

**IN THE COURT OF THE SUB JUDGE, NEDUMANGAD**

**Present : Smt. Rajasree. C.R, Civil Judge (Senior Division)**

**On Wednesday 18<sup>th</sup> March 2026/ 27<sup>th</sup> Phalguna 1947**

**I.A 5/2025 in OS 11/2025**

**Petitioners No. 1 and 2/  
Defendants No. 1 and 2**

1. M/s IFCI Limited, having registered Office at Continental Chambers, 2<sup>nd</sup> Floor, 142, M.G. Road, Nungambakkam, Chennai- 600034.
2. Authorised Officer, M/s IFCI Limited, having registered Office at Continental Chambers, 2<sup>nd</sup> Floor, 142, M.G. Road, Nungambakkam, Chennai- 600034.

**(By Adv. Sri.R. Santhosh Mahadevan)**

**Respondents/ Plaintiff  
and Defendant No.3**

1. M/s. Hotel Mythri, Rajadhani building, Samthripathi , Fort, Thiruvananthapuram.
- 2 Mr. Abdul Rasheed @ A.R. Babu, Citadel, Golf Links Road, Kowdiar, Thiruvananthapuram

**(By Adv. Sri. M.R. Anandakuttan, Adv. A. Rahim and Adv.**

**Joseph Stephenson )**

This petition having been finally heard on 13/03/2026 and the court on 18/03/2026 passed the following:-

### **ORDER**

This application is filed under Order VII Rule 11 (d) and under section 151 of the Code of Civil Procedure, 1908 to reject the plaint.

2. Petition averments, in brief, are stated as follows: Petitioners are the first and the second defendants in the suit. The suit is filed for a decree for declaration that the execution of the lease agreement dated 06.12.2017 with respect to the plaint schedule building by the mortgagor in favour of the plaintiff will not violate section 65A of the Transfer of Property Act and the plaintiff is not liable to be evicted from the scheduled premises under section 14 of the Securitisation Act, and to pass a decree of consequential permanent prohibitory injunction restraining the defendants from evicting the plaintiff from the scheduled premises during the subsistence of the contracted lease period which is binding on the mortgages and for such other relief. The present suit is barred by section 34 of the SARFAESI Act and is an abuse of the process of the court. The suit is not maintainable as the court lacks jurisdiction to entertain the suit due to the express bar under Section 34 of the SARFAESI Act. As per Section 34 of the SARFAESI Act, the jurisdiction of the Civil Courts to

entertain any sort of proceedings in respect to the matters over which Debts Recovery Tribunal or the Appellate Tribunal is ousted. As the suit is not maintainable, it has to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure. The plaintiff had already invoked the jurisdiction of the Debts Recovery Tribunal by filing a Securitisation Application No. 174/2020 under section 17 of the SARFAESI Act, raising the same contentions and seeking similar reliefs. The said matter was adjudicated on merits and a final judgment was passed on 05.12.2024, which is produced along with the written statement. The plaintiff has suppressed the fact of the order passed by the Debts Recovery Tribunal and also filed a false affidavit stating that no similar petition has been filed before any other court. The Hon'ble Debts Recovery Tribunal has decided the issue of application under section 65A of the Transfer of Property Act and has passed an order stating that the lease deed was executed in violation of section 65A of the Transfer of Property Act and dismissed the Securitisation Application with costs. Under section 18 of the SARFAESI Act, any person who is aggrieved by the order of the Debts Recovery Tribunal, passed under Section 17, has to prefer an appeal before the Debts Recovery Appellate Tribunal, Chennai. The plaintiff has not availed the statutory remedy, but instituted this suit. In paragraph number 7 of the plaint, the plaintiff has already admitted that he had instituted SA. 174/2020 before the Debts Recovery Tribunal. When the Debts Recovery Tribunal has adjudicated the matter on

merits by final judgment dated 05.12.2024, Civil Court has no jurisdiction to consider the same issue again.

3. The first respondent has not filed any written objection to this application.

4. Heard the counsel for the petitioners and the first respondent. At the time of hearing counsel for the first respondent/plaintiff vehemently argued that the suit is maintainable and has produced decisions of the Hon'ble Apex Court and the Hon'ble High Court of Kerala.

5. This application is filed by the petitioners/the first and the second defendants to reject the plaint under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908, for the reason that this court lacks jurisdiction to entertain this suit as there is an express bar under section 34 of the SARFAESI Act. The suit is filed for a decree for declaration that the execution of the lease agreement dated 16.12.2017 with respect to the plaint schedule building by the mortgagor in favour of the plaintiff is in violative of section 65A of the Transfer of Property Act and that the plaintiff is not liable to be evicted from the scheduled premises. There is also a relief of consequential permanent prohibitory injunction to restrain the defendants/petitioners from evicting the plaintiff from the scheduled premises during the subsistence of the contracted lease. The averments in the plaint would show that the plaintiff is a registered partnership

firm engaged in the hotel business. The first respondent/plaintiff took possession of the building owned by the third defendant/second respondent herein on 05.06.2006 on license. During the subsistence of the license agreement, a lease agreement was executed by the plaintiff and the third defendant. The agreement was executed on 06.12.2017 for a period of nine years as registered deed 3154/2017 of SRO Nedumangad and would expire only on 06.12.2026. The first respondent/petitioner had spent about three crores for the renovation of the building and the hotel in then building was classified under the category of four star hotel in the year 2020. During March 2020, the plaintiff came across a publication in the Malayala Manorama daily disclosing that the petitioners herein/ the first and the second defendants are taking steps to conduct the sale of the leasehold building suppressing the fact that the first respondent/ plaintiff is in occupation of the same as a tenant. Thus, the first respondent has no other option but to approach the Debts Recovery Tribunal by filing SA 174/2020. It is further averred in the plaint that the mortgage deed executed by the third defendant in favour of the first defendant does not prohibit the mortgagor /third defendant to lease out the mortgaged property.

6. According to the petitioners, the plaintiff herein has preferred a Securitisation Application as SA.174/2020 before the Debts Recovery Tribunal seeking the same relief as sought in the plaint. It is also averred by the petitioners that the Debts Recovery Tribunal has dismissed the application and

the remedy available for the first respondent/ plaintiff is to prefer an appeal before the Debts Recovery Appellate Tribunal, Chennai under section 18 of the SARFAESI Act.

7. At this juncture, let me consider Section 34 of the Securitisation and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002. It reads as follows: “*No Civil Court shall have jurisdiction to entertain any suit or proceedings 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 the Banks and Financial Institution Act, 1993*”. Section 17(1A) of the Act provides that an application under sub section (1) of section 17 shall be filed before the Debts Recovery Tribunal having jurisdiction. Section 18 of the Act deals with appeal to the Appellate Tribunal against the order made by the Debts Recovery Tribunal

8. The Hon’ble Supreme Court in *Karam Singh v. Amarjit Singh & Others* 2025 LiveLaw (SC) 1011 has held that “*while considering rejection of the plaint thereunder only the averments made in the plaint and nothing else is to be considered to find out whether the suit is barred by law*”. On perusal of the plaint averments it is not evident that the present suit has to be rejected for want of jurisdiction. There is no averments in the plaint that would go to show that the matters sought to be adjudicated in this suit was earlier adjudicated. Though in this application it is stated that several documents are produced along with written statement, on verifying the case records it is seen that the written statement and documents are not produced. In paragraph number 7 of

the plaint, it is stated that SA No. 174/2020 was filed by the first respondent/plaintiff before the Debts Recovery Tribunal and there is an order in the interim stage and the same is in force. The plaint is not evident regarding the disposal of the Securitisation. Application which is filed by the plaintiff/respondent herein. Though the petitioners herein had averred that the Securitisation Application filed as SA No. 174/2020 was dismissed by the Debts Recovery Tribunal, no order is produced to substantiate the same. It is not evident that the first respondent/plaintiff had approached the Debts Recovery Tribunal by filing SA.174/2020 with the same prayer and pleadings as is averred in the plaint.

9. In the case at hand, the lease agreement was executed on 06.12.2017. It is seen from the plaint averments that the mortgage was created prior to the execution of the lease agreement in the year 2017. However, there is no specific averment that the mortgage deed executed by the second respondent/ third defendant in favour of the petitioners contain a clause that prevents the third defendant from executing a lease deed in favour of the first respondent/ plaintiff. The learned counsel for the plaintiff/first respondent has brought my notice the decision reported in **Harshad Govardhan Sondagar and Others v. Internl. Assets Reconstruction Company**, 2014 KHC 4229 where it is held that there is no remedy available under section 17 of the SARFAESI Act to the lessee to protect his lawful possession under a valid lease. At the time of argument the learned counsel for the petitioners pointed out that after creating mortgage of an immovable property by the borrower/third defendant in favour

of the petitioners, secured creditors, a lease agreement was created in favour of the plaintiff. True, a lease agreement can be created by the second respondent/ third defendant after the creation of mortgage with respect to the building situated in the mortgaged property if there is no specific clause in the mortgage curtailing such right. The plaintiff is seeking protection under the provisions of section 65A of the Transfer of Property Act stating that the lease in his favour is binding on the mortgagee/first petitioner. It is not evident whether there is any express bar in the mortgage deed preventing the mortgagor to make the lease agreement of the mortgaged property. If the mortgage deed does not prohibit a mortgagor from making a lease of the mortgaged property and as long as the lease satisfies the requirements of sub-section 2 of section 65A, a lease made by a borrower as a mortgagor will not only be valid but is also binding on the secured creditor as a mortgagee. This is held in the decision reported in **Harshad Govardhan**, cited above. As the mortgage deed is not before this court, it is not possible for this court to consider this aspect. As there are no materials to analyse whether the decision taken by the Debts Recovery Tribunal is connected with the pleadings and prayer sought for in this case, I am of the considered view that this application filed to reject the plaint has no legs to stand and is liable to be dismissed.

**In the result, this application is dismissed.**

*(Dictated to the CA, typed by her corrected by me and pronounced in Open Court on this, the 18<sup>th</sup> day of March, 2026).*

RAJASREE.C.R,

*Civil Judge (Senior Division)*

Appendix: NIL

Civil Judge, Senior Division

Typed by :BR

Compd by :RPN