

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

CIVIL REVISION No. 549 of 2022

BETWEEN:-

**AAVAS FINANCIERS LIMITED (FORMERLY
KNOWN AS AU HOUSING FINANCE LIMITED)
THROUGH ITS AUTHORIZED OFFICER/
MANAGER MR. NEERAJ SHARMA S/O SHRI
BALWAN SHARMA, AGED ABOUT 28 YEARS,
OCCUPATION: LEGAL MANAGER OFFICE NO.
303, 3RD FLOOR, THE GRACE, PLOT NO. 01 AND
02, KIBE COMPOUND, MADHUMILAN SQUARE,
INDORE (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI ARPIT KUMAR OSWAL – ADVOCATE)

AND

**SMT. BHAGWANTI MAHAWAR W/O SHRI
KISHANLAL MAHAWAR, AGED ABOUT 46
YEARS, OCCUPATION: HOUSE HOLD WORK 19/3,
TILAK MARG, GALI NO. 6, UJJAIN (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI DINESH CHANDRA KASNIYA - ADVOCATE)

Reserved on : 23.08.2023

Pronounced on : 26 .09.2023

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This revision having been heard and reserved for orders, coming on for pronouncement this day, the court has pronounced the following:

ORDER

This revision under Section 115 of the Code of Civil Procedure has been preferred by the defendant/applicant being aggrieved by the order dated 11.07.2022 passed in RCS-A 316/2020 by the Vth Civil Judge, Junior Division, Ujjain whereby its application under Order 7 Rule 11 of the CPC for rejection of the plaint on the ground of the same being barred by law has been rejected.

2. The plaintiff has instituted an action against the defendant for declaration of her title to the suit house, declaration that she has not received any loan from the defendant, that the entire action of the defendant as regards the suit house is null, void and not binding upon her and for permanent injunction restraining the defendant from interfering with her possession over the suit house and from alienating the same.

3. Upon service of summons upon it, the defendant filed an application under Order 7 Rule 11(d) of the CPC for rejection of the plaint submitting that the same is barred by virtue of provisions of Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the Act, 2002'). The plaintiff contested the application by filing her reply to the same.

4. By the impugned order, the aforesaid application has been rejected by the trial Court by holding that the suit is maintainable observing that the jurisdiction of the Civil Court can be invoked to a limited extent in cases such as when plaintiff alleges fraud on part of the defendant. In the plaint, the plaintiff has specifically alleged fraud on part of the defendant and has also alleged threat to her title to the suit house.

5. Learned counsel for the defendant submits that the impugned order passed by the trial Court is apparently illegal and contrary to the provisions of Section 34 of the Act, 2002. There is a specific bar created thereunder as regards institution of a Civil Suit before the Civil Court in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act, 2002 or under the Recovery of Debts Due to Banks and Financial Institution Act, 1993. The action of the defendant in initiating steps against the plaintiff for recovery of outstanding amount of loan cannot be questioned by way of a Civil Suit. Reliance has been placed by him on the decision of the Supreme Court in the matter *Jagdish Singh Vs Heeralal and Ors. 2014 (1) SCC 479*.

6. *Per contra*, learned counsel for the plaintiff has submitted that the suit instituted by plaintiff before the trial Court is very much maintainable as the same is founded upon allegations of fraud having been practiced by the defendant upon her. The claim is not entirely covered under the provisions of the Act, 2002 but is also beyond it. Reliance has been placed on the decision of the Supreme Court in the

case of *Mardiya Chemicals Limited and Others V/s. Union of India and Others, 2004 (4) SCC 31*.

7. I have heard the learned counsel for the parties and have perused the record.

8. It is well settled that while considering an application Under Order 7 rule 11 of the CPC only the plaint allegations and the documents filed along with the plaint can be seen. The plaint allegations have to be taken to be true at this stage. The suit has been instituted by plaintiff on specific plea as regards fraud and deceit having been practiced upon her by the defendant. She has categorically pleaded that the defendant has committed certain acts fraudulently with the purpose of usurping the suit house which are null and void to begin with and not binding upon her. The suit would hence be maintainable in view of the decision in the case of **Mardiya Chemicals Limited (supra)** in which it has been held that 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.

9. In **Jagdish Singh (supra)** it was held that any person aggrieved against any measure taken or to be taken by the secured creditor can approach the DRT or appellate tribunal and not the Civil Court which will have no jurisdiction in such matters. In the present case, the plaintiff has not instituted the claim in respect of any measures taken or proposed to be taken by the defendant under Section 17 of Act, 2002 but has alleged fraud on its part resulting in threat to

her title to the suit house. The judgment relied upon by the counsel for the applicant hence does not help him in any manner.

10. The Trial Court has hence rightly held that as plaintiff has specifically alleged fraud having been practiced upon her by the defendant, her claim to the limited extent as held in the case of **Mardiya Chemicals Limited (supra)** is maintainable before the Civil Court. It has thus not committed any error in rejecting the application under Order 7 Rule 11 of the CPC filed by the defendant. The revision being devoid of merits is hence dismissed.

(PRANAY VERMA)
JUDGE