


<p>MHKO190005632025</p> 	<p style="text-align: center;"><u>ORDER BELOW EXH. 18</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>
---	--

Defendant No.9 has preferred the present application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short CPC), praying for rejection of plaint, inter alia, on the grounds of (i) statutory bar under the the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter “SARFAESI Act”), and (ii) statutory bar / non-compliance of notice under the Multi-State Co-operative Societies Act, 2002 (“MSCS Act”).

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. Defendant No.9 contended that it is a Multi-State Co-operative Society governed by the MSCS Act, 2002. It is submitted that notice under

Section 115 of the MSCS Act is mandatory and, since such notice is not given, the suit is barred. It is further contended that in view of Section 84 of the MSCS Act, the competent forum is an arbitrator appointed by the Central Registrar and therefore civil court jurisdiction is barred. Defendant No.9 has initiated recovery proceedings as per SARFAESI Act, and measures are already undertaken. Hence, in view of Section 34 of SARFAESI Act, civil court jurisdiction is barred; the appropriate remedy is before DRT under Section 17 of SARFAESI Act. Accordingly, it prayed to allow the application.

4. The plaintiff has opposed the said application by filing say at Exh.41 and prayed for dismissal of the application. The plaintiff submitted that the suit is filed for partition of ancestral properties (described in detail in paragraph 1 of the plaint) and consequential relief of perpetual injunction. It is contended that authorities under SARFAESI Act are not empowered to grant relief of partition, which is a civil remedy. Therefore, the civil court has jurisdiction and the suit is not barred. So far as MSCS Act is concerned, plaintiff submitted that Section 115 notice is required only when the suit is in respect of an act touching the business of the society. According to plaintiff, the present suit essentially seeks partition; it does not challenge the loan transaction or recovery proceedings as such. Therefore, the notice under Section 115 is not warranted and the suit is not barred under MSCS Act.

5. Having heard arguments of the Ld. Advocates conscientiously, perused documents, 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.	Whether the plaint is liable to be rejected under Order VII Rule 11 CPC on the ground that the suit is barred by Section 34 / remedy under Section 17 of the SARFAESI Act and/or barred for want of notice under Section 115 and bar under Section 117 of the MSCS Act?	No
2.	What order?	The application(Exh.18) is rejected.

REASONS

As to issue Nos. 1 and 2 -

6. At the outset it shall be made clear that, at the stage of Order VII Rule 11 of CPC, the court is required to examine the averments in the plaint and the reliefs claimed, and decide whether the plaint is barred by law on the face of it. The defence version and disputed questions of fact are ordinarily not determinative at this stage. It is also well settled that a plaint cannot be rejected in part.

7. Defendant No.9 strongly relies upon Section 34 SARFAESI to contend that civil court jurisdiction is barred. It is apt to reproduce section 34 here.

Section 34 of SARFAESI Act reads thus :

“34. Civil court not to have jurisdiction.— No Civil Court shall 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 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 this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993”

8. It is made clear by the provision itself that civil court cannot grant an injunction which directly restrains measures taken or to be taken under SARFAESI, in view of section 34. However, the present suit is not confined to injunction against defendant No.9. The main and substantive relief in the plaint is partition of ancestral properties and consequential reliefs flowing therefrom. It is pertinent to note that the SARFAESI Act is a recovery mechanism. The forum under SARFAESI is meant to examine the legality of measures under section 13(4) upon an application under section 17. The relief of partition, by its very nature, is a civil remedy which requires adjudication of civil rights/shares and division by metes and

bounds. Such relief is not a relief which the Debt Recovery Tribunal (DRT) is constituted to grant under the SARFAESI Act. Therefore, merely because defendant No.9 has initiated SARFAESI measures against the property, it does not follow that the entire suit for partition becomes barred. At the highest, if any prayer in the suit directly seeks to interdict SARFAESI measures, the court may have to examine that prayer at the appropriate stage and pass suitable orders consistent with section 34; however, that is distinct from rejecting the plaint as a whole.

9. Defendant No.9 has also argued that notice under Section 115 is mandatory because it is a Multi-State Co-operative Society. Section 115 of the MSCS Act reads as follows :

“115. Notice necessary in suits.— No suit shall be instituted against a multi-State co-operative society or any of its officers in respect of any act touching the constitution, management or the business of the society until the expiration of ninety days next after notice in writing has been delivered to the Central Registrar... and the plaint shall contain a statement that such notice has been so delivered or left.”

10. Section 115 applies only where the suit is “in respect of any act touching the constitution, management or the business of the society.” On plain reading, Section 115 does not mandate notice in every suit where a multi-state co-operative society is arrayed as a party. The applicability

depends upon the nature of the cause of action and the relief claimed— i.e., whether it is in respect of an act touching the society's business.

11. In the present case, on considering the plaint as pleaded, the plaintiff's foundation is that the suit properties are ancestral and that he seeks partition. Defendant No.9 appears to have been joined because it claims interest in the property by virtue of its recovery proceedings. At this stage, the plaint, read as a whole, cannot be said to be primarily and directly a suit against the society in respect of its business activity, so as to attract Section 115 as a threshold bar compelling rejection of plaint. Whether, in the course of trial, any relief against defendant No.9 is found to be barred or not grantable is a matter for adjudication at the appropriate stage; however, that is different from holding that the suit itself is barred for want of Section 115 notice.

12. It is important to refer section 117 of MSCS Act here.

117. Bar of jurisdiction of courts.—

1. Save as otherwise provided in this Act, no court shall have jurisdiction in respect of—

(a) the registration of a multi-State co-operative society or its bye-laws or of an amendment of the bye-laws;

(b) any matter concerning the winding up and the dissolution of a multi-State co-operative society.

(2) While a multi-State co-operative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against the liquidator or against the society or any member thereof, except by leave of the Central Registrar and subject to such terms and conditions as he may impose.

(3) Save as otherwise provided in this Act, no decision or order made under this Act shall be questioned in any court.

Section 117 primarily bars civil court jurisdiction in specific matters as mentioned above and bars questioning decisions/orders made under the Act. In the present case, at least at the threshold, the suit is not one seeking to set aside any registration, winding up/dissolution, or to question an order passed under MSCS Act as contemplated by Section 117. Hence, Section 117 does not, on the face of the plaint, bar institution of the present suit for partition.

13. Defendant No.9 has relied upon the judgment of Hon'ble Supreme Court in the case of **Authorized officer, state bank of Travancore and Anr v. Mathew K.C.** reported in **2018 (5) MH.L.J 586**. This ruling is concerned with preventing misuse of writ jurisdiction in the face of an available SARFAESI remedy. In the present matter, the plaintiff's action is a civil suit for partition and injunction, which does not involve invoking writ jurisdiction or directly contesting SARFAESI proceedings. The reliefs sought are grounded in property rights, not in challenging a bank's statutory powers. Therefore, the Mathew K.C. judgment does not profit Defendant No.9 in this situation.

14. Further, defendant No.9 has relied upon the judgment of the Hon'ble Bombay High Court in **State Bank of India v. Sagar s/o Pramod Deshmukh**, reported in **2011 (3) M.H.L.J. 71**. A careful reading of the said judgment, however, shows that the ratio laid down therein does not advance the case of defendant No.9, rather, it supports the plaintiff.

15. In the said decision, the Hon'ble Court has held that the Debt Recovery Tribunal is a tribunal of limited jurisdiction, and that its powers are confined to examining the validity and legality of the action taken by a secured creditor under Section 13 of the SARFAESI Act. The Hon'ble Court further observed that all other disputes in respect of a secured asset, which do not fall within the scope of jurisdiction of the DRT under Section 17 or of the Appellate Tribunal under section 18, continue to be within the jurisdiction of the civil court. The Hon'ble High Court has clearly laid down that, while deciding whether the jurisdiction of the civil court is ousted under section 34 of the SARFAESI Act, the real test is to ascertain whether the DRT is empowered to adjudicate upon the particular question and to grant the relief sought. The extent of exclusion of civil court jurisdiction depends upon the extent of jurisdiction conferred upon the DRT under Section 17 of the Act. In that case, the plaintiffs had filed the suit seeking declaration, partition, separate possession and consequential injunction. Hon'ble court held that there is no provision under the SARFAESI Act which confers upon the DRT or its Appellate Tribunal the power to pass a decree for partition or to determine civil rights of parties by effecting separate

possession of immovable property. Such reliefs are purely civil in nature and fall squarely within the domain of the civil court.

16. Therefore, applying the ratio laid down in **State Bank of India v. Sagar s/o Pramod Deshmukh (*supra*)**, it is evident that since the DRT is not empowered to grant the relief of partition and separate possession, the jurisdiction of the civil court is not barred under section 34 of the SARFAESI Act.

17. The plaintiff has placed reliance upon the judgment of the Hon'ble Bombay High Court in **Bank of Baroda, Khamgaon v. Gopal Shriram Panda and others**, reported in **AIR Online 2021 Bom 1070**. In the said decision, the Hon'ble High Court reiterated the settled principle that the presumption is always in favour of the civil court having jurisdiction, and that exclusion of such jurisdiction must be either expressly provided or clearly implied by statute. The Hon'ble Court further observed that even where there is an express bar of jurisdiction, if the action complained of does not fall within the four corners of the statute under which the bar is created, the jurisdiction of the civil court would still be available.

18. The plaintiff has further relied upon another judgment of the Hon'ble Bombay High Court in **Assistant General Manager, State Bank of India v. Mangala**, reported in **2025 (2) ALL MR 292**. In the said case, the Hon'ble High Court specifically considered the effect of SARFAESI proceedings on a civil suit involving partition of property. The Hon'ble Court observed that the jurisdiction of the civil court is not completely ousted

merely because SARFAESI proceedings are initiated, particularly when the suit involves an issue of partition. It was further held that the Debt Recovery Tribunal is not empowered to entertain or adjudicate a claim for partition, and therefore, the bar under section 34 of the SARFAESI Act would not operate to exclude the jurisdiction of the civil court in such matters. Consequently, the Hon'ble High Court upheld the order rejecting the application for rejection of plaint under Order VII Rule 11(d) of the CPC.

19. The principles laid down in the aforesaid judgments squarely apply to the facts of the present case. Since the present suit involves a substantive relief of partition, which lies beyond the jurisdiction of the DRT, and since the exclusion of civil court jurisdiction cannot be readily inferred, the said rulings support the plaintiff's contention that the suit is maintainable. Accordingly, these judgments clearly benefit the plaintiff and militate against the plea of defendant No.9 for rejection of the plaint.

20. In view thereof, this Court finds that the application (Exh. 18) is liable to be rejected. Hence, **issue No. 1** is answered in the **negative**. In answer to issue No. 2, the following order is passed :

ORDER

The application (Exh. 18) is rejected.

Radhanagari
Date : 16/12/2025

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