

**ORDER BELOW EXH.13**

1. Said application is for grant of ad-interim temporary injunction restraining respondent No.2 to conduct bid of suit premises and to grant status-quo of the suit premises till the disposal of the present appeal.

2. The appellant submitted that he has filed the suit for permanent injunction restraining the defendant from disturbing peaceful possession of the suit house before the Court of Civil Judge Junior Division, Seloo having R.C.S. No.51/2018. The plaintiff is the tenant of original defendant No.1 of the suit house, which was mortgaged to defendant No.2 bank. The defendant No.2 filed application under order 7 Rule 11 (b), (c), and (d) of Code of Civil Procedure. In that application, defendant No.2 claimed that section 34 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In short, SARFAESI Act, bars the jurisdiction of the Civil Court. Said application came to be allowed by the learned trial Court and thereby rejected the plaint by passing the order dated 07/02/2019 to application Exh.19 on the ground that the jurisdiction of Civil Court is barred as per section 34 of SARFAESI Act. On 26/03/2019 there is bid of suit premises is scheduled. Hence, the third party interest can be created to itself, which will lead to complexity in the appeal and multiplicity of proceeding. Hence, it is directed to the respondent not to create third party interest in the suit

premises till the disposal of the present appeal and to stop the bid. Hence, the appellant-plaintiff prayed that the application may be allowed.

3. Respondent No.2 has filed say below this application and resisted that application. According to respondent No.2, that respondent no.2 has filed application for framing of preliminary issue as well as rejection of plaint under Order 7 Rule 11 of Code of Civil Procedure. Looking to the provisions of law, preliminary issue needs to be decided before deciding the application of temporary injunction in the interest of justice.

4. Perused the application and say. Heard the learned counsel for both the sides. Perused the record. On perusal of the record, it reveals that this application is filed against the order of rejection of plaint under Order 7 Rule 11 of Code of Civil Procedure. The order of rejection of plaint is nothing, but it is decreed. Hence, the appeal is maintainable.

5. Question is whether the order of rejection of plaint passed by the trial Court below Exh.19 on 07/02/2019 is proper or not is to be decided by the Court. However, the copy of News Paper filed by the appellant, in which there is publication of E- Auction of suit premises published by defendant No.2.

6. Upon going through the said E-Auction notice, reveals that said E-Auction notice was published as per provisions of law. Section 8(6)/Rule 9(1) of SARFAESI Act by defendant No.2. The date of E-Auction of the suit house is scheduled today. In the said

notice, the name of owner of property i.e. defendant No.1 is mentioned and appellant-plaintiff is the tenant of defendant No.1. Considering the facts above, the order of rejection of the plaint on the ground that the Civil Court has no jurisdiction to try the suit bearing No.51/2018 as per section 34 of SARFAESI Act is under challenge in this appeal and bid is E-Auction of the suit property is scheduled. If the suit property is auctioned today, the very purpose of file present appeal would be frustrated. Therefore, it is necessary in the interest of justice to grant status-quo in respect of suit premises till the next date only and to direct the defendant to stop bid E-Auction of the suit premises till next date only. Hence, on these reasons and in the light of above discussion, the application deserves to be partly allowed. Hence, I proceed to pass the following order.

**ORDER**

1. Application Exh.13 is partly allowed.
2. Defendant No.2-bank is hereby directed to maintain status-quo of the suit property till next date only and to stop the bid E-auction of the suit premises of Plot No.53, Khasara No.39 having area 1450 Sq.ft. situated at Mouza Sindhi (Railway), Nagar Parishad, Telipura Ward No.14 of Mouza No.161, Tah. Seloo and District Wardha till next date.
3. Both the parties to take note of the order.

Dt.26/03/2019

(N.G.Satpute)  
Adhoc District Judge-1, Wardha

