

Order below Exh. 40 in
Reg. Civil suit No. 26/2022

This is a suit for declaration that order passed by the District Collector is illegal and for consequential relief of prohibitory injunction to not act as per the said order. The present application is filed for framing of preliminary issue as to jurisdiction to try and entertain the present suit.

02. Perused application and say.

03. Heard both sides.

04. The Ld. DGP for defendants 1 and 2 has filed present application for framing of preliminary issues stating that, the suit is not tenable in view of the provisions of SARFAESI Act. It is the submission of the Ld. DGP that, when order under section 14 is passed, the said order is appealable before the Debt Recovery Tribunal in terms of the section 34 of SARFAESI Act. Considering these facts, it is submitted by the Ld. DGP that, the question of jurisdiction of this Court to try and entertain the present suit needs to be framed as a preliminary issues.

05. The plaintiff through his Ld. Advocate strongly objected the application and submitted that, the defendant No.3 had already filed an application under order 7 rule 11(d) for rejection of the plaint on the point of jurisdiction of the Court. It is further submitted that the said application was heard on merits by the Court and it was rejected by passing order to that effect. The Court in the said order has categorically dealt with question of jurisdiction of this Court to try and entertain this matter. It is further submitted that the present application filed by the defendant for the same reason which is not tenable. As such, the plaintiff has prayed for rejection of the application.

06. I have gone through the record and proceeding of the case. The record reveals that the question of jurisdiction of this Court to try

CNR No. MHSI02-000.....-2022

and entertain this suit is considered by the Court while passing order belong exh. 29 and the said application was rejected by the Court. Now, defendants 1 and 2 have filed present application by raising same question under different provisions of the Code of Civil Procedure. If the sum and substance of the present application and of the application decided at Exh. 29 is considered, it appears that, same question has been posed by defendants 1 and 2 by way of filing present application. The question of jurisdiction is concerned, it can not decided at threshold without evidence of the parties. The order of the District Collector has been challenged by the plaintiff by alleging that the said order is illegal and void. The issue as to jurisdiction of the Court can also be framed along with other issues but there is no reason to try such issue as preliminary issue. When the question of jurisdiction is already gone into at initial stage at the time of considering application under order 7 rule 11, I do not find appropriate reason to frame such issue as preliminary issue and to try it. Hence, following order is passed.

ORDER

01. Application stands rejected.
02. No order as to Costs.

(Dictated on Dias and pronounced in open Court.)

Oros.
Dated : 27/09/2024.

Sd/-
(**A.D.Tidke**)
Joint Civil Judge, Senior Division,
Sindhudurg-Oros.