

MHYA010031242019



R.C.A No. 74/2019

Dnyaneshwar Vs. ICICI Bank & others

**ORDER BELOW EXH. 15**

Perused the application, say of respondent Nos.1 and 2 and case papers and heard learned counsel Shri. A. B. Bajaj for the appellant and learned counsel Shri. M. R. Oswal for the respondent No. 1 & 2.

2. The appellant filed this application for setting aside no evidence order and grant of permission to adduce evidence. It appear from the contents of the application that the appellant has mistakenly filed this application in this case instead of filing it in some other proceedings pending before some other Court. This appeal has preferred against the order of rejection of plaint under Order 7 Rule 11 of C.P.C.

3. The appellant had filed Civil Suit against the respondents for declaration and permanent injunction. Before filing the suit there was order of learned District Magistrate, Yavatmal under SARFAESI Act dated

5/12/2016. The learned District Magistrate had ordered to take possession of the mortgage property. After this order there was settlement between the appellant and respondent No.1. The appellant had agreed to pay Rs. 1,80,000/- towards full and final settlement amount of loan and Rs. 1,00,000/- is also paid as per the settlement however he failed to pay remaining amount Rs. 80,000/- of settlement amount and filed suit against the respondents. It is pertaining to note that the loan was obtained by son Chandrashekar of appellant for construction of house on the plot owned by appellant. The appellant was guarantor. After the death of his son Chandrashekar the appellant is liable to pay the loan amount and therefore learned District Magistrate passed an order under SARFAESI Act to take possession of mortgage property.

4. The appellant instead of making payment of remaining amount Rs. 80,000/- filed the suit. The SARFAESI Act expressly bared the Civil Suit under Section 34 of the Act and therefore learned trial Court rejected the suit of plaintiff. This appeal is against the said order of trial Court. There is no provision of adducing evidence in appeal

filed against the order of rejection of plaint. This Court or the Trial Court never passed any no evidence order. There is no substance in the application therefore it is liable to be rejected. Hence, I proceed to pass following order;

**ORDER**

1. The application is rejected.
2. No order as to cost.

Date: 27/03/2024.

**(Moreshwar B. Dudhe)**  
Adhoc District Judge-2,  
Yavatmal.