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

CIVIL REVISION APPLICATION NO.09 OF 2024

APPLICANT (Ori. Deft No.1)	:-	HDFC Bank Ltd, Public Limited Co. Through its Authorized Officer, Amit Ranjansingh Sengar, Aged about – 41 years, Occupation-Service, R/o C/o HDFC Bank Ltd. Peninsula Business Park, B-Wing, 4th Floor, Dawn Mills Compound, Ganpat Rao Kadam Marg, Lower Parel (West), Mumbai 400 013, through HDFC Bank Opp-Collector Office, Akola.

..VERSUS..

RESPONDENTS (Orig. Plaintiff)	:-	1)	Sau. Nasim Ramjan Garve Aged about 34 Years, Occ. Agriculture and Household, R/o C/o – Ramjan Garve, Shivani Road, Post Pogat, Tq. Mangrulpir, Dist. Washim, Pin Code – 444403, Mob.7498083799
(Orig. Deft. No.1)		2)	Hussain Qadri S/o Madan Khannu Lange, Aged about 60 Years, Occ. Business, Mob.9922033750.
(Orig. Deft. No.2)		3)	Javed Qadri S/o Hussain Qadri Aged about 35 Years, Occ. Business, Both are R/o Mankarna Plot, Akola, Tah. & Dist. Akola.
(Orig. Deft. No.3)		4)	Mehraj S/o Hussain Qadri, Aged about 30 Years, Occ. Business, R/o Naigaon, Tah. & Dist. Akola.

Mr. S.D. Ingole, Advocate for Petitioner.
Mr. U.J. Deshpande, Advocate for Respondent No.1.
Mr. Z. Haq, Advocate for Respondent Nos.2 to 4.

CORAM : ROHIT W. JOSHI, J.
DATE : 27/02/2026

JUDGMENT :

1. The present revision application is filed challenging the order dated 17.10.2022 passed by the learned 8th Joint Civil Judge Senior Division, Akola, on application at Exh.20 in Special Civil Suit No.93 of 2023. The respondent No.1, who is the original plaintiff, and respondent Nos.3 and 4, who are the defendants, had mortgaged the suit property with the applicant-bank, who is arrayed as defendant No.4 in the civil suit. The defendant No.4 has initiated recovery proceedings under the provisions of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as "SARFAESI Act") with respect to the suit property.

2. In this backdrop, plaintiff filed the aforesaid civil suit seeking a declaration that the defendant Nos.1 to 3 did not have exclusive right, title and interest over the suit properties and that the mortgage of the same in favour of the defendant No.1-Bank is illegal. The suit is pertaining to two properties. It is the case of the plaintiff that one of the properties is her ancestral property since the same is acquired from the sale proceeds of a property sold by her grandfather i.e. father of defendant No.1 and another property is held by her as co-owner with the defendant Nos.1 to 3 inasmuch as although the sale deed with respect to the same is executed in the names of defendant Nos.1 to 3, she has contributed towards the sale consideration on an assurance that she will also have a right and share over the same. Thus, mortgage in favour of the defendant No.4-bank is challenged on the ground that the defendant Nos.1 to 3 did not have exclusive right to mortgage the same. Consequently, the action taken by the defendant No.4-bank against the said property is also challenged.

3. Perusal of the plaint will indicate that it is the case of the plaintiff that the suit property mentioned in paragraph-8 of the plaint was purchased from the sale proceeds of a property sold by grandfather of the plaintiff and defendant Nos.2 and 3. On this basis, the plaintiff claims that the said suit property is ancestral property and she is a co-owner of the said suit property. The foundation of the said suit is absolutely misconceived. The plaintiff cannot inherit the property of her grandfather during the lifetime of her father (defendant No.1). The plaintiff therefore has no right over the said suit property and consequently, has no cause of action to institute the suit qua the said suit property.

4. As regards the suit property mentioned in paragraph-18 of the plaint, the contention of the plaintiff is that she has contributed towards the sale consideration for purchasing the said suit property. The plaintiff contends that she was given an assurance that she will also have a share in the suit property. She further claims that an amount of Rs.75,000/- to Rs.1,00,000/- was contributed by her towards the construction of the building constructed over the land at the time of finishing of the construction activity. In this regard, it must be stated that, the plaint does not indicate the date or tentative period when the plaintiff contributed the amount. The plaint is absolutely silent with regard to the amount allegedly contributed by plaintiff for purchasing the said suit property. There is no explanation as to why despite allegedly contributing money for purchasing the suit property, her name was not included as a purchaser in the sale deed. The plaint does not indicate any circumstances due to which the plaintiffs' name was not included as purchaser in the sale deed. The pleadings as can be seen are absolutely vague. It must be mentioned that the suit is filed at a time when the defendant No.4 / present applicant was proceeding against the suit properties for recovery of its dues under the SARFAESI Act. The defendant No.4 has issued notice under Section 13(2) of the SARFAESI Act, on 15.01.2022 and order for physical possession under Section 14 of the SARFAESI Act came to be passed on 26.05.2023. In this backdrop, the civil suit is filed on 12.07.20023. The intent beyond filing the suit is not far to see. It is apparent that the suit is filed in order to avoid the action under Section 13(4) of the SARFAESI Act. Although under Order VII Rule 11 of the Code of Civil Procedure, 1908 the pleadings have to be taken on their face value, the same would have be read meaningfully, to guard against frivolous litigation initiated with a design to defeat action initiated by the defendant No.4-Bank. The plaint avernments when read meaningfully will indicate that the plaintiff by clever drafting, is trying to create an illusion of cause of action. The cause of action sought to be canvassed is not real or genuine cause of action. The plaint therefore does no disclose any cause of action even with respect to the suit property mentioned in paragraph-18 of the plaint.

5. The learned trial Court has erred in rejecting the application for rejection of plaint on the ground that all the reliefs sought in the suit are not barred by the provisions of the SARFAESI

Act. The learned trial Court has lost sight of the fact that the plaintiff cannot claim any interest over the suit property. The learned trial Court has erred in not following the settled legal principal with respect to meaningful reading of the plaint in order to keep frivolous litigation at bay. The learned trial Court should have appreciated that the plaint avernments, taken on the face value, did not make out a right in favour of the plaintiff in the suit properties. The plaintiff therefore does not have any cause of action to agitate in the suit.

6. In view of the aforesaid, civil revision application is **allowed** in the following terms :-

i) Order dated 17.10.2023, passed by the learned 8th Joint Civil Judge Senior Division, Akola, on application at Exh.20 in Special Civil Suit No.93 of 2023, is quashed and set aside.

ii) Application at Exh.20 filed in Special Civil Suit No.93 of 2023 on the file of learned 8th Joint Civil Judge Senior Division, Akola, is **allowed** and plaint in the said civil suit is rejected.

iii) No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate