

MHKO050025992014



Shri. Vijay Waingade.

Vs.

Shri. Sourabh Waingade &amp; ors.

**ORDER BELOW EXHIBIT NO.120 IN**  
**REG. CIVIL SUIT NO. 363/2014**

This is the application filed by plaintiff under Order XXXIX, Rule 1 and 2 r/w. Section 151 of Code of Civil Procedure for grant of temporary injunction to restrain defendant no.6 bank from transferring or alienating suit property 1-A (3) through E-Auction proceeding till final disposal of suit.

**Plaintiff 's case in brief is as follows :-**

02. It is the case of plaintiff that, present suit is filed for permanent injunction against defendants to restrain them from alienating and creating encumbrances over suit property. Prior to filing of this suit one suit bearing R.C.S. No. 132/1994 was filed for partition, separate possession and for perpetual injunction. That suit was decreed and defendant no.1 to 4 was restrained by way of permanent injunction from alienating and creating encumbrances on suit properties till effecting actual partition. That decree was attained at finality and final decree proceeding bearing F.D. No.5/2010 is pending to that effect.

03. According to plaintiff said permanent injunction order is still in existence. Despite of that, defendant no.1 and 5 have created false and bogus will in the year-2011. Thereafter, on the basis of

alleged will they have got entered their names in revenue records of suit property. After entering names defendant no.1 and 5 have started to alienate and create encumbrances on suit property.

04. It is contended that, defendant no.1,3 and 5 have obtained loan on C.T.S. No.2976 disobeying injunction order passed in R.C.S. No.132/1994. It is further contended that, temporary injunction was granted in this matter against defendant no.1, 3 and 5. Thereafter, defendant no.6 on the basis of alleged mortgage deed started recovery proceeding under provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In pursuant to said proceeding, defendant no.6 has taken the possession suit property 1-A (3) i.e. C.T.S. No. 2976. Now, defendant no.6 has issued E-Auction sale notice and Scheduled Auction process on 04/03/2020. Therefore, plaintiff prayed that, defendant no.6 be restrained by way of temporary injunction from conducting E-Auction process in respect of suit property 1-A(3) till final disposal of the suit.

**Defendant No.6 case in brief is as follows :-**

05. Defendant no.6 raised objection to the application. It is submitted that, suit property bearing C.T.S. No. 2976 was owned and possessed by defendant no.1 and 5. The said property was acquired by them through will. The said will was not challenged by the plaintiff in suit. Defendant no.1 and 5 have taken loan from defendant no.6 mortgaging said property. Thereafter, defendant no.1 and 5 have made default in repayment of loan and therefore, defendant no.6 initiated proceeding under SARFAESI Act. It is submitted that, this court has no jurisdiction to grant injunction in view of bar created under section 34 of SARFAESI Act. Therefore, defendant no.6 prayed to reject the

application.

06. Considering the rival contentions between the parties, the following points arise for my determination and I have recorded my findings thereon with reasons as stated below.

| <u>SR.NO.</u> | <u>POINTS</u>   | <u>FINDINGS</u>            |
|---------------|---|----------------------------|
| 1)            | Whether the plaintiff has made out ...<br>prima-facie case ?  | NO.                        |
| 2)            | Whether the balance of convenience lie ...<br>in favour of the plaintiff ?                                    | NO.                        |
| 3)            | Whether irreparable loss would be<br>caused to the plaintiff, if the injunction ...<br>as prayed is refused ? | NO.                        |
| 4)            | What order ?  | ... AS PER FINAL<br>ORDER. |

**-: REASONS :-**

07. I have heard Ld. Advocates for both the parties. They have made submissions, according to their contentions made in the application and say. The Ld. Advocate for plaintiff relied upon following case laws-

**01. *Robust Hotels Pvt. Ltd. Vs. EIH Limited & others.***

***Civil Appeal No.11886 to 11887 of 2016,***

**02. *Pralhad Jawale Vs. Sitabai Nikam***

***Criminal Appeal No. 884 and 857 of 2010,***

**03. *Habibur Rahman Vs. Malay Bhushan Kaur & others.***

**04. *Maharwal Khevaji Trust Vs. Baldev Das.***

08. The Ld. Advocate for defendant no.6 placed reliance on *Jagdish Singh Vs. Heeralal & ors., Civil Appeal No.9771 of 2013.*

**AS TO POINT NOS.1 TO 3:-**

09. In this case there is no dispute that, suit bearing R.C.S. No. 132/1994 was filed for partition, separate possession and for perpetual injunction. The said suit was decreed and defendant no. 1 to 5 were restrained from alienating and creating encumbrances on suit properties. Thereafter, various proceedings were filed between plaintiff, defendant no.1 to 5 and in their co-sharers. But, in this case most important aspect is that, whether this court is empowered to grant injunction against the auction proceeding schedule to be held on 04/03/2020 by defendant no.6. Admittedly, defendant no.6 bank has initiated auction of suit property 1-A(3) i.e. City Survey No.2976 for recovery loan amount taken by defendant no.1 and 5 under the provisions of SARFAESI Act.

10. Admittedly, section 34 of SARFAESI Act outs the jurisdiction of Civil Court from entertaining any suit or proceeding, in respect of any matter, which DRT or the Appellate Tribunal is empowered by or under The SARFAESI 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 the recovery of debts due to bank and financial institutions Act.

11. In this case by way of present application plaintiff is challenging the action taken by defendant no.6 under SARFAESI Act. Thus, there is clear cut bar under section 34 of SARFAESI Act that,

injunction shall not be granted in respect of any proceeding or action taken under said Act for recovery of debts. The Ld. Advocate for plaintiff on that aspect submitted that, this court vide order Exhibit No.106 on the application filed under Order VII, Rule 11(d) held that, this court is having jurisdiction to entertain the suit against defendant no.6 bank. I have gone through the said order, while passing order on said application, it observed that, there is no any relief sought against defendant no.6 and plaintiff has impleaded defendant no.6 as a formal party. He has not challenged any action or proceeding in the suit under SARFAESI Act. Thus, the one aspect is cleared that, while deciding application below Exhibit No.106, it observed that, the proceeding under SARFAESI Act was not under challenge. Therefore, this court concluded that, suit is maintainable against defendant no.6. But now by way of present application plaintiff is challenging action initiated by defendant no.6 under said Act. Therefore, injunction sought by plaintiff cannot be granted in this suit in view of bar created under section 34 of SARFAESI Act.

12. Further, in view of Section 17 of said Act, any person including borrower aggrieved by any of the measures referred to in sub section (4) of section 13 taken by securities, creditor or its authorized officer can make an application to the DRT against such measure. Thus, one aspect is clear that, under section 17 of SARFAESI Act alternative efficacious remedy as of right provided to plaintiff. He is able to approach DRT, or appellate tribunal under said Act and put his grievance against action taken by defendant no.6.

13. Therefore, I am of the view that, in view of section 41 (h) of Specific Relief Act, when alternative efficacious remedy available to

parties, then court cannot grant injunction. In this case also as stated above plaintiff can approach to DRT or Appellate Tribunal Under SARFAESI Act and he can obtain relief by way of above mode.

14. Moreover, plaintiff has not sought any relief against defendant no.6 in suit. It is settled law that, when no relief could be granted in the main suit itself, it is not permissible to grant any interim relief, to be operative till the disposal of the suit. In this matter as plaintiff has not sought any main relief against defendant no.6, therefore, this court could not grant any interim relief in his favour. So far as reliance placed by Ld. Advocate for plaintiff on cited case laws are concerned, the facts in cited case and case in hand are totally different. In those cited case laws Hon'ble courts have not expressed any opinion as to the bar created under section 34 of SARFAESI Act. Therefore, ratio laid down in cited case laws are not helpful to the plaintiff. Considering above all aspects, I hold that, plaintiff is not entitled for temporary injunction as prayed. Hence, I answered point no. 1 to 3 in the “**Negative**” and in result to point no.4, I proceed to pass following order.

**ORDER**

- 01) Application (Exhibit No.120) is rejected.
- 02) Costs in main cause.

(Dictated and pronounced in open court)

Date:- 04/03/2020.  
Ichalkaranji.

I/c. 3<sup>rd</sup> Jt. Civil Judge, Jr. Division,  
Ichalkaranji.

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

|                         |  |
|-------------------------|--|
| Name of stenographer    | R. D. Patil.   |
| Name of Court           | P. M. Mane,<br>4 <sup>th</sup> Jt. Civil Judge Jr. Dvn. and<br>Judicial Magistrate First Class,<br>Ichalkaranji. |
| Date of Dictation       | 04/03/2020   |
| Order signed by P.O. on | 04/03/2020   |
| Order uploaded on       | 04/03/2020   |