



ORDER BELOW EXH.66 IN SPECIAL CIVIL SUIT NO.53/2021.

Sou.Jayshree Ashok Maskar.

V/s.

Shri.Sadanand Bapu Kadam etc.

Plaintiff has moved the present application for temporary injunction by taking recourse to Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908.

2. Case of the plaintiff in short is as under :-

As per plaintiff, she has filed the suit for partition and separate possession, in which one application below Exh.5 for temporary injunction was filed and which has been allowed by the Court vide order below Exh.5 on 18/02/2022. As per order below Exh.5, defendants are restrained from creating any third party interest over the suit property without following due process of law and defendant Nos.5 and 6 (Federal Bank) have also filed appeal against order below Exh.5. As per plaintiff, concerned bank has approached to the Debts Recovery Tribunal (DRT) against defendant Nos.1 and 2 only and trying to disposses the plaintiff from the suit property.

3. According to plaintiff, she is having undivided share in the suit property but defendant Nos.5 and 6 have moved the

application before the Chief Judicial Magistrate's (CJM) Court, Kolhapur and obtained the order of possession under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act on 03/06/2024. As per plaintiff's contention, once the Civil Court has passed the order of temporary injunction, then Chief Judicial Magistrate's (CJM) Court has no jurisdiction to pass the possession order and so plaintiff has filed the present application for restraining the defendant Nos.5 and 6 (Federal Bank) from taking possession of the suit property and sought injunction against defendant Nos.1 and 2 also.

4. Defendant Nos.5 and 6 (Federal Bank) has filed its say below Exh.72 and strongly opposed the present application contending therein that, they have took the legal recourse and present application is not tenable as the civil Court has no jurisdiction to entertain the objection about the order of the Chief Judicial Magistrate's (CJM) Court, as order is passed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act.

5. From rival pleadings of parties, following points arise for my determination, on which I have recorded my findings thereon with reasons to follow.

Sr. No.	POINTS		FINDINGS
1.	Whether plaintiff has established prima facie case in her favour ?	...	In the negative.

Sr. No.	POINTS		FINDINGS
2.	Whether balance of convenience lies in favour of plaintiff ?	...	In the negative.
3.	Whether irreparable loss will cause to plaintiff if injunction as sought is not granted in her favour ?	...	In the negative.
4.	What order ?	...	As per final order.

REASONS

6. Heard learned counsel for the plaintiff Shri.R.A. Magdum. Perused record.

AS TO POINT NOS.1 to 4 :-

7. The case of the plaintiff, as it appears from her plaint is to the effect that she is having undivided share in the suit property, which is ancestral one and in view of order below Exh.5 dated 18/02/2022, this Court has restrained the defendants from creating any third party interest over the suit property in respect of her share without following due process of law but, defendant Nos.5 and 6 (Federal Bank) has obtained possession order from the Court of Chief Judicial Magistrate, Kolhapur and trying to disposses her. Further as per plaintiff, once this Court has passed injunction order, the Chief Judicial Magistrate (CJM) Court, Kolhapur has no jurisdiction to pass the possession order and so she has filed the present application to restrain the defendant Nos.1, 2, 5 and 6 from dispossessing her.

8. Here it appears from the record that in view of order below Exh.5 (Temporary Injunction Application) dated

18/02/2022, my learned predecessor has passed the order and restrained the defendants from creating any third party interest over the suit property without following due process of law. Now according to plaintiff, defendant Nos.5 and 6 have approached to the Chief Judicial Magistrate (CJM) Court, Kolhapur under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act and obtained possession order. Further as per plaintiff, the Court of Chief Judicial Magistrate has no jurisdiction to pass the possession order in view of temporary injunction order of this civil Court.

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act also empowers secured creditors (Bank or Financial Institutions) to enforce their security interests without court's intervention subject to the compliance with the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act. Jurisdiction of the civil Court is limited in such matters in view of bar under section 34 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act. Civil Courts cannot entertain application that interfere with SARFAESI proceeding and proper remedy would be to approach the Debts Recovery Tribunal (DRT) under section 17 of the The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act.

9. Here it is important to note that the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act have overriding effect and plaintiff lacks locus-standi to challenge the SARFAESI proceeding in the civil suit, as the remedy is provided under section 17 of the Act itself. Hence, in my opinion the present application is not tenable. Consequently, I answer point Nos.1 to 3 in the negative and in response to point No.4 pass the following order.

ORDER

- 1) Application is hereby rejected.
- 2) Costs in cause.

Jaysingpur.
Date : 06/01/2025.

Civil Judge Senior Division,
Jaysingpur, Dist.Kolhapur.