2026:BHC-AUG:21143

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3435 OF 2017

1. Jalgaon Peoples Co-operative Bank Ltd.
152, Polan Peth, Dana Bazar,
Jalgaon, District Jalgaon,
Through its Chief Executive Officer

2. Anil s/o Shantaram Patkar,
Authorized Officer,
Age : 61 years, Occ. : Service
R/o Ring Road, Jalgaon,
District Jalgaon,
Through its CEO,
Jalgaon Peoples Cooperative bank Ltd.

VERSUS

M/s. Om Sai Extrusions Pvt. Ltd.
Gat No. 363, Tarsod Shivar,
Tq. Tarsod, Tq. And Dist. Jalgaon,
Through its Managing Director
Shri. Prakash Prabhakar Choudhari
Age : 45 years, Occ. Business and Agriculture,
R/o. Tarsod Shivar, Tq. And Dist. Jalgaon

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Advocate for the Petitioners : Mr. V. D. Hon, Senior Counsel i/b Mr. A. V. Hon
Advocate for Respondents : Mr. S. V. Adawant

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CORAM : SIDDHESHWAR S. THOMBRE, J.
Date : 5th May, 2026

JUDGMENT :-

1. **Rule**. Rule made returnable forthwith. Heard finally with the consent of the parties at the stage of admission.

2. The petitioners have challenged the order dated 27.09.2016 passed by the 6th Joint Civil Judge, Senior Division, Jalgaon, below Exh. 14 in Special Civil Suit No. 01 of 2012. By the said order, the learned Judge rejected the application filed by the petitioners under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 ("CPC" for short).

3. The brief facts of the present petition are as under :

Petitioner No. 1 was initially registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. Subsequently, since 2013, it has been registered as a Multi-State Co-operative Society under the provisions of the Multi-State Co-operative Societies Act, 2002. M/s. Dynamic Furnaces Private Limited ("the Company") availed a loan from the Petitioner Bank, and all assets of the said Company were mortgaged to the Petitioner Bank as secured assets. The petitioners initiated proceedings under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, against the Company. Following due procedure, the secured assets were attached and put up for sale by issuing a public notice.

4. The respondent herein participated in the sale process and submitted a bid as per the tender notice. The respondent purchased the property and a Memorandum of Understanding was arrived at between the parties. Thereafter, the respondent filed Writ Petition No. 6302 of 2007 before this Court. This Court permitted the Bank to withdraw an amount of Rs. 10,00,000/- deposited by the respondent, while the remaining Rs. 65,51,000/- was directed to be paid by the respondent within ten weeks. Concurrently, the Petitioner Bank was directed to execute the sale deed.

5. Upon payment of the balance amount pursuant to the orders of this Court, the petitioner executed the sale deed in favour of the respondent and handed over possession. The respondent subsequently filed Special Civil Suit No. 01 of 2012 before the Civil Judge, Senior Division, Jalgaon, seeking directions against the Petitioner Bank for a deposit and compensation with interest @ 24% per annum on an amount of Rs. 1,00,00,000/-. Upon receipt of the summons, the Petitioner Bank filed its written statement raising a preliminary objection regarding the tenability of the suit, citing the earlier proceedings initiated by the respondent and the

orders passed by this Court.

6. The Petitioners Bank further filed an application under Order VII Rule 11(d) of the Code of Civil Procedure at Exh. 14 for rejection of the plaint. It was contended that the suit filed by the respondent is not maintainable in view of the specific bar on the jurisdiction of Civil Courts under Section 34 of the SARFAESI Act, and further on the ground of failure to issue the mandatory statutory notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960.The learned Trial Court rejected the application at Exh. 14, and being aggrieved by the same, the petitioners have filed the present petition.

7. The learned Senior Counsel, Mr. V. D. Hon, instructed by Mr. Ashwin Hon, invited my attention to the plaint and submitted that the respondent has filed the suit seeking damages on account of delay in commencement of production, escalation of project costs, loss of stamp duty exemptions, compensation for mental harassment, and electricity-related grievances. He contended that the entire claim is fundamentally rooted in the actions taken by the Petitioner Bank under the SARFAESI Act during the auction of the secured assets.

8. Learned Senior Counsel further submitted that the petitioner is a co-operative society, and as per the provisions of Section 164 of the Maharashtra Co-operative Societies Act, 1960, the service of a prior statutory notice is mandatory before the institution of a suit. He argued that since the present proceedings arise from an auction conducted by the Petitioner Bank, wherein the respondent was the auction purchaser, the dispute falls within the ambit of the SARFAESI Act. Consequently, he submitted that Section 34 of the SARFAESI Act operates as a bar, divesting the Civil Court of jurisdiction to entertain the suit.

9. It was further contended that the respondent's claims for compensation based on alleged delays in handing over possession and the non-payment of taxes within the timelines stipulated in the tender notice directly relate to matters touching the business of the Society. Therefore, in the absence of a statutory notice under Section 164, the suit is not maintainable.

10. In support of these contentions, the learned Senior Counsel placed reliance upon the following judgments :

- **Suprabhat Co-operative Housing Society Ltd. vs. Span Builders [(2002) 3 Mh. L. J. 837]**

- **Jijamata Sahakari Sakhar Karkhana Ltd. vs. Sukhdeo Rambhau Fulzade and Others [(2010) 5 Mh. L. J. 431]**
- **Devgiri Nagri Sahakari Bank Ltd. vs. Jubidabegum w/o Asadulla Khan and Others [(2012) 6 Mh. L. J. 457]**
- **Mohan Meakin Limited, Bombay vs. The Pravara Sahakari Sakhar Karkhana Ltd., Pravaranagar, Ahmednagar [(1987) Mh. L. J. 503]**

11. In view of the aforesaid precedents, the learned Senior Counsel submitted that the issuance of a notice under Section 164 of the Act of 1960 is a mandatory condition precedent, which admittedly was not complied with. He concluded that, whether on the ground of lack of statutory notice or the jurisdictional bar under Section 34 of the SARFAESI Act, the suit is liable to be dismissed at the threshold. Accordingly, he prayed that the application filed by the petitioners below Exh. 14 be allowed.

12. Per contra, the learned counsel for the respondent, Mr. S. V. Adwant, submitted that the suit is primarily one for damages. He drew my attention to the public notice and the Memorandum of Understanding, specifically highlighting Clause 5. He contended that under the terms of the auction sale conducted pursuant to the notice dated 19.12.2005, the Petitioner Bank had expressly undertaken the liability for payment of all taxes and dues in respect

of the property. Furthermore, the Petitioner Bank had agreed to compensate the respondent for any liabilities or losses found payable in relation to the said property.

13. Learned counsel further invited my attention to Section 19 of the SARFAESI Act, arguing that while a borrower may seek damages under the Act, an auction purchaser like the respondent has no such statutory remedy under the SARFAESI framework. He submitted that since the losses were caused by the petitioners' delay in handing over possession and their failure to conclude the transaction within the stipulated period, which consequently delayed the commencement of production, a civil suit is the only available and appropriate remedy.

14. Regarding the objection raised under Section 164 of the Maharashtra Co-operative Societies Act, 1960, Mr. Adwant argued that the suit is maintainable without a statutory notice as the dispute does not at touching the business of the Society. He contended that while the core business of the bank involves advancing and recovering loans, the present claim arises from a breach of specific contractual obligations and negligence in the auction process. He submitted that given the specific nature of the

prayers in the plaint, which seek compensation for losses caused by the petitioners' defaults, the bar under Section 164 is not attracted.

15. In support of his contentions, the learned counsel for the respondent placed reliance upon the following judgments :

- **Leelamma Mathew vs. Indian Overseas Bank and Others [(2023) 20 SCC 459]**
- **Central Bank of India and Anr. vs. Prabha Jain and Others [(2025) 4 SCC 38]**
- **Bank of Baroda vs. Gopal Shriram Panda [2021 SCC OnLine Bom 466]**
- **Mohinder Kaur Kochar vs. Mayfair Housing Pvt. Ltd. and Others [(2013) 1 Mh. L. J. 389]**
- **Gajanan Eknath Sonankar vs. Shegaon Shri Agrasen Co-op Credit Society Ltd. and Anr. [(2015) 1 Mh. L. J. 579]**

16. On the basis of the aforesaid submissions, the learned counsel for the respondent prayed for the dismissal of the present petition.

17. Having considered the submissions and the material on record, the primary issue for determination is whether the suit filed

by the respondent Bank pertains to an act "touching the business of the society." The record indicates that the Petitioner Bank, in the course of its business, disbursed a loan to M/s. Dynamic Furnaces. Upon the borrower's default, the petitioners initiated proceedings under the SARFAESI Act, leading to the auction where the respondent purchased the secured assets. The respondent's claim for damages is a direct consequence of this recovery process specifically arising from the sale of mortgaged properties which is inextricably linked to the Bank's core business of advancing and recovering loans.

18. In this context, it is necessary to refer to Section 164 of the Maharashtra Co-operative Societies Act, 1960, which provides :

> *164. Notice Necessary in Suits :-*
>
> *"No suit shall be instituted against a society, or any of its officers, in respect of any act touching the business of the society, until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left."*

19. A perusal of Section 164 makes it clear that if a suit is

instituted in respect of an act "touching the business of the society," the issuance of a prior statutory notice is mandatory.

20. The petitioners further contended that the suit is barred under Section 34 of the SARFAESI Act, which states :

> *34. Civil Court not to have jurisdiction :-*
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> *"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."*

21. It is also relevant to consider Section 17 (Application against measures to recover secured debts) and Section 19 (Right of borrower to receive compensation and costs in certain cases) of the SARFAESI Act. Section 19 specifically empowers the Tribunal to direct the secured creditor to pay compensation to the borrower if the measures taken under Section 13(4) are found to be invalid.

22. In the present case, the respondent is an auction

purchaser, not a borrower. Therefore, the remedy under Section 19 is not directly available to the respondent. Consequently, as far as the jurisdictional bar under Section 34 is concerned, since the respondent is not a "borrower" aggrieved by measures under Section 13(4), I find that the civil suit for damages, based on a breach of the Memorandum of Understanding, is maintainable. However, the maintainability of the suit hinges critically on the compliance with Section 164 of the Act of 1960.

23. In **Suprabhat Co-operative Housing Society Ltd. vs. Span Builders** (supra), this Court held that the words "touching the business of the society" are of wide import. Similarly, in **Jijamata Sahakari Sakhar Karkhana Ltd. vs. Sukhdeo Rambhau Fulzade** (supra) and **Devgiri Nagri Sahakari Bank Ltd. vs. Jubidabegum** (supra), it was reiterated that the recovery of loans through the sale of mortgaged property constitutes an integral part of a co-operative bank’s business.

24. Therefore, I find that the actions complained of namely, the auctioning of assets, the recovery of dues, and the subsequent execution of a sale deed, clearly fall within the ambit of acts "touching the business of the society." Admittedly, the respondent

failed to issue the mandatory statutory notice under Section 164 before instituting the suit.

25. While the respondent relied on **Leelamma Mathew vs. Indian Overseas Bank (supra)** and **Mohinder Kaur Kochar vs. Mayfair Housing Pvt. Ltd. (supra)** to argue that the suit is maintainable, those rulings do not absolve the plaintiff from the mandatory requirement of Section 164 when the defendant is a Co-operative Society and the act touches its business.

26. In view of the above, I find that the learned Trial Court committed an error in holding that a notice under Section 164 was not mandatory. Since the issuance of such notice is a condition precedent for instituting a suit against a co-operative society, the failure to comply with this statutory requirement is fatal to the suit. Consequently, the application at Exh. 14 for rejection of the plaint ought to have been allowed. Accordingly, I am inclined to allow the writ petition.

ORDER

(a) The Writ Petition is **allowed**.

(b) The order dated 27.09.2016 passed by the 6th Joint Civil Judge, Senior Division, Jalgaon, below Exh. 14 in Special Civil Suit No. 01 of 2012 is hereby set aside.

(c) The application at Exh. 14 filed by the petitioners under Order VII Rule 11(d) of the Code of Civil Procedure is allowed, and the plaint in Special Civil Suit No. 01 of 2012 stands rejected.

(d) Resultantly, pending civil applications, if any, also stand disposed of.

(e) Rule is made **absolute** in the above terms. No order as to costs.

(f) The respondent / original plaintiff is at liberty to file fresh suit after giving notice under Section 164 of the MCA Act, 1960.

(SIDDHESHWAR S. THOMBRE, J.)

Omkar Joshi