 and another order dated 23rd January 2024 in Writ Petition No. 333 of 2024 passed by the Division Bench, Mr. Engineer would urge that, the borrower and the concerned persons had left no stone unturned to deprive the secured creditor of the secured assets, and the instant suit is a link in the chain of unlawful means adopted by the borrower and the Plaintiff to thwart the recovery of debt. The conduct of the borrower and his family members, as reflected in the aforesaid orders passed by this Court, disentitles the Plaintiff from any equitable relief.

13. Thirdly, Mr. Engineer laid emphasis on the fact that, another suit

1 (2014) 1 SCC 479.

2 Civil Application No. 3283 pf 2017 in First Appeal No. 21 of 2017, Order dated 1st November 2017.

instituted by Utkarsha Sanjay Mali (D4), the sister of the Plaintiff and another daughter of D1 and D2, did not yield the desired result and an Appeal against order passed in the said suit, being Appeal from Order No. 560 of 2024, was withdrawn by the Appellant with liberty to file an Application before Debts Recovery Tribunal for seeking reliefs as claimed in the said Appeal against Respondent No. 5-the Petitioner herein. Thus, the Plaintiff, who is similarly circumstanced, like Defendant No. 4, was also required to approach the DRT for redressal of her grievances.

14. Mr. Engineer nextly urged that, the mortgaged property is not the ancestral property. The factum of partition of the properties and the subsequent execution of instruments so as to confer absolute ownership of the secured assets on Defendant No.1 is not in contest. At any rate, Mr. Engineer would urge, Defendant No.1 had raised the finances for legal necessity. Therefore, the very claim of the Plaintiff that, the properties being ancestral properties, and she has 1/5th undivided interest therein is legally unsustainable. The learned District Judge thus could not have interfered with a well reasoned discretionary order passed by the trial Court.

15. Mr. Pai, the learned Senior Advocate for Respondent No. 8-the auction purchaser, supplemented the submissions canvassed by Mr. Engineer. Mr. Pai laid particular emphasis on the fact that borrowers and their associates have resorted to unlawful and illegal means to first dispossess the secured

creditor, who had obtained possession of the suit properties pursuant to the order passed by the Magistrate under Section 14 of the SARFAESI Act, and even caused obstruction to the possession of Respondent No. 8, the auction purchaser. The parties who resort to such unlawful means do not deserve any discretionary relief.

16. Mr. Pai urged with a degree of vehemence that, the learned District Judge committed a gross error in holding that all the suit properties were the ancestral properties. Taking the Court through the Mutation Entries in respect of the suit properties, Mr. Pai would urge that, all the properties became the absolute properties of Defendant No.1. When the security interest was created in the suit properties, Defendant No.1 was the absolute owner thereof. The claim of the Plaintiff that the suit properties are the ancestral properties and she has an undivided 1/5th share in the suit properties is, thus, demonstrably false. The learned District Judge, without proper evaluation the material on record, proceeded to interfere with the discretionary order passed by the trial Court by ascribing flimsy reasons.

17. Mr. Pai reiterated that the instant suit was a collusive suit. A reference was made to the fate of the proceeding instituted by Utkarsha (D4). Mr. Pai made a strenuous effort to demonstrate that the auction sale by the Petitioner in favour of Respondent No. 8 was after following the due process of law. The injunction order passed by the learned District Judge, which was, in the first

place, without jurisdiction, did not impinge upon the sale of the suit properties by the Petitioner in favour of Respondent No. 8. Attention of the Court was invited to an order passed by the DRT on 17th April 2025, whereby all the objections raised on behalf of the borrowers to the sale of the suit properties were negated by the DRT. Thus auction sale of the suit properties by the Petitioners in favour of Respondent No. 8 can, even otherwise, be said to be by following due process of law. In these circumstances, the impugned order of injunction deserves to be quashed and set aside.

18. Per contra, Mr. Surel Shah, the learned Senior Advocate for Respondent No.1-the Plaintiff, supported the impugned order. First and foremost, Mr. Shah would submit that, the Petitioner does not deserve to be heard in this Petition as, in the teeth of the injunction order, the Petitioner has professed to sell the suit properties in favour of Respondent No. 8. Such a sale in breach of an injunction order is illegal and void. No right, title and interest can be said to have been transferred in favour of Respondent No. 8 on the strength of such sale. The purported sale of the suit property by the Petitioner to Respondent No. 8 is non-est in the eyes of law. On this count of deliberate and contumacious breach of impugned order itself, the Petition deserves to be dismissed summarily.

19. To lend support to this submission, Mr. Shah placed a very strong reliance on the judgment of the Supreme Court in the case of **Balwantbhai**

Somabhai Bhandari Vs Hiralal Somabhai Contractor (Deceased)
Represented by LRs and Ors.³

20. As the second limb of the submission, Mr. Shah would urge that, Respondent No. 8- auction purchaser is also not entitled to be heard in this Petition having acquired subject property in the face of an injunction order. The auction purchaser will have to workout its remedies in an appropriate proceeding before the appropriate forum.

21. Mr. Shah assiduously controverted the contentions on behalf of the Petitioner and Respondent No. 9 that the suit properties are not the ancestral properties. Taking the Court through the averments in the Plaint and the entries in the Record of Rights of the suit properties, Mr. Shah would urge the claim of the Plaintiff that the suit properties are ancestral properties is substantiated by documents of unimpeachable character. In fact, the Mutation Entries on which reliance was placed on behalf of the Petitioner and Respondent No. 8, if properly construed, belied the claim of the Petitioner and Respondent No. 8.

22. Mr. Shah would urge that, the trial Court has also recorded a categorical finding that one of the properties was the ancestral properties and, yet, declined to protect the interest of the Plaintiff by recording an utterly unsustainable finding that rest two properties were self-acquired properties of

³ (2023) 17 SCC 545.

Defendant No.1 The learned District Judge was thus within his rights in correcting the manifest error committed by the learned Civil Judge. Such an order which corrects the error in the exercise of discretion by the trial Court, is not open for interference, in exercise of its supervisory jurisdiction by this Court, submitted Mr. Shah.

23. In any event, since by the impugned order, the learned District Judge had restrained the Defendants from creating third party interest in the suit properties to the extent of the share of the Plaintiff without following due process of law, the said order is otherwise not amenable to interference as it balances the equities between the parties.

24. The aforesaid submissions now falls for consideration.

25. To begin with the jurisdictional challenge. The thrust of the submission on behalf of the Petitioner and Respondent No.8 was that the civil court's jurisdiction was clearly ousted by the provisions contained in Section 34 of SARFAESI Act, 2002, as the very purpose of the suit was to obviate the measures initiated by the secured creditor under Section 13 of the SARFAESI Act, 2002. As the challenge squarely falls within the ambit of the provisions contained in Section 17 of the SARFAESI Act, 2002, the Plaintiff must have approached the DRT.

26. To appreciate this challenge, at the outset, certain fundamental principles with regard to the jurisdiction of the civil court vis-a-vis the Tribunal,

which is created under the statute, deserve to be kept in view. The jurisdiction of the civil court is of wide amplitude. In a sense, it is plenary and omnipotent. The Civil Court has jurisdiction to entertain all suits of civil nature, unless its jurisdiction is expressly or impliedly barred, and the exclusion of the jurisdiction of the civil court is not readily to be inferred.

27. The Tribunal, in contrast, which is a creature of statute, is bound by the jurisdiction conferred on it under the provisions of the Act, by which it is created. Being the creature of the statute, the Tribunal has limited jurisdiction. It has to discharge the statutory functions within the four corners of the statute creating it. The Tribunal, thus, cannot transgress its jurisdictional limits and delve into the matters which do not strictly fall within its adjudicatory province. In the context of the facts of the case at hand, the Tribunal i.e. DRT, which the Petitioner and Respondent No.8 claimed to have exclusive jurisdiction, is a creature of RDB Act, 1993. It has to exercise jurisdiction within the confines of RDB Act, 1993 and the SARFAESI Act, 2002.

28. Mr. Engineer would urge that the legal position as regards the jurisdiction of the civil court vis-a-vis an action pursuant to the measures initiated by the secured creditor is well settled. Reliance was placed on the judgment in the case of **Jagdish Singh (supra)**. In the said case, the Supreme Court enunciated that the expression 'any person' used in Section 17 of the Act, 2002 (as it stood before it was substituted by Act 44 of 2016) is

of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13(4) of the SARFAESI Act, 2002. 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 SARFAESI Act, 2002. 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.

29. The development in law after the aforesaid decision of the Supreme Court in the case of **Jagdish Singh (supra)**, deserves to be noted. In fact, the legal position in regard to the bar of the jurisdiction of the civil court can be said to be now fairly crystalized. It may be superfluous to make a reference to the judgments which delve on the extent of the bar created under Section 34 of the SARFAESI Act, 2002. It would suffice to make a reference to the Division Bench judgment of this Court in the case of **Bank of Baroda V/s. Gopal Shriram Panda**⁴ and a judgment of the Supreme Court in the case of

4 2021 SCC Online Bom 466

Central Bank of India and Anr. V/s. Prabha Jain and Ors.⁵, wherein the import of the judgment in the case of **Jagdish Singh (supra)**, which constitutes the sheet-anchor of the submission of Mr. Engineer, was clarified. In the case of **Bank of Baroda (supra)**, the Division Bench considered on a reference 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 enforcement of security interest of a secured creditor, is barred by Section 34 of the Securitisation Act ?”

30. The Division Bench after an elaborate analysis, including the judgments in the cases of **Mardia Chemicals Ltd Vs Union of India**⁶, **Jagdish Singh (supra)**, answered the above question, as under :

“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

5 (2025) 4 SCC 38

6 (2004) 4 SCC 311.

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)

31. 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, especially 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.

32. In the case of **Central Bank of India (supra)**, while explaining the ratio in the case of **Jagdish Singh (supra)**, the Supreme Court observed, inter alia, in relation to the Division Bench judgment of this court in the case of Bank of Baroda (supra), as under :

“29. In para 24 (of Jagdish Singh) this Court held that DRT has jurisdiction with respect to “measures” taken by the secured creditor under Section 13(4) and that in respect of such matters, the civil court’s jurisdiction is ousted. However, thereafter, there is no further discussion on the nature of the suit and without recording any finding that DRT has the power to decide partition suits, this Court straightaway affirmed the rejection of the plaint under Order VII, Rule 11. While doing so, this Court missed to consider that under Section 17, DRT has no power to partition properties and hence, civil court’s jurisdiction to grant a decree of partition cannot be said to be ousted. When there is no finding in the judgment that the DRT has the jurisdiction to grant the relief of partition, the judgment cannot be said to be a precedent on that point.

30. The aforesaid was looked into by a Division Bench of the Bombay High Court in Bank of Baroda (supra), and the reasonings assigned in our view are very commendable.....” (emphasis supplied)

33. In view of the aforesaid clarification of law in the context of the jurisdiction of the Tribunal under Section 17 of the SARFAESI Act, 2002, reliance placed by Mr. Engineer on the decision in the case of Jagdish Singh (supra), and the order in

Satyajit Balasaheb Kadam (supra), which followed **Jagdish Singh (supra)**, does not advance the cause of the submission on behalf of the Petitioner and Respondent No.8.

34. It would be contextually relevant to note that, even the trial Court was persuaded to repel the challenge to the tenability of the suit in view of the interdict contained in Section 34 of the SARFAESI Act, 2002, and observed in clear and explicit terms that the issues and matter raised in the present suit and the relief sought are out of the ambit of Debt Recovery Tribunal and only the civil court has jurisdiction to adjudicate those matters.

35. Having dealt with the jurisdictional challenge, it would be apposite to appreciate whether the appellate Court was justified in interfering with the discretionary order passed by the trial Court.

36. The legal position in regard to interference with a discretionary order is well recognized. Ordinarily, the appeal Court is not expected to interfere with the exercise of discretion in the matter of grant of injunction by the trial Court and substitute its own discretion for the same, except where it can be demonstrated that the discretion has been exercised arbitrarily or perversely, or the impugned order is contrary to the settled principles of law. An arbitrariness in the exercise of discretion or perversity in the order passed by the trial Court can arise where the injunction has been granted sans material or the trial court has declined to grant temporary injunction, despite existence

of justifiable material.

37. On the aforesaid touchstone, reverting to the facts of the case, it becomes evident that two reasons primarily weighed with the learned Civil Judge in declining to grant interim relief. First, the learned Civil Judge was of the view that the Plaintiff succeeded in establishing that, out of three suit properties, only the property described in paragraph No.1A i.e. Survey No.1/1/A/1 was the ancestral property and failed to prove that the other two properties i.e. Survey Nos.1/1/A/6 and 1/1/A/7 were the ancestral properties. Second, since the Defendant No.1 had inherited other properties and the Plaintiff chose not to bring those properties in the common hotchpot and seek partition therein, the suit seeking partial partition was not maintainable.

38. Consistent with these findings, the learned Civil Judge has drawn an inference that the suit was actuated by a design to wriggle out of the clutches, in view of the measures initiated by the secured creditor under the SARFAESI Act, 2002. Whether the aforesaid approach and findings of the learned Civil Judge were, prima facie, borne out by the material on record, or bordered on perversity, was the question that the learned District Judge was required to answer.

39. Learned District Judge found that the trial Court erred in the exercise of jurisdiction by recording findings which appeared to be against the weight of the material on record. Whether these findings of the learned District Judge

are legally sustainable, is the moot question.

40. First and foremost, the character of the suit properties 1A, 1B and 1C. Both the Petitioner and Respondent No.8, one the one part, and the Plaintiff - Respondent No.1, on the other part, banked upon the entries in the revenue record and the mutation entries to drive home their respective contentions. As noted above, even the trial Court has recorded a categorical finding that the suit property 1A i.e. Survey No.1/1/A/1 is the ancestral property. With regard to the rest two i.e. Survey Nos.1/1/A/6 and 1/1/A/7, the parties were at issue.

41. Mutation Entry No.134 certified on 6 November 1991 sheds light on the character of Survey Nos.1/1/A/6 and 1/1/A/7 also. From a bare perusal of the said Mutation Entry No.134, it becomes evidently clear that Dnyanoba K. Mali, father of Defendant No.1 and the grandfather of the Plaintiff, and Jagannath D. Shelar partitioned the properties between themselves under a Partition Deed. Survey Nos.1/1/A/1, 1/1/A/6 and 1/1/A/7 were allotted to the share of Dnyanoba K. Mali. Out of those land, Survey No.1/1/A/1 came to be mutated in the name of Dnyanoba Mali; Survey No.1/1/A/6 was mutated in the name of Laxmibai D. Mali, mother of Defendant No.1, and the grandmother of the Plaintiff and Survey No.1/1/A/7 came to be mutated in the name of Sanjay Mali – Defendant No.1.

42. At this juncture, it is necessary to note that, Survey Nos.1/1/A/6 and 1/1/A/7 came to be mutated in the name of Laxmibai and Sanjay (D1) as the

members of the family of Dnynoba Mali. The mutation of these lands which fell to the share of Dnynoba Mali, in the said partition, in the name of Laxmibai and Sanjay Mali (D1) underscores the character of the suit properties 1B and 1C. Prima facie, those lands were not mutated in the names of Laxmibai and Sanjay (D1) in their own right.

43. It appears that the learned Civil Judge was swayed by the fact that, there were subsequent transfers in relation to the suit properties 1B and 1C. However, in the process, the learned Civil Judge seems to have lost sight of the underlying character of the properties bearing Survey Nos.1/1/A/6 and 1/1/A/7. The fact that, subsequently, Laxmibai, mother of Sanjay Mali (D1), executed a Gift Deed on 18 August 2009 of the property bearing Survey No.1/1/A/6 in favour of Sanjay Mali (D1) does not detract materially from the ancestral character of the suit property.

44. Likewise, the fact that certain portions of Survey No.1/1/A/7 were acquired by Sanjay Mali (D1), under the registered Sale Deeds, or for that matter, after the demise of Dnynoba, Laxmibai and the sisters of Sanjay Mali (D1) relinquished their right, title and interest in Survey No.1/1/A/1, under a registered Release Deed dated 7 November 2008, do not impinge the right of the Plaintiff as a coparcener in the suit properties. Prima facie, once the Plaintiff could demonstrate that the suit properties 1A, 1B and 1C are the ancestral properties and she had an interest therein by birth, the subsequent

instruments in relation to those properties do not alter the character of the suit properties.

45. Thus, the endeavour of Mr. Pai to demonstrate that, in view of the subsequent instruments, Defendant No.1 became the absolute owner of the suit properties 1A, 1B and 1C does not merit countenance. Learned District Judge was, therefore, justified in observing that the learned Civil Judge was in error in holding that, there was nothing on record to prove that the suit properties 1B and 1C were also the ancestral properties inherited from Ddynoba Mali. Prima facie, these findings were recorded by the trial Court, by ignoring the very mutation entry No.134, on the basis of which the suit property 1A was held to be an ancestral property.

46. The second ground of the suit for partial partition being not maintainable, was sought to be met by the Plaintiff, before the trial Court, by canvassing a submission that those properties can be brought in the common hotchpot by seeking amendment in the plaint. Learned Civil Judge was not persuaded to accede to the said submission. However, the fact remains that by an order dated 22 April 2024, on an application for amendment in the plaint (Exh.45), rest of the properties which were inherited from Ddynoba Mali, grandfather of the Plaintiff, were permitted to be included in the suit properties. Resultantly, by the time the impugned order was passed by the learned District Judge, other properties were also brought in the common

hotchpot and were the subject matter of the suit for partition.

47. In the backdrop of the aforesaid fact situation, where the right of the Plaintiff in the suit properties 1A, 1B and 1C as a coparcener became prima facie evident, a suit for partition, separate possession of her share in those properties and the consequential relief of injunction, squarely fell within the jurisdiction of the civil Court. Learned District Judge was, therefore, justified in returning a finding that the Plaintiff had made out a prima facie case. The balance of convenience, in a situation of the present nature, where the apparent undivided interest of the Plaintiff in the suit properties was sought to be alienated, pursuant to the measures under the SARFAESI Act, 2002, to enforce security interest; to the creation of which the Plaintiff was apparently not a party, tilted in her favour. In these circumstances, the element of irreparable loss, in the event the suit property were to be alienated for the enforcement of the security interest, also appeared to be in favour of the Plaintiff.

48. Should the Plaintiff be granted interim relief, especially in the context of the conduct of the Defendant No.1 and his associates, as noted in the orders passed by this Court in WP No.333 of 2024 troubled the conscience of the Court. Undoubtedly, high-handed action of taking the possession of the secured assets by dispossessing the secured creditor by resorting to unlawful means, cannot be countenanced under any circumstances. The Division

Bench of this Court was, thus, required to intervene and ensure that the rule of law prevails. However, in the considered view of this court, when the Court is confronted with the question of civil rights of the Plaintiff, which are prima facie evident, the conduct of the other co-sharers, be they the parents of the Plaintiff, cannot be arrayed to defeat an otherwise legitimate right. Thus, the submissions forcefully canvassed on behalf of the Petitioner and Respondent No.8 premised on the conduct of the borrower and their associates, do not merit acceptance.

49. Likewise, the submission on behalf of the Petitioner and Respondent No.8 based on the fate of the suit instituted by Utkarsha (D4) does not hold any ground. In the case at hand, by and large, both the courts below have found that the Plaintiff has undivided interest in the suit properties; the trial Court and the District Court differed on the extent of the undivided interest of the Plaintiff. In the light of the position in law, adverted to above, the Plaintiff is entitled to assert her proprietary right over the suit properties. Such claim of the Plaintiff cannot be thrown overboard on the ground that the claim of identically situated co-sharer did not succeed. Moreover, in the light of the clear enunciation of law to assert the civil right in the secured assets, a person who is not a borrower or guarantor is not required to approach the DRT as the reliefs sought in the instant suit are beyond the remit of the statutory jurisdiction of the DRT.

50. This propels me to the conduct of the Petitioner in alienating the suit property after the impugned order was passed by the learned District Judge. Learned District Judge passed the impugned order thereby restraining Defendant Nos.1 to 5, including the Petitioner, or any one acting on their behalf from creating third party interest without due process of law to the extent of the share of the Plaintiff in the suit properties till the final disposal of the suit. The endorsement on the judgment indicates that the judgment was signed by the Presiding Officer on 27 January 2025 and it was uploaded on 28 January 2025.

51. It appears that the intimation of the said judgment was given by the Advocate for the Plaintiff to the Advocate for the Petitioner on the morning of 28 January 2025. On the very day, a communication was addressed by the Petitioner to the Respondent No.8 that the anchor bid of the Respondent No.8 in the e-auction held on 28 January 2025 was accepted as a successful bid. The sale certificate was executed and registered in favour of Respondent No.8 on 8 May 2025.

52. Evidently, the suit property was alienated by the Petitioner in favour of Respondent No.8, after the impugned order came to be passed. Even if some allowance is given as to the time of communication of the impugned order on 28 January 2025, yet, it can hardly be controverted that, despite the knowledge of the impugned order, the Petitioner went ahead with the auction

process and completed the transaction by executing and registering the sale certificate, after four months of the impugned order. Holding of e-auction on 28 January 2025, the very day on which the judgment of the learned District Judge was uploaded and acceptance of the bid of respondent No.8 as a successful bidder, cannot be brushed aside as a matter of sheer co-incidence. The reasons are not far to seek.

53. Firstly, it is not the case that the Petitioner did not participate in the proceedings in Misc. Civil Appeal No.47 of 2023. The Petitioner was represented by an Advocate before the learned District Judge and did resist the appeal. When the judgment was delivered on 24 January 2025, it was incumbent upon the Petitioner to ascertain the nature of the order passed in the appeal. Secondly, even if the benefit of doubt is given to the Petitioner as regards the time of the knowledge of the impugned order on 28 January 2025, yet the fact that the Petitioner proceeded to complete the transaction with impunity culminating in the execution of the sale certificate on 8 May 2025, betrays the intent to act in defiance of the impugned order.

54. This inference appears inexorable if viewed from the stand point whether the Petitioner had the opportunities to make amends before the transaction could be concluded by executing sale certificate. The letter dated 28 January 2025 under which the Petitioner purportedly accepted the bid of Respondent No.8, makes it clear that 15% of the bid amount was to be

deposited on the following day and the balance amount was to be deposited within 15 days from 29 January 2025. Even if it is assumed that the Petitioner obtained the knowledge about the impugned order on 28 January 2025, there was ample time for the Petitioner to remedy the situation. Instead, it appears, the Petitioner proceeded to conclude the transaction by executing the sale certificate on 8 May 2025.

55. The legal position as regards the consequences that ensue such alienation in the teeth of the injunction order is well recognized. The general principle that, *lis pendence* does not render the transfers effected during the pendency of the suit void, but only renders such transfers subservient to the decree that may be eventually passed, cannot be pressed into service where the property is transferred in disobedience of an injunction order. If the transfers in disobedience of the restraint order passed by the Court are not considered on a different footing, then the sanctity of the orders passed by the Court would be completely eroded. The courts have, thus, taken a view that the act done in willful disobedience of an injunction order, in addition to entailing an action in contempt, would also be illegal and invalid transfer. The rights of the parties cannot be jeopardised by effecting transfer of the property in teeth of an injunction order. The dictate of public justice commands that such transfers be treated as non-est in the eye of law.

56. A useful reference in this context can be made to the Division Bench

judgment of this Court in the case of **Keshrimal Jivji Shah and Anr. V/s. Bank of Maharashtra and Ors.**⁷ In the said case, the Division Bench was confronted with the question :

“Is transfer of an immovable property in contravention of a prohibitory or injunction order of a court illegal or void ?

57. The Division Bench after referring to the judgments of the Supreme Court in the cases of **Ramchandra Ganpat Shinde V/s. State of Maharashtra**⁸ and **Satyabrata Biswas V/s. Kalyan Kumar Kisku**⁹, held that such transfer was clearly illegal, if not void. The Division Bench observed in terse terms that :

“27.....It is time that we recongnize the principle that transfer of immovable property in violation of an order of injunction or prohibition issued by court of law, confers no right, title or interest in the transferee, as it is no transfer at all. The transferee cannot be allowed to reap advantage or benefit from such transfer merely because he is not a party to the proceedings in which the order of injunction or other prohibitory direction or restraint came to be issued. It is enough that the transferor is a party and the order was in force.”

(emphasis supplied)

58. The aforesaid observations are a complete answer to the submission sought to be canvassed on behalf of Respondent No.8 that it has

7 (2004) 3 Mah.L.J. 893

8 AIR 1994 SC 1673

9 AIR 1994 SC 1837

parted with a valuable consideration and cannot be made to suffer the consequences of the injunction order.

59. In the case of **Vidur Impex & Traders (P) Ltd. V/s. Tosh Apartments (P) Ltd.**¹⁰ the Supreme Court held that the sale transaction conducted in teeth of the injunction order passed by the Delhi High Court did not have any legal sanctity.

60. In the case of **Balwantbhai Somabhai Bhandari (supra)** on which reliance was placed by Mr. Shah, the Supreme Court considered the question whether the contemptuous transactions are void. After an elaborate analysis and reference to the previous precedents, the Supreme Court enunciated that, although Section 52 of the Transfer of Property Act, 1882 does not render a transfer pendente lite void yet the court while exercising contempt jurisdiction may be justified to pass directions either for reversal of the transactions in question by declaring the said transactions to be void or proceed to pass appropriate directions to the authorities concerned to ensure that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or anyone claiming under him.

61. Mr. Pai, learned Senior Advocate, attempted to salvage the position by canvassing a submission that the sale of the secured assets by the Petitioner

¹⁰ (2012) 8 SCC 384

in favour of Respondent No.8 can be said to be in conformity with the order passed by the learned District Judge, as the sale was upheld by DRT and the challenge to the sale at the instance of the borrower was repelled by the DRT.

62. The submission does not commend itself. By the impugned order, the learned District Judge has restrained the Petitioner from creating third party interest in the suit property without due process of law to the extent of the share of the Plaintiff in the suit property. The action initiated against the borrowers, to which the Plaintiff is not a privy, cannot be said to be a creation of third party interest by following due process of law. To give meaning and content to the impugned order, it must be held that, due process of law must be qua the Plaintiff.

63. The conspectus of aforesaid discussion is that, none of the challenges to the impugned order are worthy of acceptance. Thus, in exercise of supervisory jurisdiction, this Court does not find such jurisdictional error, legal infirmity or perversity in the impugned order as to interfere with the same. The Writ Petition, therefore, deserves to be dismissed.

64. Hence, the following order :

ORDER

- (i) The Writ Petition stands dismissed.
- (ii) Rule discharged.
- (iii) No costs.

(iv) In view of the dismissal of the Writ Petition, Interim Applications also stand disposed.

(N.J.JAMADAR, J.)