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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 29.10.2025

Pronounced on: 24.12.2025

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+ C.R.P. 158/2024

SHRI RAM HOUSING FINANCE LTD

.....Petitioner

Through: Mr. Shahrukh Inam, Advocate.

versus

ROSHINI DEVI

.....Respondent

Through: Mr. Satish Kumar Paanchal, Ms.
Babita Paanchal and Mr. Karan
Paanchal, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. The petitioner is arrayed as defendant No. 5 in CS SCJ/851/2022, pending before the JSCC/ASCJ/GJ, Patiala House Court, Delhi ["Trial Court"]. By way of the present revision petition under Section 115 of the Code of Civil Procedure, 1908 ["CPC"], it assails an order dated 01.04.2024 passed by the Trial Court in CS SCJ/851/2022, dismissing its application under Order VII Rule 11 CPC, for rejection of the plaint. The said application was preferred on the ground that the suit is barred under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFAESI Act"].



A. FACTS

2. The transactions between the parties arise out of a loan agreement dated 24.12.2020 executed between the petitioner and late Mr. Mahavir Singh, as the primary borrower, alongwith his son, Mr. Gaurav Tanwar, and his wife, Ms. Roshni Devi, as co-borrowers [“the borrowers”]. The respondent herein, who is the plaintiff in the suit, is the wife of late Mr. Mahavir Singh and the mother of Mr. Gaurav Tanwar.

3. Under the said loan agreement, a sum of Rs.64,33,968/- was sanctioned, repayable in 144 monthly instalments of Rs.92,464/- each. The loan was secured by a mortgage created over an immovable property bearing No. WZ-144, measuring $83\frac{1}{3}$ sq. yds. ($37\frac{1}{2}$ ft. \times 20 ft.), with all roof rights, out of Khasra No. 1791, situated within the limits of Old Lal Dora, Village Naraina, New Delhi-110028 [“the suit property”].

4. Owing to persistent defaults in repayment, the petitioner classified the loan account as a Non-Performing Asset [“NPA”] on 08.05.2022 to the borrowers, and thereafter issued a demand notice dated 20.05.2022 under Section 13(2) of the SARFAESI Act.

5. In response thereto, the borrowers submitted a representation in June 2022, *inter alia* contending that the loan was intended to be insured with Kotak Mahindra Life Insurance Company Ltd. [“the Insurance Company”], and that the insurance premium had been handed over to the petitioner’s representatives. It was further alleged that, despite the same, no insurance policy was ever issued or received by them.

6. The petitioner rejected the borrowers’ representation *vide* communication dated 07.07.2022 and thereafter issued a possession notice dated 01.08.2022 under Section 13(4) of the SARFAESI Act.



7. In the meantime, the respondent/plaintiff instituted the civil suit, wherein the petitioner was arrayed as defendant No. 5, and four individuals were impleaded as defendants No. 1 to 4, described as “representatives/officers” of the petitioner.

8. The reliefs sought in the suit are as follows:

*“(a) passing a **decree/order of declaration that the acts of the defendants**, i.e. i) presenting of ECS mandate of EMI amounting to Rs.92,464/- which was cleared on 07.01.2022 in the bank account of deceased husband of plaintiff; ii) issuing the letter dated 15.03.2022 thereby demanding the two outstanding EMI which were returned unpaid; iii) **issuing of PRE SARFESAI Notice dated 18.04.2022**; iv) declaring the loan account of borrower/plaintiff/husband of plaintiff as Non Performing Assets (NPA) on 08.05.2022 and v) **issuing of Notice dated 20.05.2022 u/s 13(2) of SARFAESI Act, 2002, are illegal and having no effects against the plaintiff, her son regarding mortgaged property** bearing no. WZ-144, Khasra No.1791, Lal Dora of Naraina, near Pillar No.09, New Delhi- 110028;*

*(b) passing a decree/order of **declaration that the there is no loan outstanding** against the plaintiff in respect of loan account No.SLPHDLHI0001093 as the borrower/deceased husband of the plaintiff was insured against the loan liability;*

(c) passing a decree/order of mandatory injunction thereby directing defendants not to recover any dues arising out of loan account No.SLPHDLHI0001093 from plaintiff or her son and recover the loan outstanding from Insurance Company to whom Defendants paid the premium of insurance against the life of borrower/Sh. Mahavir Singh Tanwar;

(d) passing an order thereby directing Defendant No.5 to refund the amount of one EMI amounting to Rs.92,464/- which was cleared on 07.01.2022 from the bank account of deceased husband as a consequential relief for which the appropriate court fees, if required or is directed shall be paid by the plaintiff subsequently;

(e) passing an order awarding the cost of the suit proceedings in favour of the Plaintiff and against the Defendants.



(f) Any other order or relief as this Hon'ble Court may deem fit and necessary may also be passed in favour of the plaintiff and against the defendants.”¹

9. Summons in the suit were issued on 27.07.2022, and by order dated 06.08.2022, the Trial Court directed maintenance of *status quo* with respect to possession of the suit property.

10. Thereafter, the petitioner filed an application under Order VII Rule 11 CPC, which came to be dismissed by the impugned order dated 01.04.2024. Aggrieved thereby, the petitioner has preferred the present revision petition.

11. By the impugned order dated 01.04.2024, the Trial Court also directed the impleadment of the Insurance Company as a party to the suit. Pursuant thereto, Kotak Mahindra Life Insurance Company Ltd. was arrayed as defendant No. 6 on 01.07.2024, and summons were issued accordingly.

B. SUBMISSIONS:

12. I have heard Mr. Shahrukh Inam, learned counsel for the petitioner, and Mr. Satish Kumar Paanchal, learned counsel for the respondent.

13. The principal contention advanced on behalf of the petitioner is that the suit is barred by law, as it is, in substance, directed against the measures initiated by the petitioner under the SARFAESI Act in respect of a secured asset. Reliance is placed on Section 34 of the SARFAESI Act, which reads as under:

“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

¹ Emphasis supplied.



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 (51 of 1993).”

14. Mr. Inam contended that the suit falls within the scope of Section 17 of the SARFAESI Act and, therefore, falls within the jurisdiction of the Debts Recovery Tribunal [“DRT”], rendering it barred under Section 34 of the SARFAESI Act. The relevant part of Section 17 of the Act reads as under:

“17. [Application against measures to recover secured debts].—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

[Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

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[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in



accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

- (a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and
- (b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and
- (c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

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15. *Per contra*, Mr. Paanchal submitted that the suit is not directed against SARFAESI measures, but arises out of the petitioner’s failure to procure and provide the insurance policy, despite having allegedly received the premium. It is contended that, had the policy been issued, the petitioner could have recovered its dues from the Insurance Company, instead of proceeding against the borrowers. It was further submitted by Mr. Paanchal that the respondent’s allegations relate to fraud and misrepresentation on the part of the petitioner and its officers, which, according to him, constitutes a recognized exception to the bar under Section 34 of the SARFAESI Act, as held in various judicial decisions.

² Emphasis supplied.



16. Learned counsel for both parties have relied upon various judicial precedents, which shall be adverted to at the appropriate stage.

C. ANALYSIS

17. The petitioner has sought rejection of the plaint under Order VII Rule 11 CPC. Clause (d) thereof empowers the Court to reject a plaint where the suit appears, from the statements contained therein, to be barred by any law.

18. The scope of enquiry under Order VII Rule 11 CPC is narrow and well defined, inasmuch as the Court is required to assess the maintainability of the plaint solely on the basis of the averments contained in the plaint and the documents filed therewith, without adverting to the defences raised in the written statement or any material produced by the defendants. This settled position of law has been consistently reiterated by the Courts, including in the recent decision of the Supreme Court in *Karam Singh v. Amarjit Singh*³.

19. The ambit of Order VII Rule 11 CPC also extends to cases where the suit is manifestly vexatious, frivolous, or otherwise amounts to an abuse of the process of the Court. The provision is attracted where the plaint discloses an illusory cause of action, or where such cause of action is sought to be created or sustained through contrived, misleading, or artfully drafted averments. The power under the said provision may also be exercised where suppression of material facts or a clear misuse of the Court's jurisdiction is apparent on the face of the plaint⁴.

³ 2025 SCC OnLine SC 2240 [hereinafter "*Karam Singh*"].

⁴ *Shri Mukund Bhavan Trust & Ors v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle & Anr* [(2024) 15 SCC 675]; *Ramisetty Venkatanna & Anr. v. Nasyam Jamal Saheb & Ors* [2023 SCC OnLine SC 521]; *Dahiben v. Arvindbhai Kalyanji Bhanusali* [(2020) 7 SCC 366]; *T.*



20. The petitioner's case is founded on the statutory bar contained in Section 34 of the SARFAESI Act, whereas the respondent asserts that the suit is based on an independent cause of action relating to issuance of the insurance policy, and alleged fraud. In order to appreciate whether the reliefs sought in the suit impinge upon the measures contemplated under the SARFAESI Act, at the outset, the statutory scheme must be examined. Section 13 of the SARFAESI Act, governs the enforcement of security interest by a secured creditor. The relevant provisions read as under:

“13. Enforcement of Security Interest.—

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*(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, **the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor** within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).*

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*(4) **In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—***

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467].



[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.”⁵

21. It is in this context that I now proceed to examine the judgments cited by learned counsel for the parties.

22. Learned counsel on both sides referred to the decision of the Supreme Court in *Mardia Chemicals Ltd. v. Union of India*⁶, wherein the Court upheld the constitutionality of the SARFAESI Act, except Section 17(2) thereof, which originally provided for a pre-deposit of 75% of the claimed amount in matters filed before the DRT. For the purposes of the present case, learned counsel specifically relied upon paragraphs 50 and 51 of the judgment, which are reproduced below:

“50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in

⁵ Emphasis supplied.

⁶ (2004) 4 SCC 311 [hereinafter “*Mardia Chemicals Ltd.*”]



sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. **Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court.** Therefore, it cannot be said that no remedy is available to the borrowers. **We, however, find that this contention as advanced by Shri Salve is not correct.** A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken “or to be taken in pursuance of any power conferred under this Act”. **That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13.** It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. **The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.**

51. However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages. We find such a scope having been recognized in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely, *V. Narasimhachariar* [AIR 1955 Mad 135] , AIR at pp. 141 and 144, a judgment of the learned Single Judge where it is observed as follows in para 22: (AIR p. 143)

“22. The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the court before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee must clearly



disclose a fraud or irregularity on the basis of which relief is sought: Adams v. Scott [(1859) 7 WR 213, 249] . I need not point out that this restraint on the exercise of the power of sale will be exercised by courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely. (See Ghose, Rashbehary: Law of Mortgages, Vol. II, 4th Edn., p. 784.)””⁷

23. Mr. Inam submitted that the aforesaid judgment has been considered by the Supreme Court in *Jagdish Singh v. Heeralal*⁸, wherein the Supreme Court emphasized that the jurisdiction of civil courts is completely barred in respect of measures taken under Section 13(4) of the SARFAESI Act, and that it is for the DRT to determine whether any illegality has occurred in the measures adopted. In *Sree Anandhakumar Mills Ltd. v. Indian Overseas Bank*⁹ and *SBI v. Allwyn Alloys (P) Ltd.*¹⁰, the Supreme Court has taken a view similar to that in *Jagdish Singh*.

24. In *Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd.*¹¹, the Supreme Court held that an allegation of fraud must be supported by detailed and specific particulars, and that in the absence thereof, the bar under Section 34 of the SARFAESI Act would clearly apply. In this context, the Court relied on the judgment in *Ram Singh v. Gram Panchayat Mehal Kalan*¹² wherein the Court observed that a plaintiff

⁷ Emphasis supplied.

⁸ (2014) 1 SCC 479 [hereinafter, “*Jagdish Singh*”].

⁹ (2019) 14 SCC 788 [hereinafter, “*Sree Anandhakumar Mills*”].

¹⁰ (2018) 8 SCC 120 [hereinafter, “*Allwyn Alloys*”].

¹¹ (2022) 2 SCC 573 [hereinafter, “*Electrosteel Castings*”].

¹² (1986) 4 SCC 364 [hereinafter, “*Ram Singh*”].



cannot be permitted to proceed with a suit barred by law through clever drafting¹³.

25. Mr. Inam also relied upon four judgments of Coordinate Benches of this Court, wherein proceedings before the civil courts were held to be not maintainable¹⁴. One of these judgments, *Radnik Exports v. Standard Chartered Bank*¹⁵, dealt with a plea analogous to the present case, relating to coverage under an insurance policy and the corresponding liability for payment. While deciding an application for injunction, the Court expressed the following *prima facie* view:

“32. Applying the aforesaid principles, the jurisdiction of this Court to entertain this suit has to be necessarily held to be barred. It matters not whether on the date of institution of this suit the bank had initiated any proceedings before the DRT or not and whether not any such proceedings are pending or not. As long as the declaration claimed in the suit is the same as the defence which could be raised by the plaintiff to a claim by the defendant Bank before the DRT, the jurisdiction of the Civil Court would be barred. The consequential relief of permanent injunction against recovery would also be thus barred.

33. Notice in this regard may also be taken of Section 34 of the SARFAESI Act which prohibits a Civil Court from granting any injunction in respect of any action “taken or to be taken” in pursuance to any power conferred by or under, not only the SARFAESI Act, but also the DRT Act. Thus, the grant by this Court, of the relief claimed in suit of permanent injunction restraining the defendant Bank from acting upon or seeking to enforce any transaction under the agreements qua which the relief of declaration as void is claimed, is prohibited. The defendant Bank, before the DRT is enforcing its claim against the plaintiff under the said agreements/transactions. The claim of the defendant Bank against the plaintiff, before the DRT, is “an action taken in pursuance of a power under the DRT Act”. Section 34

¹³ *T. Arivandandam v. T.V. Satyapal* [(1977) 4 SCC 467].

¹⁴ *Radnik Exports v. Standard Chartered Bank* [2014 SCC OnLine Del 3404]; *Kashish Uppal v. Shriram Housing Finance Ltd.* [2022 SCC OnLine Del 1562]; *Utpala Mukherjee v. Aeromarine Logistics (P) Ltd.* [2022 SCC OnLine Del 1647]; *IFCI Venture Capital Funds Ltd. v. SRGP Corpn. Ltd.* [2024 SCC OnLine Del 1148].

¹⁵ 2014 SCC OnLine Del 3404 [hereinafter, “*Radnik Exports*”].



supra, prohibits this Court from injuncting the defendant Bank from agitating its claim against the plaintiff before the DRT.

34. I have wondered that if the jurisdiction of this Court to grant the consequential relief of injunction is barred, can this Court have jurisdiction to grant the relief of declaration and/or should this Court grant the relief of declaration, which, without the consequential relief of injunction, would be a toothless declaration, incapable of saving the plaintiff from the claim of the defendant Bank if the DRT was to conclude otherwise and thus, but a mere scrap of paper. I am, (without foraying into the aspect of whether the jurisdiction to grant declaration would also be barred) of the view that in these circumstances this Court ought to refuse to grant the relief of declaration also, which is but a discretionary relief. It cannot be forgotten that grant of every injunction entails declaration of rights and no injunction can be granted without adjudicating conflicting rights of the parties. Thus, where grant of injunction is prohibited, such prohibition cannot be circumvented by instead granting declaration. This follows from Section 34 of the Specific Relief Act also which bars making of such a declaration where the plaintiff, able to seek further relief, omits to do so. The only difference here is that though the plaintiff has claimed further relief, such further relief is barred by Section 34 of the SARFAESI Act.

35. I would be failing in my duty if do not record that I have in *Sunayana Malhotra supra* taken a view that a Civil Court will have jurisdiction, if no proceeding before DRT is initiated. However, the same cannot be said to be good law in view of the subsequent dicta of the Supreme Court in *Jagdish Singh supra*. In the same vein, reference may also be made to *Richa Industries Ltd. v. ICICI Bank Ltd.* 190 (2012) DLT 500 where another single Judge, though held the suit for declaration, injunction and damages to be maintainable, refused interim relief. However I do not consider myself bound thereby because the suit was so held maintainable on a prima facie view of the matter and also because FAO(OS) No. 577/2011 preferred thereagainst was disposed off as compromised on 28th February, 2013.

36. The suit is thus found to be not maintainable. The amendment claimed to the plaint does not affect its maintainability. Thus, the suit is dismissed and resultantly the pending applications are infructuous. The plaintiff is also burdened with costs of the suit. Counsel's fee assessed at Rs. 20,000/-.

Decree sheet be drawn up.”¹⁶

¹⁶ Emphasis supplied.



26. Mr. Paanchal, on the other hand, relied upon the following judgments, in addition to *Mardia Chemicals Ltd.*, which has been referred to hereinabove:

(a) In *State Bank of India v. Sagar*¹⁷, a learned Single Judge of the Bombay High Court summarized the legal position with regard to ouster of jurisdiction under Section 34 of the SARFAESI Act in the form of eleven principles. The principles relevant for the present case were stated as follows:

“33. In view of the above, the sum and substance of the decision is that:

(i) *The jurisdiction of the Civil Court to entertain, try and decide any suit or proceeding in respect of the property, which is the subject matter of security interest created in favour of a secured creditor, is barred only to the extent of the matters, which the Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under the Act to determine. (Para 18)*

(ii) *The jurisdiction of the Civil Court in respect of the matters, which do not fall within the jurisdiction of the Debts Recovery Tribunal or its Appellate Tribunal under Sections 17 and 18 of the said Act, is not ousted or barred under the provision of Section 34 of the said Act and the Civil Court continues to exercise such jurisdiction. (Para 18)*

(iii) **In order to decide the question as to whether the jurisdiction of the Civil Court under Section 9 of the Civil Procedure Code is ousted or not, the real test would be to find out whether the Debts Recovery Tribunal under Section 17, is empowered to hold an enquiry on a particular question and to grant relief in respect thereof.** *The extent of jurisdiction of the Debts Recovery Tribunal under Section 17 shall decide the extent of exclusion of jurisdiction of Civil Court to decide the dispute in respect of the suit property. (Para 18)*

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¹⁷ 2011 SCC OnLine Bom 184 [hereinafter, “*Sagar*”].



(vi) The jurisdiction of Civil Court to entertain, try and decide the Civil Suit claiming relief of declaration that the action of the secured creditor to take possession of the property and to sell the same, is fraudulent and void, as has been held by the Apex Court in Mardia Chemical's case, is not barred by Section 34 of the said Act. (Para 23)

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(viii) Once it is held that the jurisdiction of Civil Court is not ousted under Section 34, to grant substantive relief of declaration that creation of security interest in favour of a secured creditor, was fraudulent and void, its jurisdiction to grant consequential relief of permanent injunction and the relief of temporary injunction in such suit, is not ousted. (Para 26)

.....¹⁸

(b) In *Bank of Baroda vs. Gopal Shriram Panda*¹⁹, the Division Bench of the Bombay High Court was considering a reference arising out of an apparent conflict between its earlier decisions in *State Bank of India v. Jigishaben B. Sanghavi*²⁰, and *Sagar*. The Division Bench concurred with the reasoning in *Sagar*, particularly paragraph 33 thereof. The Division Bench answered the question referred to it as follows:

“27. In view of what we have discussed above, our considered opinion to the question as referred to is as under:—

Question:

“Whether the jurisdiction of a Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Section 17 of the Securitisation Act, in relation to enforcement of security interest of a secured creditor, is barred by Section 34 of the Securitisation Act?”

Answer:

¹⁸ Emphasis supplied.

¹⁹ 2021 SCC OnLine Bom 466 [hereinafter, “*Bank of Baroda*”].

²⁰ 2010 SCC OnLine Bom 1868 [hereinafter, “*Jigishaben B. Sanghavi*”].



The answer, looking to the nature of the question, in our view, is in parts:—

(A) Jurisdiction of the Debts Recovery Tribunal to decide all matters relating to Sections 13 and 17 of the SARFAESI Act, is exclusive.

(B) In all cases, where the title to the property, in respect of which a 'security interest', has been created in favour of the Bank or Financial Institution, stands in the name of the borrower and/or guarantor, and the borrower has availed the financial assistance, it would be only the DRT which would have exclusive jurisdiction to try such matters, to the total exclusion of the Civil Court. Any pleas as raised by the borrowers or guarantors, vis-a-vis the security interest, will have to be determined by the DRT.

(C) The jurisdiction of the Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Sections 13 and 17 of the SARFAESI Act, in relation to enforcement of security interest of a secured creditor, is not barred by Section 34 of the SARFAESI Act.

(D) Where civil rights of persons other than the borrower(s) or guarantor (s) are involved, the Civil Court would have jurisdiction, that too, when it is prima facie apparent from the face of record that the relief claimed, is incapable of being decided by the DRT, under Section 17 of the DRT Act, 1993 read with Sections 13 and 17 of the SARFAESI Act.

(E) Even in cases where the enforcement of a security interest involves issues as indicated in Mardia Chemicals (supra) of fraud as established within the parameters laid down in A. Ayyasamy²¹; a claim of discharge by a guarantor under Sections 133 and 135 of the Contract Act [Mardia Chemicals (supra)]; a claim of discharge by a guarantor under Sections 139, 142 and 143 of the Contract Act; Marshaling under Section 56 of the Transfer of property Act [J.P. Builders (supra)]; the Civil Court shall have jurisdiction.

²¹ A. Ayyasamy v. A. Paramasivam [(2016) 10 SCC 386].



(F) Examples as indicated in para 22.3, are illustrative of the Civil Court's jurisdiction.

(G) The principles laid down in para 33 (i) to (ix) of *Sagar Pramod Deshmukh (supra)* are in accordance with what we have discussed and held above.”²²

(c) In *Sushma Suri v. Mahamedha Urban Cooperative Bank Ltd.*²³, the Division Bench of this Court found *prima facie* material suggesting antedating of documents to defeat subsisting injunction orders, treated such conduct as constituting fraud, and consequently permitted amendment of the plaint to incorporate specific pleadings of fraud.

(d) In *Ritu Gupta v. Usha Dhand*²⁴, a Coordinate Bench of this Court considered the Supreme Court's decision in *Jagdish Singh* was to be distinguishable on facts, as no allegation of fraud had been raised in that case.

(e) Similarly, in *Tajunissa v. Vishal Sharma*²⁵, the existence of an allegation of fraud was considered sufficient to permit the suit to proceed before the Civil Court.

27. The plaint in the present case must now be considered in light of the aforesaid legal framework. The relevant averments of the plaintiff are summarized below:

(a) In paragraph 1 of the plaint, the respondent has summarised the cause of action as under:

²² Emphasis supplied.

²³ 2011 SCC OnLine Del 5178 [hereinafter, “*Sushma Suri*”].

²⁴ 2014 SCC OnLine Del 6506 [hereinafter, “*Ritu Gupta*”].

²⁵ (2022) 2 HCC (Del) 154 [hereinafter, “*Tajunissa*”].



“1. That the Plaintiff is a law abiding, peace loving and God fearing citizen and having her permanent abode at the address as mentioned hereinabove and under compulsive circumstances in the wake of illegal acts, misdeeds of cheating and forgery and on the said basis, putting the pressure on the plaintiff to repay the loan amount which is not liable to be paid by her, is compelled to file the present suit for the relief of declaration, mandatory and permanent injunction on the following premise.”

- (b) It is averred in the paragraph 2 of the plaint, that the loan was taken by the respondent’s late husband from the petitioner, and that the suit property was mortgaged to secure the loan, though it stood in the name of the respondent.
- (c) In paragraph 5 of the plaint, it is alleged that the petitioner’s representatives explained the loan scheme alongwith a life insurance cover, assuring that in the event of the borrower’s death, the outstanding loan would be recovered from the Insurance Company. The relevant paragraph reads as under:

*“5. That in view of the above, the **Defendant No. 1 and 2 approached the deceased husband of the plaintiff and explained the whole loan scheme, procedure & life insurance scheme attached to the proposed loan which was to be given to the deceased husband of the plaintiff**, in the active presence of the plaintiff and her son. The Plaintiff, her son and her husband Sh. Mahavir Singh Tanwar discussed with Defendant No.1 & 2 all the features of loan scheme i.e. the loan amount, rate of interest, tenure of repayment of loan, amount of EMI and Life Insurance cover for Borrower. **It was explained by defendant No.2 that if the deceased husband of plaintiff/Mahavir Singh Tanwar takes the life insurance on his life to protect the liability against the loan and in case he dies, the Company/Defendant No.5 would directly recover the loan outstanding from the Insurance Company or Insurance Company would directly clear the loan** of Defendant No.5 as per terms of agreement for which the husband of plaintiff agreed to pay the premium against the Insurance Policy. It was also discussed and decided that husband of the Plaintiff Sh.*



Mahavir Singh Tanwar shall be the borrower and the Plaintiff and her son Sh. Gaurav Tanwar shall be standing guarantor in the Loan Scheme.”²⁶

- (d) In paragraph 7, it has been averred, *inter alia*, that, contrary to prior discussions, the respondent and her son were shown as co-applicants instead of guarantors, which defendant Nos. 1 and 2 justified as being in accordance with the company policy.
- (e) In paragraph 8 of the plaint, it is contended that the sanction letter mentioned a “*Life Insurance Premium*”, and that the borrowers agreed to pay a premium of Rs. 83,968/- towards the life insurance of the respondent’s husband, to be deducted from the loan amount.
- (f) It is further contended in paragraph 9 that, the respondent, alongwith her son and husband, signed the loan kit and other documents, and that the petitioner’s representatives promised to provide copies of the relevant documents, but failed to do so.
- (g) In paragraph 10 of the plaint, the disbursement of the loan amount is detailed, with the contention that a sum of Rs. 83,968/- was deducted towards the life insurance premium of the respondent’s late husband.
- (h) In paragraph 12 of the plaint, it is stated that the respondent’s husband passed away on 21.12.2021, following which her son requested the petitioner to settle the outstanding loan liability against the aforesaid insurance policy.

²⁶ Emphasis supplied.



- (i) Instead of settling the dues with reference to the insurance coverage, the petitioner issued a letter dated 15.03.2022 in respect of two alleged defaulted instalments, which were returned unpaid²⁷.
- (j) Thereafter, the respondent caused a legal notice dated 18.04.2022, served on 19.04.2022, to be issued to the petitioner, calling upon it to settle the claim with the Insurance Company and to address her grievance through its senior officers²⁸.
- (k) Despite the same, the petitioner proceeded to issue a pre-SARFAESI demand notice dated 18.04.2022, declared the account of the borrowers as NPA on 08.05.2022, and thereafter issued a demand notice under Section 13(2) of the SARFAESI Act on 20.05.2022²⁹.

28. The question that arises for consideration is whether the dispute, framed in the aforesaid manner, and seeking the reliefs enumerated therein, is susceptible to the jurisdiction of the DRT, and therefore, barred under Section 34 of the SARFAESI Act.

29. On a plain reading of Section 17 of the SARFAESI Act, as extracted in paragraph 14 above, DRT is vested with jurisdiction to entertain applications by any person, including a borrower, aggrieved by any of the measures referred to in Section 13(4) of the SARFAESI Act. While no measures under Section 13(4) thereof had been taken at the time the suit was instituted in June 2022, I am informed that the petitioner has since initiated such measures by issuing a possession notice dated 01.08.2022.

²⁷ Paragraph 15 of the Plaint.

²⁸ Paragraph 17 and 18 of the Plaint.



30. Be that as it may, a close reading of the respondent's pleadings in the suit demonstrates that the claims are squarely directed against the petitioner's actions in relation to loan recovery, including the issuance of the pre-SARFAESI notice and the subsequent demand notice under Section 13(2) of the SARFAESI Act, which are admittedly precursors to the measures contemplated under Section 13(4) of the SARFAESI Act. The reference to the insurance policy is made solely for the purpose of asserting that the respondent seeks exoneration from liability under the loan. In *Mardia Chemicals Ltd.*, the Supreme Court specifically rejected the argument that a suit would lie at a stage prior to measures being taken under Section 13(4) of the SARFAESI Act³⁰.

31. In the present case, there is thus, no allegation whatsoever that the creation of the security interest in favour of the defendant was fraudulent. The allegation of the respondent/plaintiff is simply that the security interest should not be enforced against her because the loan was covered by an insurance policy. What the defendant essentially seeks is in the nature of a defence to enforcement, which can be raised before the DRT, and not in the nature of a plea of fraud. As held in the judgments cited above, the Court must be vigilant to prevent proliferation of vexatious suits, or proceedings clearly intended by statute to be prosecuted by means other than ordinary civil litigation³¹. A mere plea of fraud, in the present case, really disguises a defence to the SARFAESI proceedings, so as to invoke the civil Court's jurisdiction.

²⁹ Paragraph 21 and 22 of the Plaint.

³⁰ Paragraph 50.

³¹ *Dahiben v. Arvindbhai Kalyanji Bhanusali* [(2020) 7 SCC 366, paragraph 24.4]



32. I am of the view that this is insufficient to take the suit outside the bar of Section 34 of the SARFAESI Act.

D. CONCLUSION:

33. For the aforesaid reasons, I hold that the Trial Court has failed to exercise jurisdiction vested in it, to reject the plaint under Order VII Rule 11 CPC. The impugned order is, therefore, set aside, and the application of the petitioner/defendant is allowed. The plaint filed by the respondent/plaintiff before the Trial Court is hereby rejected.

34. It is clarified that the observations made in this judgment shall not prejudice the rights and contentions of the parties in any proceedings under the SARFAESI Act. In order to enable the respondent to take such remedies, it is directed that *status quo* will be maintained for a further period of four weeks from today. This is to ensure that no precipitate steps are taken in this time, but the concerned DRT, if approached, will take an independent decision in accordance with law. The present order does not constitute any expression of opinion by this Court, even *prima facie*, for the purposes of consideration of interim relief by the DRT.

35. The appeal is disposed of in the aforesaid terms.

PRATEEK JALAN, J

DECEMBER 24, 2025

SS/dy/Shreeya/