

**IN THE COURT OF CIVIL JUDGE SENIOR DIVISION MEHKAR,  
DIST. BULDHANA.**

(Presiding Officer : Smt. T. S. Gaigole)

CNR No.MHBU210001542025

**Special Civil Suit No.9/2025**

Dr. Abhinandan Idarchand Surana

V/s.

Santoshkumar Gondulal Surana & others.



**ORDER BELOW EXH.11**

Defendant No.7 has filed an application for rejection of the plaint under Order VII, Rule 11 of the Code of Civil Procedure.

2. It is submitted by the defendant that as per loan application of the Santosh Surana (defendant No.1), the defendant No.7 bank sanction and granted secured cash credit loan in the nature of credit facility. The sanction loan amount is ₹60,00,000/-. The total outstanding amount is ₹69,51,931/-. The security interest in favour of the bank has been executed by Santosh Surana (defendant No.1). He executed agreement dated 14/12/2023 and registered deed of mortgage. The property mentioned in the plaint as property No.1A is the secured assets on which security interest has been created by defendant No.1 in favour of the bank by executing mortgage deed. Defendant No.1 is the principle borrower and also mortgagor. Siddharth Surana and M/s. Gopalkrushna Traders stood as guarantor for defendant No.1. Both are borrowers as per section 2(8) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter is called as SARFAESI Act, 2002).

3. The borrower and guarantor committed default in repayment of loan amount and interest and also committed breach

of the agreement and terms and conditions of the loan. The notice dated 30/02/2024 and 30/06/2024 under the SARFAESI Act, 2002 were given to the defendant No.1 and guarantor, but, they failed to make any compliance. Thereafter, notice of taking possession of secured assets as per provision of section 13(2) and section 13(4) of the SARFAESI Act, 2002 were given. As per this notice the symbolic possession was taken by the bank. On 30/12/2024, the Hon'ble Collector, Buldhana passed order of taking actual possession and direction was given to the Tahasildar for taking action as per the SARFAESI Act, 2002.

4. It is submitted by the defendant that the present suit filed by the plaintiff is nothing but a collusive steps with Santosh Surana, Siddharth Surana and M/s. Gopalkrushna Traders. It is filed to defeat the claim of the bank and to prolong the recovery proceeding. As per section 34 of the SARFAESI Act, 2002, the Civil Court does not 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 can be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power confirmed by or under this Act. There is a expressed bar to the Civil Court jurisdiction.

5. It is further submitted that the plaintiff has no right, title and interest in the property in question during the lifetime of Indarchand Surana – father of the plaintiff (defendant No.2). The persons are Hindu and therefore, during the lifetime of Indarchand

(defendant No.2), the plaintiff did not get any right, title or interest in the property in question. Moreover, on 20/07/2020, the registered relinquishment deed has been executed by Indarchand Surana, Sonibai Surana, Latabai Surana, Atul Surana, Vipul Surana. All of them executed relinquishment deed in favour of Santosh Surana (defendant No.1) who is borrower and guarantor of the bank. Thus, the present suit is beyond the jurisdiction of the Court. The plaintiff is no right title and interest in the property in question. The suit is also not tenable as there is no compliance of notice under section 80 of the C.P.C. Therefore, defendant filed present application for rejection of the plaint.

6. Plaintiff filed his say at Exh.15 and submitted that the plaintiff filed present suit for partition and separate possession of suit properties as mentioned in plaint. The said suit properties are ancestral and joint family property. The parties are governed by Hindu Mitakshara School. The plaintiff is having right in suit property by birth. Therefore, the said claim should be decided by civil court and the civil court is only competent forum to resolve the present dispute of parties. While deciding the application under Order VII, Rule 11 of C.P.C. the allegation in the plaint should be considered and the jurisdiction must be as per plaint.

7. It is further submitted that the defendant No.1 had taken loan and he has executed the documents in respect of said alleged loan case. However, the plaintiff is not party to alleged loan case. The officers of bank, local directors and defendant played fraud behind the back of plaintiff to grab property share of plaintiff.

The defendant No.5 and the local director of the bank are also guarantor to the mortgage deed. The suit property 1A is in actual possession of the plaintiff and two others. So the alleged loan transaction is not binding on him. There is no intention of plaintiff to defeat the alleged rights of bank. If any grievance of bank in respect of alleged loan, the bank can recovery from borrower and guarantor also. The SARFAESI Act, 2002 does not take away the civil rights of parties. Moreover, Debt Recovery Tribunal cannot resolve the dispute of partition. Therefore, the suit is not barred by any law. The present suit is for partition and other properties also involved in the suit. Therefore, objection raised by the defendant is not tenable. The Civil Court is the competent forum. Considering the urgency, the plaintiff prayed for waive of notice under section 80 of C.P.C. The Hon'ble Court has dispensed with the notice. Therefore, the present application is not tenable at all.

8. Heard Ld. Advocates for both sides. On the backdrop of rival contentions of both parties, following points arise for my determinations. I have recorded my finding on the same for reason mentioned below :

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1)	Whether plaint of this suit is liable to be rejected ?	... In the Negative.
2)	What order ?	As per final order.

### **REASONS**

9. It is argued by Ld. advocate for the defendant No.7 that as per section 34 of the SARFAESI Act, 2002, Civil Court has no

jurisdiction to entertain the present suit also no injunction shall be granted by the Civil Court in respect of the action taken by the defendant No.7 under section 13(4) of the SARFAESI Act, 2002. He argued that defendant No.7 is concerning only to the suit property 1A mentioned in the plaint. Suit property 1A assumes character of self acquired property. Defendant No.1 and 2 and other legal heirs relinquished their share/right in the suit property 1A in favour of the defendant No.1. Therefore, plaintiff has no legal right on title in the suit property during life time of his father. No cause of action accrues to plaintiff to file present suit during the life time of his father. The grand son has no right in the property of the grandfather if his father is alive. If the plaintiff has any grievance, he can seek remedy under section 17 of the SARFAESI Act, 2002. The defendant No.7 has taken symbolic possession of the suit property 1A. Therefore, he prayed that entire plaint against defendant No.7 regarding suit property 1A be rejected. Also, notice under section 115 of Multi-State Co.-Operative Societies Act is not issued to the defendant No.1. To justify his argument, defendant relied upon following case laws.

- i) **Kritika Jain V/s. Rakesh Jain & Anr.** in CS(OS) 679/2024 and I.A. No.37445/2024,
- ii) **Uttam V/s. Saubhag Singh & others.** reported in 2017(1) Mh.L.J. 294,
- iii) **Shashikant Shripad Pandit & others. V/s. Kaustubh Subhash Pandit & others.** reported in 2020(3) Mh.L.J. 302,
- iv) **Vasant Kashinath Salve V/s. Moreswar Bhujangrao Niwalkar** reported in 2024 DGKS (Bom.) 4092,

- v) **Ajay Ramesh Chaudhary & Anr. V/s. Milind Janardhan Bhalerao & Ors.** reported in 2025(5) Bom.C.R. 258,
- vi) **Jagdish Singh V/s. Heeralal & others.** reported in 2014(3) Mh.L.J. 588 S.C.,
- vii) **State Bank of India V/s. Jigishabeen B. Sanghavi & others.** reported in 2011(2) Mh.L.J. 342,
- viii) **State Bank of India V/s. Anish Kumar & others.** reported in AIR 2018 Punjab & Hariyana 178,
- ix) **Sumathi V/s. Sengottaiyan & others.** reported in AIR 2010 Madras 115,
- x) **Church of Christ Charitable Trust and Educational Charitable Society V/s. Ponniamman Educational Trust** reported in (2012) 8 SCC 706,
- xi) **Chetana Shankar Manapure & Anr. V/s. Bandu Tanaji Barapatre** reported in 2020(4) Mh.L.J. 481,
- xii) **Coventry Spring & Engineering Company Ltd. V/s. Biswanath Ramkaran Agrawal & others.** reported in 2014(5) Mh.L.J. 62,
- xiii) **Xavier D'Souza & Anr. V/s. Luis D'Souza & Anr.** reported in 2009(1) Bom.C.R. 250,
- xiv) **Saraswat Co-Op. Bank Ltd. Mumbai V/s. Madan S. Jha & another** reported in 2010(4) Mh.L.J. 981,
- xv) **Pushkar Prabhakar Tagde & Anr. V/s. Nitin Divakar Joshi** reported in 2025(4) ALL MR 558,
- xvi) **Allahabad Bank, Kolkatta V/s. Hemantkumar Omprakash Malpani & others.** reported in 2017(6) Mh.L.J. 252,

10. Ld. advocate for the plaintiff argued that plaintiff has filed suit for partition and separate possession of the suit property

and also for declaration and permanent injunction. Suit property is the ancestral property. It is also mentioned in the relinquishment deed that property is ancestral. Plaintiff has right in the suit property. If in the suit, property dispute is involved, the Civil Court has jurisdiction. Also the plaintiff is not borrower or guarantor, he is a third person. Also he is not party to the relinquishment deed. As property is ancestral and there is no partition, plaintiff has right to sue. The plaintiff is residing in the suit property 1A and in possession of it. He also argued that the cause of action is mentioned in the suit. Also all bundle of facts should be read to consider the cause of action. The plaintiff has sought partition of the other property also, therefore, partial suit cannot be rejected. To justify his argument, he relied upon following case laws.

- i) **Central Bank of India V/s. Smt. Prabha Jain & Ors.** reported in 2025 STPL 1233 SC,
- ii) **The Assistant General Manager, Stressed Assets Manager & Ors. V/s. Sow. Mangala & Ors.** reported in 2024 AIR Bombay 337,
- iii) **Harji Shivji Hirani & Ors. V/s. Vishram Harji Hirani & Ors.** R/Civil Revision Application No.405 of 2018 dated 08/04/2019,
- iv) **M.R.Ramasamy & Ors. V/s. Karthika & Ors.** reported in 2022 SCC Online Mad 7852,
- v) **Shri. Prakash V/s. Smt. Yallamma @ Roopa & Ors.** Civil Revision Petition No.100061 of 2022 dt. 08/11/2022,
- vi) **Smt. Gayatriraje Puar & Ors. V/s. Smt. Shailajaraje Puar & Ors.** Civil Revision No.391 of 2021 Dt. 06/04/2023,

- vii) **Madhav Prasad Aggarwal & Anr. V/s. Axix Bank Ltd. & Anr.** reported in 2019 STPL 6441 SC,
- viii) **Mymoon Peer @ Ana Belinda Dias V/s. Dena Bank through its Chief Manager,** appeal from order No.23 of 2015 dated 25/07/2017,
- ix) **M/s. Mangaldham Properties LLP & anr. V/s. Sri. Ravi Agarwal & others.** reported in 2025(1) Cal HCN 726,
- x) **Shilpa Co-Operative Housing Society V/s. Janabai Gulabrao Wangal** reported in (2014) 6 AIRBomR 823,
- xi) **Ambajogai Peoples Cooperative Bank Ltd. V/s. Shrimauli Builders Bangalore Water Supply & sewerage Board Angerlehner Michel Construction Pvt. Ltd.** reported in 2007 STPL 19522 Bombay,
- xii) **Gajanan Eknath Sonankar V/s. Shegaon Shri Agrasen Co-Op. Credit Society Ltd. Buldhana & anr.** reported in 2015 STPL 7488 Bombay,
- xiii) **Shyam Co.-Operative Housing Society Ltd. V/s. Ramibai Bhagwansing Advani & others.** reported in 1952 STPL 368 Bombay,

**AS TO POINT NO.1 :-**

11. In the present case, on perusal of the plaint, it reveals that the plaintiff filed suit for partition, separate possession, declaration and permanent injunction. It is contended by the plaintiff that suit property A which is mortgaged by the defendant No.1 is the ancestral property of the plaintiff and defendant No.1 to 6. Plaintiff is in possession of the 1/4<sup>th</sup> part of the suit property 1A. The grand father of the plaintiff by name Gendulal has been died on

03/01/2011. The defendant No.1 who is uncle of the plaintiff executed mortgage deed dated 14/12/2020 in favour of the bank (defendant No.7) and taken loan. The security has been created by the defendant No.7 on the suit property 1A (secured assets) in favour of the bank. The defendant No.5 and Local director of the bank are also guarantor to the mortgage deed. Therefore, it is not only loan case but, it is an attempt to grab the property. Defendants along with the local director of the bank played fraud with the plaintiff. The defendant No.1 committed default in the repayment of the loan. Therefore, defendant No.7 bank has taken measures under section 34 of the SARFAESI Act, 2002. However, suit property is the ancestral property and there is no partition of the property and plaintiff is having share in it.

12. The plaintiff in the present suit has prayed for following relief :

- 1) He has claimed relief for the partition of the suit property 1A and 1B and also claimed separate possession of the 1/9<sup>th</sup> share in both suit property.
- 2) He has also claimed the relief of declaration that mortgage deed executed by the defendant No.1 in favour of the defendant No.7 is not binding on him.
- 3) He has also claimed the relief of permanent injunction i.e. not to disturb the possession over the suit property 1A.

13. It is submitted by the Ld. Advocate for the defendant No.7 that as per section 34 of the SARFAESI Act, 2002, there is a bar

for the Civil Court to entertain the dispute wherein the action under section 13(4) under the said Act has been initiated by the financial institute. In support of his argument he relied upon the case i.e. **Jagdish Singh V/s. Heeralal, State Bank of India V/s. Jigishabeen Sanghavi, State Bank of India V/s. Anish Kumar and Sumathi V/s. Sengottaiyan & others.** In above cases it has been held that the person aggrieved by any action taken under section 13(4) of the SARFAESI Act, 2002 has to approach DRT under section 17 of the Act. The expression “any person” to include not only the borrower but any person who is aggrieved by a measure which is taken by the secure creditor. Even the civil suit filed for declaration, permanent injunction and separate possession by way of partition by son of borrower is not maintainable.

14. As against this, Ld. Advocate for the plaintiff submitted that jurisdiction of the Civil Court cannot be ousted in respect of the claim of partition and declaration which don't fall under the provision of SARFAESI Act, 2002. He relied upon case laws i.e. **Central Bank of India V/s. Smt. Prabha Jain & Ors., The Assistant General Manager, Stressed Assets Manager & Ors. V/s. Sow. Mangala & Ors.** In the first case i.e. **Central Bank of India V/s. Smt. Prabha Jain & Ors.** Division Bench of the Hon'ble Supreme Court has held that DRT does not have jurisdiction to grant a declaration which respect to the mortgage deed or the sale-deed as sought by the plaintiff. The jurisdiction to declare a sale-deed or mortgage be illegal is vested is the Civil Court under section 9 of the Code of Civil Procedure. Therefore, the Civil Court has jurisdiction to finally adjudicate upon the relief of declaration that sale-deed or mortgage

deed is illegal or nullity. Hence, the relief prayed by the plaintiff regarding declaration is not barred by the section 34 of the SARFAESI Act, 2002 and are within the Civil Court jurisdiction. In this case the Hon'ble Supreme Court has referred the cases i.e. **Jagdish Singh V/s. Heeralal, State Bank of India V/s. Jigishabeen Sanghavi.**

15. In the second case i.e. **The Assistant General Manager, Stressed Assets Manager & Ors. V/s. Sow. Mangala & Ors.** It has been held by the Hon'ble Bombay High Court Aurangbad Bench that the DRT is not in empowered to entertain the claim of partition raised by the respondent No.1 who is neither the borrower nor the guarantor. The jurisdiction of Civil Court is not completely ousted, since the partition issue is involved in the suit. The case **Bank of Baroda & anr. V/s. Gopal Shriram Panda & others.** has been referred in this case. Also the Division Bench of the Hon'ble Bombay High Court in the case of **Bank of Baroda & anr. V/s. Gopal Shriram Panda & others.** (in Civil Revision Application No.2930/2011 decided on 25/03/2011) it has been held that where the civil rights of a person other than the borrower or guarantor is involved, the Civil Court would have jurisdiction to decide the same and therefore, for such adjudication of civil right the bar under section 34 of the SARFAESI Act, 2002 would not apply.

16. Thus, on perusal of the plaint it reveals that the present plaintiff who filed suit for partition, possession, declaration and injunction is neither a borrower nor a guarantor to the loan secured by the defendant No.1. It also appears that he has filed suit for

partition in respect of the suit property 1A which is mortgaged by the defendant No.1. Plaintiff also prayed for the relief of declaration that mortgage deed is not binding on him. Therefore, in view of the observation of the Division Bench of Hon'ble Apex Court in the case of **Central Bank of India V/s. Smt. Prabha Jain & Ors.** and observation Hon'ble Bombay High Court in the case of **The Assistant General Manager, Stressed Assets Manager & Ors. V/s. Sow. Mangala & Ors.**, The jurisdiction of the Civil Court is not completely ousted since partition issue is involved in the present suit. The DRT is not having any jurisdiction to adjudicate the claim of partition and the declaration.

17. Ld. advocate for the defendant No.7 submitted that the defendant No.1 and 2 and other legal heirs relinquished their right in the suit property 1A in favour of the defendant No.1. Thus, the suit property 1A assumes the character of the self acquired property. As per section 8 of the Hindu Succession Act. The plaintiff has no legal right or title in the suit property during the lifetime of his father. Thus, plaintiff has no cause of action to file the present suit. In support of his argument, he relied upon the case laws cited above i.e. **Kritika Jain V/s. Rakesh Jain, Uttam V/s. Saubhag Singh, Shashikant Shripad Pandit V/s. Kaustubh Subhash Pandit, Vasant Kashinath Salve V/s. Moreshwar Bhujangrao Niwalkar and Ajay Ramesh Chaudhary V/s. Milind Janardhan Bhalerao.** As against this Ld. advocate for the plaintiff submitted that the suit property is ancestral property which is not partitioned. It is also mentioned in the relinquishment deed that suit property is ancestral. Even today the suit property is in the name of the grandfather of the plaintiff.

The plaintiff has right in the suit property. The issue whether suit property is ancestral or self acquired can be decided in trial. He relied upon the case laws i.e. **Harji Shivji Hirani & Ors. V/s. Vishram Harji Hirani & Ors., M.R.Ramasamy & Ors. V/s. Karthika & Ors., Shri. Prakash V/s. Smt. Yallamma @ Roopa & Ors. and Smt. Gayatriraje Puar & Ors. V/s. Smt. Shailajaraje Puar & Ors.** cited above.

18. In the present case the plaintiff contended that the suit property is ancestral property which is not partitioned and the grandfather of the plaintiff is died on 03/01/2011. Therefore, considering contention of the plaintiff the issue whether the suit property assume the character of self acquired property or it is the ancestral property. Also whether section 8 or section 6 of the Hindu Succession Act mainly applicable in the present matter, this issue can only be decided after the evidence is laid by the parties. It requires trial. Therefore, the case laws cited by the Ld. advocate for the plaintiff are squarely applicable to the present matter. The facts of the present case and the facts of the cases cited by the Ld. advocate for the defendant regarding the right of the plaintiff in the property are different. Therefore, with due respect, it is not applicable.

19. It is also submitted by the Ld. advocate for the defendant that he is concerned only with the suit property 1A which is mortgaged by the defendant No.1 in favour of the bank. Therefore, the plaint against defendant No.7 regarding the suit property 1A be rejected. He relied upon the case law i.e. **Coventry**

**Spring V/s. Biswanath Ramkaran Agrawal** cited above. Ld. advocate for the plaintiff submitted that the plaintiff filed suit for the both property i.e. suit property 1A and 1B and the partial plaint cannot be rejected. He relied upon the case law **Central Bank of India V/s. Smt. Prabha Jain & Ors.**

20. I have gone through the case law i.e. **Coventry Spring** cited above. Facts of the present case and case cited are totally different. There is no issue of partition. In the case i.e. **Central Bank of India V/s. Smt. Prabha Jain & Ors.** It has been held that there cannot be partial rejection of the plaint under Order VII, Rule 11 of the C.P.C. Even if one relief survives, the plaint cannot be rejected under Order VII, Rule 11 of the C.P.C. In the present case, both properties are involved. There is a main issue of partition. The plaintiff filed suit against other defendants also. Therefore, in view of the observation of the Hon'ble Apex Court, in the case cited by Ld. advocate for the plaintiff, there is no substance into the submission of the Ld. advocate for the defendant. Partial plaint against some of the defendant cannot be rejected.

21. It is also submitted by the Ld. advocate for the defendant that suit is not properly valued. He relied upon the case law i.e. **Allahabad Bank V/s. Hemantkumar Malpani & others.** In the present case the plaintiff is not party to a mortgage deed. Also he is not guarantor to the loan. Therefore, plaintiff is not required to pay court fee on the outstanding amount of the mortgage. However, record shows that the plaintiff has filed suit for partition, separate possession, declaration and permanent injunction. The plaintiff has

valued suit property of ₹1,20,00,000/- and he has claimed 1/9<sup>th</sup> share in the suit property. The 1/9<sup>th</sup> share in the suit property comes as ₹13,33,333.33/- Therefore, plaintiff is required to pay court fee on the amount of ₹13,33,333.33/- as per section 6 (5) of the Bombay Court Fee Act. The plaintiff has paid court fee stamp of ₹17,382/-. Therefore, it will be justifiable to give direction to the plaintiff to deposit the remaining court fee within 14 days.

22. It is also submitted by the Ld. advocate for defendant that the plaintiff did not issue notice under section 115 of the Multi-State Co-Operative Society Act prior to filing of the suit which is mandatory. In absence of it, the suit is liable to be rejected. He relied upon the case laws i.e. **Saraswat Co-Op. Bank V/s. Madan S. Jha.**

23. Ld. advocate for the plaintiff submitted that considering urgency of the matter Hon'ble Court has dispensed with notice under section 80 of the C.P.C. The plaintiff has filed suit for partition and separate possession which does not come under the business of the bank.

24. He relied upon the case laws i.e. **Shilpa Co-Operative Housing Society V/s. Janabai Gulabrao Wangal, Gajanan Eknath Sonankar V/s. Shegaon Shri Agrasen Co-Op. Credit Society Ltd. Buldhana & anr.** In which it is held that the notice under section 164 of the Maharashtra Co-Operative Society Act, 1960 was not at all necessary before filing the suit in a Civil Court for partition, separate possession and declaration. In the present case also the

plaintiff has filed suit for partition, separate possession, declaration and permanent injunction. The plaintiff has sought the main relief for partition and separate possession. The plaintiff not being borrower and guarantor is exercising his civil right. Therefore, it appears that the present suit is comprehensive suit. Hence, no prejudice will be caused if the notice under section 115 of the Multi-State Co-Operative Bank is not issued prior to the filing of the suit. Moreover, in the present case the plaintiff filed application to dispensed with pre-suit notice under section 80 of C.P.C. and also section 115 of the Multi-State Co-Operative Society Act and the court granted permission to dispensed with mandatory notice under section 80 of C.P.C. Therefore, there is no substance into the submission of the Ld. advocate for the defendant.

25. Considering the facts discussed above, it reveals that in the present suit, the main issue of partition is involved. The plaintiff also sought for declaration that mortgage deed is not binding on him. Moreover, partial plaint cannot be rejected against some of the defendants if one relief is survives. The issue that property is self acquired or ancestral and the plaintiff has right to sue can be decided in the trial by taking evidence. Considering nature of the suit and civil right of the plaintiff, no prejudice will be caused if notice under section 115 of the Multi-State Co-Operative Society Act has not been issued prior to filing of the suit. Therefore, the present suit filed by the plaintiff is maintainable and hence the plaint under Order VII, Rule 11 cannot be rejected. However, it is necessary to give direction to the plaintiff to pay deficit court fee. Accordingly, I pass following order.

(17)

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**ORDER**

- 1) The application at Exh.11 is rejected.
- 2) Plaintiff is directed to pay remaining court fee on the amount of ₹13,33,333.33/- within the period of 14 days.
- 3) No order as to costs.

Date : 04/12/2025

**( T. S. Gaigole )**  
Civil Judge Senior Division,  
Mehkar.

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Dr. Abhinandan V/s. Santoshkumar & ots.

**CERTIFICATE**

I affirm that the contents of this <u>P.D.F.</u> file order is same, word to word, as per the original order.	
Name of the Stenographer Grade II	Balkrishna M. Shilwant.
Court	Civil Judge Senior Division, Mehkar.
Date	04/12/2025
Order signed by the presiding officer on	04/12/2025
Order uploaded on	06/12/2025