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IN THE COURT OF PRL. CIVIL JUDGE AND J.M.F.C HUBBALLI

: PRESENT :

Sri.Vishwanath Yamakanmardi
BSW.LLB.
PRL. CIVIL JUDGE AND J.M.F.C
HUBBALLI.

O.S.No.654/2021

Dated 6th day of July, 2026

Plaintiff:

1. Sangeeta W/o. Santosh Gujarati,
   Age: 42 years, Occ: House wife,
   R/o. Jamadar Galli, Chitaguppi Chawl,
   Ganeshpeth, Hubballi.

(By Sri. B. S. Asundi, Advocate)

- Versus -

Defendant:

1. The Manager,
   Canara Bank, Station Road,
   Hubballi.

(By Sri. V. N. Bhat, Advocate)

ORDERS ON PRELIMINARY ISSUE

This is a suit filed by the plaintiff against the defendant for the relief of permanent injunction.

2. The brief facts of the plaintiff's case and description of the suit property is as under:

A non agricultural and land building bearing CTS No.767/A, Ward No.51, situated at Jamadar Galli, Chitaguppi Chawl, Ganeshpeth, Hubballi which is bounded as to the East – CTS No.7637/B, to the West – Road, to the North- Guttar, to the South – Road. The plaintiff is the bonafide purchaser of the suit property. The plaintiff has purchased the suit property from one Noorbegum Mahaboobsab Pathan and others on 22.11.2017 through registered sale deed. Since from the date of purchase, plaintiff is in physical and actual possession and enjoyment of the suit property as an absolute owner of the suit property. After purchasing the suit property, the plaintiff was in dire need of money and therefore she availed a loan from t5he defendant bank by deposit the title deeds of the suit property. The plaintiff availed a loan of Rs.14/- Lakhs from the defendant bank. After availing the loan from the defendant bank remitted approximately about Rs.5/- Lakhs to the defendant bank, but subsequently due to lock down declared by the Government of India due to Covid-19 pandemic and due to some other unavoidable circumstances the plaintiff failed to remit the monthly EMI's to the defendant bank.

It is further submitted that, during March 2021 plaintiff visited the defendant bank to regularize her loan, but the defendant refused to received the EMI from the plaintiff and given evasive reply stating that your house property has been already sold on 09.10.2020 by bank on 09.10.2020 during lock down to one Smt. Abedabegum W/o. Nannesab Neelgar and also the said sale transaction has been confirmed on 13.01.2021. The plaintiff applied for the encumbrance over the suit property before the Sub Registrar and found no encumbrance. On 28.12.2020 the plaintiff received a notice from the D.C. Dharwad wherein it was instructed to the plaintiff to hand over the physical possession of the suit property to the defendant bank on which the plaintiff immediately approached the D.C Dharwad and made enquiry with the D.C and at that time the defendant authority was also present over there. That on enquiry D.C orally informed the plaintiff to deposit Rs.1/- Lakh to the defendant bank. Plaintiff approached the defendant bank for depositing the amount, but defendant bank refused to receive the same amount. Hence, plaintiff constrained to file the present suit.

3. After registering the suit this Court issued summons to the defendant, the defendant appeared before the Court through his counsel and filed written statement.

In the written statement defendant contended that, suit of the plaintiff is false, frivolous and vexatious and the sane is not tenable in law.

That the suit property has been sold in e-Auction and sale proceeds have been credited to the loan account of the plaintiff on 18.02.2021, hence suit of the plaintiff is bad for non-joinder of necessary parties.

It is further submitted that, the defendant bank has granted housing loan of Rs.15,40,000/- on 20.11.2017 to the plaintiff for purchase of immovable property i.e., property bearing CTS Ward No.1, CTS No.767/A measuring 44.6/9 sq. yds area consisting of old RCC building and open space situated at Jamadargalli, Chitaguppi Chawl, Ganeshpeth, Hubballi, plaintiff has created registered equitable mortgage by deposit of title deeds vide document No.HBE-1-11864-2017-18 on 01.03.2018 securing the loan limit of Rs.15,40,000/-. The plaintiff committed default in repayment of the debts due to the bank and the loan account of the plaintiff has been classified as non performing assets (NPA) with effect from 19.10.2018. Notice U/s.13(2) of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been issued on 11.01.2019 and there called upon the plaintiff herein to discharge the full liability by paying the outstanding due of Rs.16,00,684=07ps., with further interest and costs within a period of 60 days from the date of said notice. Plaintiff had failed to comply with the said notice a possession notice was served on the plaintiff for taking constructive possession of the property on 04.04.2019 and the possession notice was also published in daily news paper. That the action initiated by the defendant is under the provisions of Sarfaeis Act, 2002. The legality or otherwise of the actions initiated under the said Act can be questioned only before the Debt Recovery Tribunal as provided under the said Act and the jurisdiction of the Civil

Courts are expressly barred under the provisions of the said Act. Hence the suit is not maintainable. Hence prays to dismiss the suit.

5. On the basis of the pleadings of the plaint and written statement, my learned predecessor has framed the issues and treated the issue No.4 as Preliminary issue, same is as under

PRELIMINARY ISSUE

1. Whether the suit of the plaintiff is barred under Sec.34 of SARFAESI ACT?
2. What order?

6. My answer to the above issues and :

Issue No.1: In the negative.

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

: REASONS :

7. **Issue No.1**: The plaintiff has filed present suit against the defendant for the relief of permanent injunction.

The contention of the plaintiff that, he has availed the loan from the defendant bank. The defendant authority without providing an opportunity to her and trying to dispossess the plaintiff from the suit property.

The contention of the defendant that, plaintiff has obtained loan from the defendant bank of Rs.15,14,000/-.

After obtaining the loan the plaintiff has committed default in payment to the debts. Hence the defendant bank has been classified as a non performing assets. Therefore, they initiated action U/s.13(2) of SARFAESI ACT, then they have issued a public notice through newspaper. The plaintiff without approaching debt recovery tribunal filed this suit. Hence, this court has no jurisdiction to entertain suit.

8. On perusal of the plaint averments, plaintiff admitted that, she has obtained the loan of Rs.14/- Lakhs from defendant bank, then she has not paid the loan to the defendant bank. The bank have initiated an action as required U/s.13(2) of SARFAESI ACT, they have given opportunity to the plaintiff to paid outstanding due with further interest for a period of 60 days from the date of issuance of notice. In spite of that, plaintiff has failed to pay the said outstanding balance, then they have been initiated the action under Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act. Therefore, the action taken by the defendant authority is legal or not legal has to be decided by Debt Recovery Tribunal not by the Civil Court. In this regard, it is relevant to refer Sec.34 of SARFAESI ACT which is as under;

> ***34. Civil court not to have jurisdiction.***—*No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or*

> *under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).*

On meticulous reading of above provision, Civil Court has no jurisdiction to entertain any action taken by the bank authority U/s.13(2) of SARFAESI ACT aggrieved person can file an appeal before the Debt Recovery Tribunal for validity of the action taken by the Bank authority. The present suit is filed by the plaintiffs before this court is not maintainable, as this court has no jurisdiction to entertain the same in view of provisions of Section 34 of SARFAESI ACT. Hence I answer preliminary issue No.4 in the affirmative.

9. **Issue No.2** : In view of the above discussion, I proceed to pass the following :

ORDER

As per order 7 rule of 11 (d) of CPC plaint is rejected. As per Provisions of Section 34 of SARFAESI ACT, this court has no jurisdiction to entertain the suit.

Hence Suit of the plaintiff is hereby dismissed as not maintainable before this court.

(Dictated to the Stenographer, transcribed and typed by him, script corrected, signed and then pronounced by me in the open court on this the 6th day of July, 2026).

(Vishwanath Yamakanmardi)
Prl.Civil Judge & JMFC,
Hubballi.