ORDER BELOW EXH.17 IN RCS. No.56/2023
(Bhagyashree v. Dattatreya and another)

1. This is an application under Order VII Rule 11 (a) and (d) of the Civil Procedure Code (CPC) for Rejection of Plaint submitted by defendant No. 2.

2. The suit is instituted by plaintiff for *Perpetual Injunction* for non obstruction to the possession of Plaintiff over the suit property Defendant no. 2 or any person claiming under them. It has been contended by plaintiff that, as per the para 5 of the plaint, Defendant no. 2 Bank has initiated proceedings against Defendant no.1 for the recovery of unpaid debt under SARFESI Act. The Defendant no.2 has also issued legal notice under section 13 (2) to Defendant no.1, in order to attach the property of Defendant no.1. However, as there is no existence of property of Defendant no.1 actually on the spot and boundaries of property of Defendant no.2 are identical with that of the Defendant no.1, Defendant no.2 is looking to attach the proceedings of Defendant no. 2.

3. **Brief facts of the application are as follows –** That, as per the statements in the plaint, the property of Defendant no.1 does not exist in reality. From the statements in Plaint, it also appears that, Defendant no.2 has initiated the proceedings for recovery of debt as per SARFESI Act. As per Sec. 17 of SARFESI Act, any proceedings initiated by any financial institution regarding the recovery of unpaid secured debt, should be challenged in Debts Recovery Tribunal (DRT) only and not in any other forum. So also, the jurisdiction of civil court is expressly barred u/Sec. 34 of SARFERSI Act so as to take cognizance of any suit containing relief relating to any proceedings initiated by any financial institution regarding the recovery of unpaid secured debt. In such situation it can be said that, no cause of action was accrued to Plaintiff to institute the said suit. So

also, the claim of Plaintiff is apparently barred by law. Therefore, it is prayed to reject the plaint.

4. Plaintiff resisted this application by his say at Exh. 49 on the anvil of the fact that the application is illegal. According to Plaintiff, he and Defendant no.1 have purchased their properties from two different vendors. The Plaintiff has purchased the area of 516.82 sq. mtrs and Defendant no.1 has purchased the area of 464.68 sq. mtrs. The predecessor in title of Defendant no.1 has also executed the correction deed in favour of Defendant no.1 regarding the area purchased by Defendant no.1. Therefore, these two properties are totally different from each other. In such case, this court has ample jurisdiction to try the said suit. Accordingly, claimed rejection of the application.

5. Following points arise for my consideration against which I have given my findings and reasons to follow.

Sr. No.	**Points**	**Findings**
1.	Whether the Plaint discloses the cause of action ?	In the affirmative
2.	Whether the suit appears from the statement in the plaint, to be barred by any law ?	In the negative.
3.	What Order ?	Application is rejected.

6. Perused the record. Heard both sides. Ld. Advocate for Defendant no.2 Shri A.U.Shete argued that, the suit is not maintainable in its present form. U/Sec. 34, when proceedings as to recovery of unpaid debt are initiated, the civil courts lost their jurisdiction. The suit instituted after demand notice u/Sec. 13 (2) SARFESI Act is not maintainable by law. The Defendant no.2 has issued demand notice u/Sec. 13 (2) SARFESI Act is the position admitted by Plaintiff. Moreover, the relationship of debtor and creditor between the Defendant no.1 and Defendant no.2 is the

fact admitted by Plaintiff. If Plaintiff faced any inconvenience due to the alleged obstruction by the acts of Defendant no. 2, then he should have approached to DRT (Debts Recovery Tribunal). Hence this suit is an attempt to bypass the jurisdiction of DRT (Debts Recovery Tribunal).

7. Ld. Advocate for Plaintiff, Shri. K.B.Sargar argued that, he is not the debtor of Defendant no. 2 Bank. properties of both Plaintiff and Defendant no. 1 are different in nature and purchased from two different persons. The vendor of Defendant no. 1 was the power of attorney of vendor of Plaintiff. As both the properties are mutually adjacent, the boundaries of them are almost same. Defendant no.1 Bank has tried to obstruct and thereby attach property of Plaintiff, hence this court has jurisdiction to try this suit. Accordingly, he prayed for rejection of said application.

REASONS

As to Points No.1, 2 and 3 -

6. It is a settled exposition of law that, in order to consider the application under Order VII Rule 11 of CPC, the court has to look into the averments in the plaint only and same can be exercised by the trial court at any stage. It is also apt to be mentioned here that, the plaint has to be read as a whole and not in the isolation or segregation.

7. The first and foremost statement in the present application is that the plaint does not contain necessary cause of action. For the said purpose, in order to determine the said issue, I consider it proper to go through the averments in the plaint itself, rather than to rely upon the arguments advanced by rival parties. Upon perusal of plaint at Exh.1 it appears that, para no. 7 of plaint discloses the cause of action. Upon reading of the plaint in entirety, *prima facie* it cannot be said that the said is false and fictitious at threshold. However, its truth and correctness can be only assessed with the aid of detailed evidence. Also, this point was

also not pressed by ld. Advocate for Defendant no. 2 in his oral arguments. In such case, it will be better to not to comment on it furthermore. Therefore, I answer point no.1 in affirmative.

8. Another submission of Defendant no. 2 is about the bar of jurisdiction u/Sec. 34 of SARFESI Act in view of the proceedings initiated before DRT (Debt Recovery Tribunal). It is mentioned in the application that, the relief claimed by Plaintiff in his plaint is incidental to the sale proceedings initiated u/Sec. 17 by the Defendant Bank. It was pointed out by ld. Advocate for Defendant no.2 that, the boundaries mentioned in the sale deeds of Plaintiff and Defendant no.1 are almost identical. He also argued that, If as mentioned by Plaintiff in the plaint that the properties of Plaintiff and Defendant no.2 are two different properties, then why the boundaries in the sale deed of Plaintiff does not have any reference of the property of Defendant no.1. On the other hand, the sale deed of Defendant no. 1 is of 18/06/2014 and sale deed of Plaintiff is of 07/02/2015. Hence the sale deed of Defendant no.1 is prior in nature.

9. Perused the documents filed by Plaintiff with the Plaint. At Exh. 3/1 the photocopy of sale deed of Plaintiff. At Exh. 3/2 there is the photocopy of sale deed of Defendant no. 1. At Exh. 3/3, there is property card of CTS no.13. The properties of Plaintiff and Defendant no.1 are looking to be the part and parcel of said CTS No.13. Upon perusal of said documents, the submissions of ld. Advocate for Plaintiff appears to be true and as per the pleadings.

10. As mentioned earlier, for the purpose of rejecting the plaint, only the statements made in the plaint are germane. Upon perusal of Plaint, it appears that, as mentioned by Defendant no.1, the boundaries of properties of both Defendant no.1 and Plaintiff are almost same. This fact is also looking to be admitted by Plaintiff in the plaint itself. However, the boundary mentioned in the northern side of both the properties is looking different. The boundary at the northern side of Plaintiff's property is

shown as **"CTS No. 12"**, and the boundary at the northern side of Defendant no.1's property is as **"remaining part of same CTS no. and Kalki Temple"**. Therefore, the boundaries at the northern side of both the properties are apparently looking slightly different. Therefore, the existence and actual location of both properties appear to be the matter requiring detailed evidence.

11. It was contended by Plaintiff that, he is not the borrower of Defendant Bank. Therefore, the provisions and procedure laid down in the SARFESI Act are not applicable to him. He also mentioned that, the area of both the properties are different. The vendors of both Plaintiff and Defendant no.1 are different. The vendor of Plaintiff appears from the statements in Plaint as one 'Amitraje Patwardhan', who also appears to be the Power of Attorney Holder of original predecessor in title of Defendant no. 1, i.e. 'Vijayadevi Nisal'.

12. Upon perusal of record, the said things pointed out by ld. Advocate for Plaintiff appears to be true. These facts also, are not denied by Defendant no.2 anywhere. It is not the case of Defendant no. 2 that, Plaintiff has some connection with the debt allegedly borrowed by Defendant no. 1, or he assigned any security interest in favour of Defendant no. 2 or he has any kind of interest in the transaction so entered between Defendant no.1 and 2. In such case, it does not appear that Plaintiff is the borrower in default, so as to bar him from knocking the doors of civil court, as mentioned in Sec. 34 of SARFESI Act. Therefore, the embargo of jurisdiction expressly or impliedly, cannot be inferred from the contents of entire pleading of plaint. The existence and location of properties of Defendant no.1 and Plaintiff appears to me the matter requiring detailed evidence. It is also trite law that, when there are averments in the application as to bar of jurisdiction, there shall be no prayer for rejection of plaint, rather in all logical practicability it gets returned. Therefore, on this count too, this application is not tenable.

13. The Plaintiff relied upon the decision of hon'ble Bombay High Court in ***State Bank of India vs. Jigishaben B. Sanghavi***, reported in ***Appeal no. 244/2010***, decided on ***December 8, 2010***. Wherein it has been observed by division bench of Hon'ble High Court that,

"11. Under Section 34, the jurisdiction of a Civil Court to entertain a suit or proceeding is barred in respect of any matter which the Debts Recovery Tribunal and /or Appellate Tribunal, 'is empowered by or under this Act to determine'. The second part of Section 34 bars the grant of an injunction by any Court of authority 'in respect of any action taken or to be taken' in pursuance of the power conferred by the Act or by the Recovery of Debts Due to Banks and Financial Institution Act, 1993. The First part of Section 34 operates as a bar in respect of a Civil Court entertaining any suit or proceeding. The bar applies in respect of a matter which can be determined under the Act by the Debts Recovery Tribunal or the Appellate Tribunal. The second part of Sction 34 prohibits the issuance of an injuntion by a Court or other authority in respect of an action which has been taken or which is to be taken in pursuance of the Act or the RDDB Act."

"21. The HUF was a co-owner/tenant in common the the residential (ii) The Bank has taken recourse to proceedings for recovery to which the HUF was not a party; (iii) The Plaintiffs had, in the course of the recovery proceedings, raised an objection before the Recovery Officer to the tenability of the action taken by the Bank; (iv) The Bank had taken recourse to its remedy under the Securitization Act Without awaiting the result of the objection raised by the Plaintiffs; (v) The action under Section 13(2) was initiated in disregard to the provisions of the Securitization Act; (vi) The mortgage executed by the Second, Third and Fourth Defendants was defective because the original Share Certificates were not with the Bank : (vii) The First Defendant had no security interest and no secured assets and, therefore, was not entitled to invoke the provisions of Sub-section(4) of Section 13 against the right claimed by the HUF; (viii) A 'systematic fraud' was played

by the First Defendants tor pressurise the Plaintiffs: and (ix) There was an absence of legal necessity which would vitiate the mortgage alleged to the been created by Second Defendant as Karta of the HUF. The reliefs which are sought in the suit have already been adverted to earlier. These averments, when construed in their entirety, would reveal that the grievance which the Plaintiffs have in the suit is in respect of the validity of the mortgage which is alleged to have been executed by the Second Defendant as Karta of the HUF and of the tenability of the action adopted by the Bank under the Securitization Act, so as to meet the interest of the HUF claimed in the residential flat. The Plaintiffs as third parties have sufficient recourse to challenge the lawfulness of the action of the Bank by invoking their remedies under Section 17. Thus, clearly within the meaning of Section 34, a suti in respect of any matter which the Tribunal is empowered by or under the provisions of Section 17 to determine is barred. The suit, therefore, in our view, was clearly barred by Section 34. The stray reference to an allegation of fraud in paragraph 15 of the plaint is not sufficient to bring the case within the scope of the exception carved out by the Supreme Court in ***Mardia Chemicals****."*

14. Upon perusal of said authority, it appears from the said case, The appellant sanctioned a financial facility of Rs. 70 crores to Crosslink Shipbreakers (P) Ltd. The Second, Third and Fourth Defendants executed letters of guarantee. The Second and Third Defendants are spouses, and second Defendant is the karta of an HUF. The fourth Defendant is the son of second and third Defendants. The first Plaintiff is the wife of the Fourth Defendant, while the Second and Third Plaintiffs are their children. The Fourth Plaintiff is the daughter of the Second and Third Defendants. The case of the Appellant is the the Second, Third and Fourth Defendants executed a memorandum of deposit of title deeds by which a residential flat – flat 1402 , at Benhur, Narayan Dabholkar Road, Malabar Hill, Mumbai – was mortgaged in its favour.

15. That means, in the said matter, all the Defendants were related and connected to each other and DRT (Debts Recovery Tribunal) attached the said flat in consequences of recovery proceedings. In this regard, the present suit is completely different from the said case on the basis of facts. In the present case, Plaintiff *prima facie* does not appear to be related in any way to the transaction between Defendant no.1 and Defendant no. 2. That such is not the case of Defendant no. 2. Admittedly, the security interest of Defendant no.2 is created with Defendant no. 1. That means, if as it appears, Defendant no. 2 borrowed money from Defendant no.2 Bank, by executing mortgage deed in their favour, then the concerned bank, i.e. Defendant no.2 can recover it personally from Defendant no.1 or from the property so mortgaged with it. If at all the Plaintiff is so connected with the transaction between Defendant no.1 and Defendant no.2, then it can be gathered only on the basis of detailed evidence. In such case, it cannot be confidently said that jurisdiction of this court is barred in view of Sec. 34 of SARFESI Act. Therefore, it will be too harsh for Plaintiff to reject the Plaint at this stage, on the basis of insufficient facts.

16. Accordingly, **c**onsidering the application in the entirety and the contents therein, there occurs no impelling grounds to fetch any order under VII Rule 11 of CPC. Resultantly, I have answered point No.1 in affirmative, point no.2 in negative and in answer to point No. 3, I proceed to pass the following order.

O R D E R

1. Application is rejected.
2. Costs in cause.

ONKAR SANJAY SHASTRI

Digitally signed by ONKAR SANJAY SHASTRI
Date: 2024.03.20 11:42:06 +0530

(Onkar S. Shastri)

Date: 20/03/2024

11th Jt. Civil Judge Junior Division, Sangli.