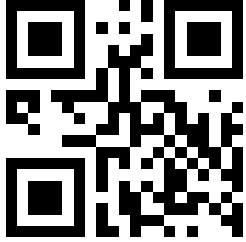


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| <p>MHKO190005632025</p>  | <p style="text-align: center;"><u>ORDER BELOW EXH. 5</u></p> <p style="text-align: center;"><u>IN</u></p> <p style="text-align: center;"><u>R.C.S. No. 145/2025</u></p> <p style="text-align: center;"><u>(Manas Deepak Aadake Vs. Deepak Baburao</u></p> <p style="text-align: center;"><u>Aadake)</u></p> <p style="text-align: center;"><u>DATE : 16/12/2025</u></p> |
|---|---|

The plaintiff has instituted the present suit seeking partition and permanent injunction in respect of the suit agricultural property as well as house property described in detail in paragraph 1 of the plaint. In so far as the present application (Exh.5) is concerned, the limited relief sought is a temporary injunction restraining defendant No. 9—finance company from taking possession of and selling the suit house property which stands mortgaged with it and from restraining defendant Nos. 1,2,4 and 9 from disturbing his possession.

2. Relation between parties -

Defendant No. 1 is plaintiff's father, defendant No. 2 is his mother, defendant No. 3 is his sister, and defendant No. 4 is his paternal uncle. Defendant No. 5 was his grandmother, who has expired during the pendency of the proceedings, and defendant Nos. 6 to 8 are his paternal aunts. Defendant No. 9 is a Multi-State Co-operative Society.

3. The plaintiff has contended that the suit house property is ancestral property. It is his specific case that no partition, either oral or written, has taken place till date. It is further contended that defendant Nos.5 to 8 have already released their respective rights in the suit house property in favour of plaintiff and defendant No.1 to 4, and therefore, they are not claiming any independent share therein. The plaintiff has submitted that defendant Nos.1 and 4 have availed loan facilities from defendant No.9, and due to default in repayment, defendant No.9 has initiated recovery proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter "SARFAESI Act"). According to the plaintiff, the said loan transactions were entered into without his consent and without effecting any prior partition of the ancestral property i.e. suit house property. In pursuance of the SARFAESI proceedings, defendant No.9 is likely to take physical possession of the suit house property, which would adversely affect his undivided share and render the present suit infructuous. Hence, he prayed to allow the application (Exh.5).

4. Defendant No.9 has filed its common written statement and say to interim application at Exh.16. It is contended that defendant Nos.1 and 4 had availed loan facilities from defendant No.9 by creating security interest over the suit house property. According to defendant No.9, the loan transaction was lawful, and the borrowers had voluntarily offered the suit property as secured asset. Defendant No.9 has submitted that due to default

in repayment of the loan amount, it has initiated recovery proceedings strictly in accordance with the provisions of the SARFAESI Act. It is contended that the statutory measures adopted by defendant No.9 are legal and binding, and the plaintiff has no independent right to obstruct or stall such proceedings by seeking injunction from a civil court. It is further contended that the jurisdiction of the civil court is barred in respect of matters arising out of measures taken under the SARFAESI Act, and the plaintiff, if aggrieved, has an alternative efficacious remedy available under the SARFAESI Act. It is submitted that the plaintiff has failed to establish any *prima facie* legal right which would justify grant of injunction against statutory recovery proceedings. Defendant No.9 has further contended that grant of temporary injunction would seriously prejudice the recovery proceedings, frustrate the object of the SARFAESI Act, and cause irreparable loss to the financial institution. On these grounds, defendant No.9 has prayed for rejection of the application for temporary injunction as against it.

5. Defendant Nos. 1,2 and 4, vide their say (Exh.43), admitted some of the contents of the plaint while denied some. They prayed to reject the application (Exh.5).

6. Heard the learned advocates for the parties and perused the pleadings, documents and the record relating to this application(Exh.5).

7. Having heard arguments of the Ld. Advocates conscientiously, perused documents, affidavits on record, considering the controversy

following issues arise for my consideration against which I have given my findings and appended my reasons to follow :

| Sr. No. | Issues | Findings |
|---------|---|--------------------------|
| 1 | Does the plaintiff prove that he has <i>prima facie</i> case in his favour ? | No |
| 2 | Does he further prove that balance of convenience is in his favour ? | No |
| 3 | Does he further prove that, he would suffer from irreparable injury if the application is refused ? | No |
| 4 | What order ? | Application is rejected. |

REASON

As to issue No. 1 :

8. The present application is moved seeking temporary injunction with twofold prayers : (i) to restrain defendant No.9 from taking possession of / selling the suit house property pursuant to proceedings initiated under the SARFAESI Act, and (ii) to restrain defendant Nos.1, 2, 4 and 9 from disturbing the plaintiff's possession during pendency of the suit.

9. At the outset, it is material to note that though the plaintiff has made a formal prayer to restrain defendant Nos.1, 2 and 4 from obstructing his possession, the plaintiff has advanced arguments only on the prayer to restrain defendant No.9 from taking possession. No specific submissions, material, or pressing of relief is shown as against defendant Nos.1, 2 and 4 to independently satisfy the requirements for grant of temporary injunction. The principal controversy, therefore, is whether this court can grant an injunction restraining defendant No.9, a secured creditor, from taking measures under the SARFAESI Act.

10. In **State Bank of Patiala v. Mukesh Jain**, reported in **(2017) 1 SCC 53**, the Hon'ble Supreme Court, while considering the scope of section 34 of the SARFAESI Act, has held that no civil court shall entertain any suit or proceeding in respect of any matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine under the Act, and further that no injunction shall be granted by any court in respect of any action taken or to be taken in pursuance of the powers conferred by or under the SARFAESI Act. The Hon'ble Supreme Court thus affirmed that when a secured creditor initiates measures under Section 13 of the SARFAESI Act, any person aggrieved thereby must seek redress before the forum specifically constituted under the Act and cannot invite the civil court to injunct such measures.

11. In the present case, without expressing any concluded opinion on the maintainability of the suit in this order, it is evident that the

substantial relief pressed in this application is to restrain defendant No.9 from taking possession of, and proceeding further with enforcement steps in respect of, the suit house property pursuant to the measures already initiated under the SARFAESI Act. In substance, therefore, through this application the plaintiff seeks to interdict and put on hold the statutory process undertaken by defendant No.9 under the SARFAESI Act. Having regard to the law laid down by the Hon'ble Supreme Court in **State Bank of Patiala v. Mukesh Jain (supra)**, this Court finds that the plaintiff has not been able to show any *prima facie* right to claim such injunction against defendant No.9 from taking measures under the SARFAESI Act.

12. A similar approach has been adopted by the Hon'ble Bombay High Court. In **Smt. Savita Patil & Anr. v. Shyam Asopa & Ors.**, reported in (2015) 1 ALL MR 187, the plaintiff-wife had nominally transferred her house to a friend, who thereafter took a bank loan and defaulted. She filed a civil suit to declare the sale deed void and also sought to restrain the bank's SARFAESI action. The trial court refused to grant an injunction against the bank once SARFAESI proceedings had commenced, and the Hon'ble High Court affirmed this view. The Hon'ble Bombay High Court held that while the question of validity of a sale deed (or by analogy, a gift deed) is within the competence of the civil court and the suit for declaration may proceed, the prayer to restrain the bank from enforcing its security squarely falls within the bar of section 34 of the SARFAESI Act, and no such injunction can be granted by the civil court.

13. Defendant No.9, in order to show collusion of plaintiff with other parties, has submitted that the demand notice under section 13(2) of the SARFAESI Act was served at the address of the suit house property itself. It is also contended that the notice issued was received by the plaintiff himself for defendant No.4, and the acknowledgment at Exh.20/1 bears the plaintiff's signature. Defendant No.9 has further pointed out that symbolic possession of the secured asset suit house property was taken on 08/02/2024. The panchanama at Exh.20/10 records the said action and specifically shows that the plaintiff was present at the time of taking symbolic possession. The said panchanama bears the plaintiff's signature. Thus, the plaintiff was well aware of the said loans and recovery procedures since inception, however, now he instituted the present suit for partition only with *malafide* intention to stop the lawful recovery procedure.

14. In response, the learned advocate for the plaintiff has argued that defendant No.9 had obtained the plaintiff's signatures on blank papers and thereafter prepared a false panchanama. In support thereof, the plaintiff has filed an affidavit at Exh.40.

15. This Court has perused notice (Exh.20/1), panchnama (Exh.20/10) and the affidavit (Exh.40). At this interlocutory stage, the contents of affidavit (Exh.40), by themselves, are not sufficient to discard the panchnama produced by defendant No.9. The plaintiff has not placed any cogent material to *prima facie* show as to why he would sign blank papers of defendant No.9. At this time, it is pertinent to note that the

plaintiff himself does not claim any direct loan transaction with defendant No.9. In such circumstances, the allegation that the plaintiff would sign blank papers of a financial institution with which he has no direct dealings, without any explanation of compulsion, misrepresentation, or surrounding circumstances, appears *prima facie* implausible. Moreover, the panchanama at Exh.20/10 is a document prepared in the course of statutory action, and unless shown otherwise by credible *prima facie* material, it carries persuasive value at this stage. Therefore, at this juncture, this Court is not inclined to accept the plaintiff's bare allegation of fabrication solely on the basis of affidavit at Exh.40, so as to disbelieve panchnama at Exh.20/10 and notice acknowledgement at Exh.20/1.

16. The plaintiff has further submitted that he had availed loans from Sarvade Vyapari Association Co-operative Credit Society, Vitthalai Gramin Bigarsheti Co-operative Pat Sanstha, Lakshmi Narayan Nagari Sahakari Pat Sanstha, and again from Sarvade Vyapari Association Co-operative Credit Society, aggregating to an amount of ₹4,19,000/-, allegedly for construction of the suit house property and for other purposes. In support of this contention, the plaintiff has produced loan account extracts at Exh.45/1 to Exh.45/5. This Court has perused the said loan account extracts. A bare perusal thereof does not disclose that the said loans were specifically availed for construction of the suit house property. The extracts merely reflect loan transactions and repayment particulars and do not establish the purpose for which the loans were sanctioned or utilized.

Moreover, even assuming for the sake of argument that the plaintiff had raised loans for construction of the suit house property, such assertion by itself does not confer upon the plaintiff any right to obstruct or restrain recovery proceedings lawfully initiated under the SARFAESI Act by defendant No.9. The existence of the plaintiff's independent borrowings from other financial institutions has no bearing on the statutory measures undertaken by defendant No.9 in exercise of powers conferred under the SARFAESI Act.

17. In the light of above discussion and in view of the law declared by the Hon'ble Supreme Court and the Hon'ble Bombay High Court, the plaintiff cannot be said to have made out a strong *prima facie* case for such an temporary injunction against the secured creditor. The plaintiff has his statutory remedy to approach the appropriate forum under sections 13(4) and 17 of the SARFAESI Act to ventilate his grievances and to seek appropriate interim protection. Accordingly, **issue No.1** is answered in the **negative**.

As to issue No.2 :

18. The next requirement is the balance of convenience. Defendant No.9 is a finance company which has advanced a substantial loan of ₹36,00,000/- on the security of the suit house property. It is stated that defendant No.1 and 4 has defaulted in repayment and the account has

become irregular. It is further shown that defendant No.9 has already initiated measures under the SARFAESI Act.

19. If at this stage, the civil court were to grant an injunction restraining defendant No.9 from taking possession or proceeding, it would effectively paralyze the statutory recovery mechanism, notwithstanding the clear bar contained in section 34 of the SARFAESI Act. Such an order would not only be contrary to the legislative intent but would also seriously prejudice the rights of the secured creditor, which is seeking to recover public money or financial assets through the special procedure enacted by Parliament.

20. In these circumstances, the balance of convenience clearly tilts in favour of allowing defendant No.9 to proceed in accordance with the SARFAESI Act rather than interdicting its actions by temporary injunction of this Court. Accordingly, **issue No.2** is answered in the **negative**.

As to issue No.3 :

21. As regards irreparable loss, it is argued on behalf of the plaintiff that if the suit house property is taken over and sold by defendant No.9, the plaintiff will be deprived of his ancestral house and will suffer irreparable harm. While the emotional attachment to ancestral property is understandable, the concept of “irreparable injury” in law must be viewed in the context of available remedies. The SARFAESI Act itself contemplates that persons aggrieved by the measures of the secured creditor may

approach the Debts Recovery Tribunal (in short DRT) and, if necessary, the Appellate Tribunal, which are empowered to grant interim and final reliefs, including setting aside the measures or awarding appropriate compensation.

22. The plaintiff has / had the opportunity to challenge the actions of defendant No.9 before the DRT and to participate in those proceedings. 'Any person' affected by the proceedings under SARFAESI Act has right to challenge the action before DRT. Therefore, it cannot be said that refusal to grant the temporary injunction would result in such irreparable injury as cannot be remedied or redressed.

23. On the contrary, granting an injunction in the teeth of section 34 of the SARFAESI Act and in the face of the law laid down in **State Bank of Patiala v. Mukesh Jain (supra)** and **Smt. Savita Patil v. Shyam Asopa (supra)** would amount to this Court exercising a jurisdiction which is expressly barred and would cause serious and unwarranted prejudice to the secured creditor. Accordingly, **issue No.3** is answered in the **negative**.

As to issue No.4 :

24. In view of the above discussion, this Court is satisfied that the plaintiff has failed to establish a *prima facie* case for grant of temporary injunction, that the balance of convenience does not lie in his favour and that no irreparable loss would be caused to him which cannot be adequately remedied through the statutory forums and in the final adjudication of the suit.

25. As regards the formal prayer against defendant Nos.1, 2 and 4, the plaintiff has not pressed the same by arguments, nor has laid a sufficient factual foundation in the present application to warrant an injunctive protection against them. No disturbance by defendant No.1, 2 and 4 is shown by the plaintiff. Hence, the application does not merit grant of temporary injunction even against defendant No.1, 2 and 4.

26. Accordingly, the application for temporary injunction (Exh.5) is liable to be rejected. Hence in answer to **issue No.4** the following order is **passed** :

ORDER

The application (Exh.5) is rejected.

Sd/-

Radhanagari
Date : 16/12/2025

(N. P. Kakade)
Jt. Civil Judge Junior Division,
Radhanagari.