



**IN THE COURT OF THE II ADDITIONAL CIVIL JUDGE
AND JMFC, AT: DEVANAHALLI.**

Present: Sri. Kenchanagouda Patil B.A. LLB. (spl)
II Addl. Civil Judge & JMFC.,
Devanahalli.

O.S. No. 181/2023

Dated this 18th Day of March, 2026.

Plaintiff/s : Sri. Siddesh.M.,
S/o. Moodlappa,
Aged about 35 years,
R/at: 1st floor, Site No.5,
BBMP Khatha No.2615 and
Site No.6, BBMP Khatha No.832,
Near Muneshwara Temple,
Kattigenahalli Village,
Jala Hobli, Bengaluru North Taluk,
Bengaluru-560064.

(Rep. by Sri. P. Narayanappa - Advocate)

V/S

Defendant/s :1. M/s. Indostar Capital,
Finance Ltd.,
Represented by its
Authorized Signatory,
Having Registered Office at
ONE INDIABULLS Center,
20th, Floor, Tower 2A,
Jupiter Mills Compound,
Senapathi Bapat Marg,
Mumbai-400013.

2. M/s. Indostar Capital,
Finance Ltd.,
Represented by its
Authorized Signatory,



Having Branch Office at No.13,
CRN Chambers,
4th Floor, Kasturba Road,
Bengaluru-560001.

3. Sri. Munishamappa
S/o. Chikkanjinappa,
Aged about 38 years,
R/at: Ground Floor,
Site No.5, BBMP, Khatha No. 2615
and Site No.6, BBMP Khatha No.832,
Near Muneshwara Temple,
Kattigenahalli Village, Jala Hobli,
Bengaluru North Taluk,
Bengaluru-560064.
4. Smt. Sowmya W/o Munishamappa,
Age: 35 Years.
R/at: Gound Floor,
site No.5, BBMP Khatha No. 2615
and site No.6,
BBMP Khatha No.832,
Near Muneshwara Temple,
Kattigenahalli Village, Jala Hobli,
Bengaluru North Taluk,
Bengaluru-560064.

**(D1&D2 Rep. by Sri. Suresh.V.-Advocate)
(Summons not yet served to D3 & D4)**

PARTIES TO I.A. No. III

Applicants/Def. No. 1&2: M/s Indostar Capital,
Finance Ltd., & another

Versus

Opponent/Plaintiff : Sri. Siddesh.M.



I.	Provision under which the application is filed	Under Or. VII Rule 11 of C.P.C. R/W Sec. 34 and 35 of SARFAESI Act, 2002.
II.	Relief sought for	For rejection of the plaint on the ground that the present suit is barred under the provisions of the SARFAESI Act, 2002, particularly under Section 34 and 35 of the said Act.
III.	The date on which the application was filed	25-05-2023
IV.	Number of the application	One
V.	The date on which the objections are filed by different opponents	--
VI.	The date on which the orders was passed on the said application.	18-03-2026

ORDERS ON I.A. NO. III FILED BY THE DEFENDANT NO. 1 AND 2 UNDER ORDER VII RULE 11 OF CPC R/W SECTION 34 AND 35 OF SARFAESI ACT,2002.

The defendant No. 1 and 2 have filed this application under Order VII Rule 11 of CPC R/w Section 34 and 35 of SARFAESI Act, 2002 for seeking rejection of the plaint on the ground that the present suit is barred



under the provisions of the SARFAESI Act, 2002, particularly under Section 34 and 35 of the said Act.

2. That the authorized person of the defendant No. 1 and 2 has sworn an affidavit in support of this application, wherein he has contended in brief that the suit schedule property has been mortgaged by defendant No. 3 and 4 in favour of the defendant No. 1 and 2 for availing financial assistance. It is further contended that defendant No. 3 and 4 had availed loan facilities from the defendant company by mortgaging the schedule property as security and subsequently committed default in repayment of the loan amount. It is further contended that due to the default committed by the defendant No. 3 and 4, the loan account was classified as Non-Performing Asset (NPA) on 04.12.2022 and thereafter the defendant company initiated recovery proceedings under the provisions of the SARFAESI Act, 2002 and a demand notice under Section 13(2) of the Act dated 16.12.2022 was issued to the borrowers and thereafter possession notice under



Section 13(4) dated 22.02.2023 was also issued.

Further it is contended that the plaintiff claims to be a tenant under defendant No. 3 and 4 on the basis of a lease agreement dated 09.09.2020, which according to them is subsequent to the creation of mortgage in favour of the defendant company. It is their specific contention that the borrower was not permitted to create third-party rights in respect of the mortgaged property without the consent of the secured creditor and therefore the alleged tenancy in favour of the plaintiff is illegal and not binding on the defendant company. It is further contended that the plaintiff has filed the present suit only to obstruct and delay the recovery proceedings initiated by the secured creditor under the SARFAESI Act, 2002 and therefore the civil Court has no jurisdiction to entertain the suit in view of the bar contained under Section 34 of the SARFAESI Act, 2002. **On these grounds the defendant No. 1 and 2 pray to reject the plaint and to allow the application.**



3. On the other hand, despite of granting sufficient opportunities to the plaintiff, has neither appeared before the Court nor filed objections to the present application nor addressed arguments on this application. Hence, objections and arguments of the plaintiff were taken as nil.
4. Heard arguments by the learned counsel for defendant No.1 and 2 and Perused contents of application, affidavit and plaint averments.
5. The following points that arise for the consideration of this court.

POINTS

1. Whether the defendant No. 1 and 2 have made out ground that the plaint is liable to be rejected under Order VII Rule 11 of CPC on the ground that the suit is barred under Sections 34 and 35 of the SARFAESI Act, 2002?

2. What order?

6. The findings on the above points are as



hereunder:

Point No. 1: In the **Affirmative**.

Point No. 2: As per final order for
the following

REASONS

7. Point No. 1: It is well settled principle of law that while considering application U/o VII Rule 11 of CPC, the Court shall have to look into only plaint averments, not the defense put forth by the defendants and while considering an application U/o VII Rule 11 of CPC the court has to examine averments in the plaint and the pleas taken by the defendants in the written statement are irrelevant. To find out the suit of the plaintiff barred by law, then the court is expected to look in to the plaint averments only.

8. Examined the plaint averments. As per the plaint averments, the defendant No. 3 and 4 are the owners of the schedule property of it using by the plaintiff for the residential purpose and entered into lease agreement with the plaintiff on 09.09.2020 and the plaintiff has paid a sum of Rs.



3,30,000/- with the defendant No. 3 as such as per the lease agreement the plaintiff is lessee under the defendant No. 3 on the basis of lease agreement and that the plaintiff is in peaceful physical possession and enjoyment as per the lease agreement. The defendant No. 1 and 2 are being private financial institution and the defendant No. 1 and 2 was affixed notice on the door and the defendant No.1 and 2 made an attempts to interfere over the 1st floor residing premises in the schedule property where the plaintiff is residing in the schedule property from 30.03.2023 and that it is noticed by the plaintiff and brought to the notice of the defendant No. 3 and 4, the defendant No. 3 and 4 informed that the defendant No. 1 and 2 are trying to capture the residential premises for the recovery of the loan amount. Further it is averred that it is shock and surprise to the plaintiff, the plaintiff did not receive any notice from the defendant No. 1 and 2,



the act of the defendant No. 1 and 2 is illegal with regard to the lease agreement a sum of Rs.3,30,000/- belonging to the plaintiff. Hence, this suit against the defendants as not to interfere over the suit schedule property until the realization of security deposit a sum of Rs.3,30,000/- from the defendant No. 3.

9. From the materials placed before the Court, it is evident that the suit schedule property was mortgaged by the defendant No. 3 and 4 in favour of the defendant No. 1 and 2 for securing loan facilities. It is also evident that due to default in repayment of the loan amount, the loan account was classified as NPA and recovery proceedings were initiated by issuing notice under Section 13(2) of the SARFAESI Act followed by possession notice under Section 13(4) of the Act.

10. The specific contention of the defendant No. 1 and 2 is that the plaintiff claims tenancy under a lease agreement dated 09.09.2020, which is



subsequent to the creation of mortgage in favour of the defendant company. It is further contended that the borrower had no authority to create third-party rights in respect of the mortgaged property without the consent of the secured creditor.

11. The Hon'ble Supreme Court of India in **United Bank of India Vs. Satyawati Tondon reported in (2010) 8 SCC 110** has held that when an effective remedy is available under the SARFAESI Act before the Debts Recovery Tribunal, civil Courts should normally refrain from entertaining suits that obstruct recovery proceedings.

12. Similarly, in **Jagdish Singh Vs. Heeralal reported in 2014(1) SCC 479**, the Hon'ble Supreme Court held that once measures under Section 13(4) of the SARFAESI Act are taken, any person aggrieved by such measures must approach the Debts Recovery Tribunal under Section 17 of the Act and the jurisdiction of the



civil Court is barred.

13. Section 34 of the SARFAESI Act specifically provides that no civil Court shall have jurisdiction to entertain any suit or proceeding in respect of matters which the Debts Recovery Tribunal is empowered to determine under the Act. The said provision also prohibits granting injunctions against actions taken under the SARFAESI Act.

14. In the present case, it is evident that the secured creditor has already initiated proceedings under the SARFAESI Act for recovery of the loan amount and enforcement of security interest over the suit schedule property. If the plaintiff claims to be aggrieved by any measures taken under Section 13(4) of the SARFAESI Act, the appropriate remedy available to the plaintiff is to approach the Debts Recovery Tribunal under Section 17 of the Act. Therefore, entertaining the present suit by this Court would amount to interfering with the statutory proceedings initiated under the



SARFAESI Act, which is expressly barred under Section 34 of the Act.

15. On the other hand, in the present case, the plaintiff has instituted this suit against the defendants for seeking the relief of permanent injunction restraining the defendants from interfering with alleged possession of the suit schedule property. But the plaintiff has not chosen to contest the present application or place any material before the Court to show that the suit is maintainable. Hence, the suit of the plaintiff which would clearly fall under Sec.34 of SARFAESI Act 2002, as such the civil Court had no jurisdiction to entertain the suit with respect to seeking reliefs as stated above, the proper course for the plaintiff was to approach the competent forum under the SARFAESI Act itself and not rushing to the civil Court for the relief.

16. The ruling relied by the learned counsel for the defendant No.1 and 2 are absolutely applicable



to the case on hand. As per Order VII Rule 11 (d) the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Absolutely there are such averments in the plaint which appears that the suit to be barred by law. In view of the above circumstances and the settle principles of law laid down by the Hon'ble Supreme Court, this Court is of the considered opinion that, present suit will fall under Sec. 34 of the SARFAESI Act, 2002. Therefore, the plaint is barred under the provisions of section 34 of the SARFAESI Act, 2002. Accordingly Point No. 1 is answered in the **Affirmative**.

17. Point No. 2: In view of the findings on point No. 1, the Court proceed to pass the following:

ORDER

I.A. No. III filed by the defendant No. 1 and 2 under Order VII Rule 11 of the Code of Civil Procedure Read with Sections 34 and 35 of the SARFAESI Act, 2002 is hereby allowed.



Consequently, the plaint in the above suit is rejected as being barred by law.

No order as to Cost.

Draw Decree Accordingly.

(Typed by me directly on my laptop and the same is revised, corrected and then order pronounced by me in the open court on this **18th day of March, 2026.**)

(Sri. Kenchanagouda Patil)
II Addl. Civil Judge and JMFC.,
Devanahalli.



ORDERS PRONOUNCED IN THE OPEN COURT
(VIDE SEPARATE ORDER)

ORDER

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(Sri. Kenchanagouda Patil)
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