Parag Balasaheb Torgalli
Vs.
The Gadhinglaj Urban Co-operative Bank Ltd., and Ors.

1. This is an application filed by the defendant No. 1 to 3 (the Bank) for rejection of plaint below Exh.26 provided under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908, which says that the plaint shall be rejected in the cases where the suit appears from the statement in the plaint to be barred by any law.

2. <u>The facts in dispute can be summarized as under</u> :-

This suit has been filed by the plaintiff who stood as a guarantor for the loan availed by the borrowers i) Sagar Appasaheb Patil and ii) Rahul Dadasaheb Nangare from the Bank i.e. Defendant No. 2. They failed to pay the loan amount on time. Therefore, their loan account becomes NPA of the Bank (def. 1 to 3). The def. 2 and 3 initiated the recovery proceeding against the borrower and the guarantor. The plaintiff is the guarantor. He filed this suit for declaration and perpetual injunction challenging the notice and procedure undertaken for attachment of the suit property by the Bank.

3. The bank appeared and filed its joint Written statement below Exh. 32 and the application (Exh. 26) for rejection of plaint as provided under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908. To support their contention the Bank submitted that they had given the loan to the borrower and the plaintiff is guarantor. After the account became NPA of the Bank, they started recovery proceedings by following due process of law. The plaintiff who stood as a guarantor is the member of their Co-operative society and thus governed by Section 91 of the Maharashtra Co-operative Act, 1960 (The MCSA, 1960). The recovery proceeding challenged in this suit is a business of the defendant society as per Section 91 of the MCSA, 1960. Therefore, as per Section 163 of the MCSA, 1960, this Court has no jurisdiction to entertain the present suit.

4. The Bank further submitted that the obtaining properties in mortgage and to recover the loan as per law is the act touching to the business of the society as contemplated in Section 164 of the MCSA, 1960. By giving reference to Section 34 of the SARFAESI Act, 2002 and of Section 91, 163, 164 of the MCSA, 1960 submitted that the relief sought by the plaintiff can be entertained only by the DRT. Thus the present suit is barred under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908.

5. The Ld. Advocate for the plaintiff filed a short written reply on the application itself on 05.07.2024 and submitted that, the borrower has mortgaged the agriculture property with the Bank and the suit property mentioned in the present suit belong to the plaintiff who stood as a guarantor. Therefore, the Bank initiated the recovery proceeding to attach the suit property. There is no specific provision in the MCSA, 1960 which can bar jurisdiction of this civil court to challenge this action of the Bank in present suit. Therefore, the plaintiff requested to reject the application.

6. The Honourable Supreme Court in ***Srihari Hanumandas Totala v. Hemant Vithal Kamat, (2021) 9 SCC 99*** has provided the guiding principles for deciding an application under Order 7 Rule 11(d) CPC of which two main are (i) to reject a plaint on the ground that the suit is barred by any law only the averments in the plaint will have to be referred to and (ii)the defence made by the defendant in the suit must not be considered while deciding the merits of the application. Therefore, to decide this application heard Ld. advocate for the plaintiff and the defendants. Perused the plaint and all documents annexed with it. Perused relevant judgments of Honorable Apex Court and Honorable High Courts.

7. The Co-operative banks can use either the specialized recovery mechanism of the SARFAESI Act or the provisions of the MCS Act, depending on the strategy they prefer. The Honourable Supreme Court of India ruled in case of ***Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Ltd., (2020) 9 SCC 215*** that the co-operative banks are considered "banking companies" under the Banking Regulation Act, 1949. They have the legal authority to use the SARFAESI Act to recover Non-Performing Assets (NPAs) without court intervention and they can issue notices, take possession of secured assets, and auction them off directly to recover dues.

8. The Honourable Supreme Court in the case of ***United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110,*** *held that* the expression ‘any person’ used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13(4) of the SARFAESI Act, 2002. Therefore, irrespective of the question whether the civil suit is maintainable or not, under the Securitisation Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the SARFAESI Act, 2002, in case the bank (secured creditor) adopts any measure including the sale of the secured assets, on which the plaintiffs claim interest.

9. In supra judgment, Honourable Supreme Court further held that, *"Section 17(2) of the SARFAESI Act, 2002 cast a duty on the Tribunal to consider whether measures taken by the secured creditor for enforcement of security interest are in accordance with the provisions of the Act and Rules made thereunder. If, the DRT, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the Rules made thereunder and require restoration of the management of the secured assets to the borrower. On the other hand, if the Tribunal finds that the recourse taken by a secured creditor under sub-section (4) of Section 13, is in accordance with the provisions of this Act and the Rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of Section 13 to recover his secured debt."*

10. The Honourable Bombay High Court in the case of ***Aditya Birla Housing Finance Ltd. v. Rajeev, 2025 SCC OnLine Bom 1221*** by giving reference of judgment of Honourable Supreme Court in *Bank of Baroda v. Gopal Shriram Panda, 2021 SCC OnLine Bom 466,* held that, the consistent view in various decisions is that the civil court's jurisdiction is completely barred so far as measures taken by the secured creditor u/s 13(4) of the SARFAESI Act against which an aggrieved persons has right of appeal before DRT or the Appellate Tribunal to determine as to whether there has been any illegality in the measures taken.

11. To see as to in which circumstances the Civil Court has jurisdiction to entertain the suit, following two judgments come in picture.

(a) The Honourable Supreme Court in the case of **Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311,** it is held," that *there is a well-known exception to the bar of jurisdiction of the civil Court in respect of an action of a secured creditor under* the SARFAESI Act, 2002*. If the action of the secured creditor is alleged to be fraudulent, it is certainly permissible to bring the matter before the civil Court".*

(b) In continuation of above finding the Honourable High Court of Bombay in the case of **State Bank of India v. Jigishaben B. Sanghavi, (2011) 2 Mah LJ 342,** it is held, *"the pleadings in such a case must "clearly disclose" a fraud or irregularity on the basis of which the relief is sought, then only it will be permissible for any person to approach the civil Court in a matter clearly covered by section 34 read with section 17 of* the SARFAESI Act, 2002*. Simply alleging fraud as a matter of form and without indicating any substance for raising such a plea is not permissible".*

12. As far as present suit is concerned it is contention of the plaintiff that i) Sagar Appasaheb Patil and ii) Rahul Dadasaheb Nangare had availed the loan for Shri Balaji Beverage, Jarali, Taluka – Gadhinglaj, District – Kolhapur in the year 2016 by mortgaging their own property i.e. Gat No.41/A from village Jarali, Taluka – Gadhinglaj, District – Kolhapur. The plaintiff stood guarantor on condition from the Bank that it will recover loan amount only from the borrower as per the SARFAESI, 2002 and not from the guarantor. Nevertheless, the bank initiated to attach immovable property of the plaintiff (the guarantor) u/s 101 of the MCSA, 1960 and issued a warrant to attach his suit property as mentioned in para 1A of the plaint in the present suit.

13. On plain receding of this contention when there is exclusive right available to the creditor, it cannot be termed as a fraud committed by the Bank. It is mere oral submission of the plaintiff about assurance of the Bank. There is no supporting document to substantiate the contention that the bank is entitled to recover the loan amount only by selling the mortgaged property of the borrower and not the property of the guarantor. It is an admitted fact that the mortgaged property of the borrower is an agricultural property and it’s excluded in recovery proceeding from the attachment under the SARFAESI Act, 2002.

14. Considering the object of enactment of the Act of 2002, there is no any illegality if the Bank initiated the proceeding against the guarantor i.e. present plaintiff. Thus, suit is not maintainable by raising a plea that the suit property is not mortgaged with the Bank therefore, it cannot be attached in recovery proceeding. This plea can be raised before the DRT and not before the civil Court. Therefore, I hold that this court bars jurisdiction to entertain the present suit in view of Section 34 of the SARFAESI Act, 2002 and Section 91, 163, 164 of the MCSA, 1960. Thus, the plaint is liable to be rejected under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908. Therefore, I passed the following order.

-: ORDER :-

1) The application Exh-26 filed for rejection of plaint, is allowed.
2) The plaint is rejected as provided in Order VII, Rule 11(d) of the Code of Civil Procedure.
3) Decree shall be drawn up accordingly.
4) Both parties shall bear their own costs.

DISTRICT COURTS MAHARASHTRA

Digitally signed by SACHIN CHANDRAKANT HAVELIKAR
Date: 2026.07.23 17:50:55 +0530

(S. C. Havelikar)
Jt. CJSD, Gadhinglaj
District :- Kolhapur.

Place : Gadhinglaj
Date : 23-07-2026