ORDER BELOW EXHIBIT – 11

1. Heard. Read the plaint and the documents annexed with the plaint. Read the present application and the objections filed vide Exh-15 in respect of the same.

2. Present application has been given by the defendants under Order 7 rule 11 of Code of Civil Procedure, 1908 to reject the plaint.

3. It is contended by Learned Advocate on behalf of defendant that the plaintiff suit is without cause of action because the suit property and the notice dated 22/11/2023 based on which the plaintiff has sought relief, has already been implemented. That the defendant bank filed the proceedings under SARFAESI Act against the plaintiff vide CRMA No. 1314/2023 and the order has been passed in the same on 01/02/2024 in favour of defendant bank. Through which the said property was ordered to be handed over to the defendant bank and accordingly the defendant bank has the physical possession of the suit property. That the relief sought by the plaintiff has become infructuous. That the plaintiff has also preferred application in Consumer Protection Court vide Customer application no. 129/2022 on the dispute raised in the present suit and that application was rejected by the Consumer Protection Court on 24/09/2024, so also the suit is barred due to jurisdiction as well as by the principle of Res judicata. That the plaintiff has conveniently suppressed the material facts of the present case. That in view of section 34 of SARFAESI Act as well the present suit is barred as Civil Court has no jurisdiction. Hence the suit is liable to be rejected under the provision of Order 7 rule 11 of Code of Civil Procedure, 1908. And has produced their supporting documents pertaining to order passed in CRMA No. 1314/2023, Customer application no. 129/2022 as well as notice of assignment of loan account with Asset Reconstruction Company (India) Ltd.

4. Per contra, the Learned Advocate of the plaintiff vide reply of the present application vide Exhibit – 15 objected that the contentions of the defendants are incorrect, misleading and misconceived and hence vehemently denied. As per the say of plaintiff, the plaintiff took the mortgage loan of Rs. 1,75,000/- from the defendant bank through Gruh Finance at the monthly installment of Rs. 1,693/- for total 180 months and that the said amount has been fully paid up by the plaintiff. Inspite of that, upon the merger of Gruh Finance with the Bandhan Bank, Bandhan Bank increased the installments to Rs. 2,253/- for 254 months. That the plaintiff never made any agreement with the Bandhan Bank for the said elevated installments. So, when the NOC was declined by the Bandhan Bank, plaintiff filed complaint before the Consumer Protection Forum but the said complaint was rejected by the Consumer Protection. That no any notice in respect of proceedings under SARFAESI Act was ever served upon the plaintiff and ex-parte order was passed, which the plaintiff is about to challenge. Thereby, plaintiff has prayed to dismiss the present application.

5. Now, in order to decide the present application seeking rejection of plaint under Order 7 Rule 11 of Code of Civil Procedure, 1908, question to be decided is :

> *Whether the plaint is to be rejected under the provision of Order 7 rule 11 of the Code of Civil Procedure, 1908 ?* ***(Affirmative)***

: : R E A S O N S : :

6. At the outset, it is required to be noted that, it is well settled principle of law, pronounced by the Hon'ble Supreme Court and Hon'ble High Courts in its various judgment that while considering an application under Order VII Rule 11 of Code of Civil Procedure, 1908, **the averment in the plaint and the supporting documents produced along with the plaint are only required to be seen to find out whether the suit is barred by law of limitation** and at that stage, the stand of defendant in the written statement or in the application for rejection of the plaint is wholly immaterial.

7. Now, the plaintiff has filed the present suit pertaining to below suit property:

Property situated in	**Property descriptions**
Godhra, Panchmahal	Property bearing municipal house no. 2/573/J/T/1

Present suit has been filed by the plaintiff for declaration and permanent injunction. It is contended in the plaint that the plaintiff is the owner of the suit property. That the plaintiff took the mortgage loan of Rs. 1,75,000/- from the defendant bank through Gruh Finance at the monthly installment of Rs. 1,693/- for total 180 months and that the said amount has been fully paid up by the plaintiff. Inspite of that, upon the merger of Gruh Finance with the Bandhan Bank, Bandhan Bank increased the installments to Rs. 2,253/- for 254 months. That the plaintiff never made any agreement with the Bandhan Bank for the said elevated installments. So, when the NOC was declined by the

Bandhan Bank, plaintiff filed complaint before the Consumer Protection Forum where the defendant bank gave vague reply. That the defendant bank gave illegal notice dated 22/11/2023 to plaintiff for symbolic possession and because of which the present suit has been filed by the plaintiff as there is apprehension that the plaintiff will be dispossessed from his suit property.

8. Now, so as to understand when the cause of action arise, it is required to go through the below mentioned principles laid down by the Hon'ble Supreme Court as well as Hon'ble High Court of Gujarat. It has been held by the Hon'ble Supreme Court in the case of **STATE OF PUNJAB V. GURDEV SINGH, (1991) 4 SCC** that,

> "*The word 'right to sue' means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringe, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted.*"

Further, it has been laid down by the Hon'ble High Court of Gujarat in the case of **BARDOLI SHREERANG EXHIBITORS PVT. LTD. V. MAHESHBHAI BABUBHAI HIRPARA & ORS. REPORTED IN 2022 (2) GLR 1061** (para-40) :

> *"So far as the law of limitation is concerned, it does not bar the institution of the suit, it merely bars the remedy. As a piece of substantive law, it may result in extinguishment of the right if the action is not commenced within a particular time, or as a piece of procedural law, it may merely bar the claim. Where a party to the suit sets up the plea of limitation, the Court is required to consider : (a) the cause of action in the suit; (b) when the cause of action commenced; and (c) the result of non-action by the plaintiff. In these premises, the question of*

limitation cannot be called a pure question of law, it would rather be mixed question of law and fact."

9. Keeping in mind the aforesaid principle, if averment of plaint is seen along with the document annexed, it transpires that suit has been filed by the plaintiff with the apprehension that the suit property will be taken over by the defendant bank. Now, based on the same when the objections given by the defendant bank is taken into consideration, it is the objection that the physical possession of the suit property has already been taken by the defendant bank and so the present suit otherwise also gets infructuous. Based on the same when the dates are seen, then it transpire that the proceedings under SARFAESI Act against the plaintiff vide CRMA No. 1314/2023 has been ordered on 01/02/2024 in favour of defendant bank. Whereas the present suit has been filed on 15/02/2024. So, it does show the suppression of material facts on the part of the plaintiff.

Now, it is the contention of the plaintiff on one side that the defendant bank gave illegal notice dated 22/11/2023 to plaintiff for symbolic possession and because of which the present suit has been filed by the plaintiff upon apprehension and has remained totally silent on the SARFAESI proceedings initiated by the defendant bank. And on the other side has argued that no any notice in respect of proceedings under SARFAESI Act was ever served upon the plaintiff and ex-parte order was passed, which the plaintiff is about to challenge. This raises cloud of doubt on the conduct of the plaintiff as to fact in the plaint that when the plaintiff has been served with the notice dated 22/11/2023 for symbolic possession then why didn't he appear before the concern forum and instead filed the suit on 15/02/2024 on the illegal notice of 22/11/2023. Now, that the order has been already passed under SARFAESI Act then the plaintiff suit is directly hit by the section 34 of the said Act. Furthermore when the original dispute pertaining to loan installment variation has already been raised then re-adjudication of the same without preferring the appeal in the same also bars the plaintiff's suit. Silence of the plaintiff pertaining to SARFAESI proceedings bearing CRMA No. 1314/2023 and its order so passed clearly points towards suppression of material facts and reflects clever drafting by way of creation of illusionary cause of action.

10. It has been held in the case of **DAHIBEN V. ARVIND KALYANJI BHANUSHALI (GAJERA) (D) THR. LEGAL HEIRS AND ORS. reported in 2020(7) SCC 366** (para-13) that,

> ***13.*** *Cause of action means every fact which would be necessary for the plaintiff to prove, if traversed in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. In* ***Swamy Atmanand v. Sri Ramakrishna Tapovanam*** *the Court has held:*
>
> > *24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded (emphasis supplied)*

> *In **T. Arivandandam v. T.V. Satyapal & Anr.,** this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words:*
>
> > *5. The learned Munsiff must remember that if on a meaningful not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII, R. 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing (emphasis supplied)*
>
> *Subsequently, in **I.T.C. Ltd. v. Debt Recovery Appellate Tribunal** this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in **Madanuri Sri Ramachandra Murthy v. Syed Jalal** held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the Court.".*

11. In view of the foregoing discussion, taking into consideration the ratio laid down in the aforesaid judgments and reading the plaint as a whole, this Court firmly believes that the present suit is barred by law most apparent on the face of record and has created illusion of cause of action by way of clever drafting and suppression of material facts. Accordingly, plaint becomes liable to be rejected under Order 7 rule 11 of Code of Civil Procedure, 1908. Hence, following order is hereby passed in the interest of justice :

<u>**O R D E R**</u>

1. The present application vide Exh-11 of defendant under the provision of Order 7 rule 11 of Code of Civil Procedure, 1908, is hereby allowed.

2. As the present suit is barred by the section 34 of SARFAESI Act as well as hit by illusionary cause of action, the plaint is hereby ordered to be rejected under the provision of Order 7 rule 11 (a) and (d) of Code of Civil Procedure, 1908.

3. No order as to cost.

4. Decree be drawn accordingly.

Signed and pronounced in the open Court on this 07th August, 2026

Date: 07/08/2026

(JINSY JOSEPH THARAYIL)
ADDITIONAL CIVIL JUDGE
PANCHMAHAL AT GODHRA
GJ01652