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CR-1190-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 5th OF FEBRUARY, 2026CIVIL REVISION No. 1190 of 2025*AU SMALL FINANCE BANK MR. DINESH PANDEY**Versus**SMT RAMDEVI RAJPOOT AND OTHERS*

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Appearance:

*Shri Mallikarjun Khare - Advocate for the petitioner.**Shri Saket Agrawal-Advocate for the respondent No. 1.**Shri Sushil Kumar Jha- Advocate for the respondent No. 2.*
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ORDER

The present petition has been filed challenging the order dated 01.08.2025 passed by the trial court, thereby rejecting the application under Order 7 Rule 11 CPC filed by the petitioner Bank who is defendant No. 1 before the trial court.

2. The necessary facts for the purpose of disposal of the present petition are that the defendant No. 2 had mortgaged the suit property in favour of the bank on 24-07-2019 while getting the loan from the bank. However, the same property was thereafter sold to the plaintiff on 23.03.2023 and thereafter the plaintiff on the strength of sale deed has filed a suit against the bank and the dependent no. 2 who is the vendor, stating that the plaintiff be declared title holder of the suit property/house and also that the defendant No. 1 i.e. the bank should not interfere in the peaceful possession of the plaintiff in the suit property. The plaintiff is the subsequent



purchaser after mortgage was created in favour of the Bank.

3. The bank has appeared in the suit and has filed an application under Order 7 Rule 11 CPC stating that in terms of section 34 of The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("SARFAESI Act" for short), the suit is barred by law and therefore the trial court cannot entertain the suit. The said application has been rejected by the trial court on the ground that in the present case since the plaintiff is not the debtor but is a bona fide purchaser, therefore her civil rights to property can be declared only by the civil court and the suit is maintainable.

4. Before this court learned counsel for the petitioner had vehemently argued that the civil court has entered into domain of the Debts Recovery Tribunal ("DRT" for short) and the only remedy to the petitioner would lie before the DRT only under section 17 of SARFAESI Act and the trial court has not cared to consider the bare language of Section 17 of SARFAESI Act which states that "any person" including borrower may approach the D.R.T. and the petitioner being subsequent purchaser after creation of mortgage in favour of the bank would come within the definition of any person and therefore the suit is not maintainable and the only option open for the plaintiff is to approach D.R.T. under Section 17 of SARFAESI Act.

5. The aforesaid assertion was countered by the learned counsel for the respondent/plaintiff by asserting that the suit is for declaration of title and the plaintiff need not approach the D.R.T. under Section 17 of SARFAESI



Act. It is further argued that the civil court is always having jurisdiction for declaration of civil rights of title in property for which civil court is the only competent court. It is further argued that the document in question is not a registered mortgage by deposit of title deeds but only an agreement which does not fall within the meaning of mortgage because the stamp duty has been paid as per Article 6 of Indian Stamp Act as applicable in State of Madhya Pradesh and not as per Article 38 of Stamp Act which relates to mortgage and in case of Mortgage, the Stamp Duty has to be paid either as per Conveyance or Bond but in the present case the stamp duty has been paid as per agreement and the document is not a registered mortgage at all.

6. Heard.

7. In the present case, so far as the assertion that the plaintiff has filed the suit simplicitor for declaration of title is concerned, there are two main reliefs prayed in the plaint. As per first relief, simpliciter declaration of title is sought. As per second relief in the memorandum of plaint, it has been prayed that the Bank be restrained from taking over possession of the suit properties and interfering in peaceful enjoyment of property by the plaintiff. The memorandum of plaint further asserts that on 29.05.2025 the bank officials tried to take over possession of the property from the plaintiff and in paragraph-7 of the plaint it is pleaded that no action against the property can be taken by the bank and whatever action is to be taken, should be taken against the defendant No. 2 and possession of the house cannot be taken by the bank from the plaintiff. In paragraph 8 of plaint, cause of action is stated as the attempts of the bank in taking over the possession of the



property. It is not in dispute that after adopting the measures under Section 13(4), there is an order under Section 14 of SARFAESI Act passed by the Chief Judicial Magistrate-Chhatarpur in favour of the petitioner-bank.

8. It is settled in law that a plaint cannot be rejected in the piecemeal. However, the substance of the suit is pointed towards the Bank only, and no prayer is made against the vendor, who executed a sale deed many years after creating a mortgage in favour of the Bank. She seeks declaration of title as against the mortgage created in favour of the Bank, and further seeks injunction against the Bank.

9. The aforesaid assertions of the plaintiff in the plaint duly make it a case where the plaintiff is aggrieved by the measures taken by the bank under Section 13 (4) of SARFAESI Act because the cause of action of the filing of the suit is measures taken by the bank under Section 13(4) and as per Section 17 of SARFAESI Act any person can approach the DRT being aggrieved by the measures taken under Section 13 (4) of SARFAESI Act. Section 34 bars Civil Suit before a Civil Court. Relevant Sections 17 & 34 are 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,1 [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.] "

"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 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)."

10. As per section 34 the suit would be barred where the DRT is having jurisdiction under the SARFAESI Act to entertain an application to determine any question.

11. Learned counsel for the appellant argued that orders of learned courts below are bad in the eye of law because in the case of *Prabha Jain Vs Central Bank of India and others 2013(1) M.P.L.J. 385*, a Division Bench of this court held that question of validity of a sale-deed mortgage with the bank, DRT is not empowered to decide such question. Though learned counsel for the respondent did not point out, but it is seen that the said judgment has been confirmed by the Hon'ble Supreme Court recently in *Central bank of India Vs. Prabha Jain, 2025 (4) SCC 38*. The Hon'ble Apex Court has held as under :-

42. The Debts Recovery Tribunal is a creature of the RDB Act of 1993 and is empowered to exercise powers under that Act and the Sarfaesi Act of 2002. The Tribunal is bound by the powers conferred to it by Parliament. Interestingly, when this Court in Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd. [Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd., (2014) 6 SCC 1 : (2014) 3 SCC (Civ) 1 : (2014) 184 Comp Cas 199] held that the tenant cannot approach the DRT because the re-possession can be only in favour of the borrower, Parliament stepped in and amended the Sarfaesi Act. Sub-sections (3) and (4) of Section 17, respectively, are instructive to the level of examination that the DRT can undertake, and the same is limited to the validity of the measures under sub-section (4) of Section 13. Hence, the DRT is not permitted to examine the validity of the earlier sale deed, whereafter the mortgage was executed in favour of the Bank.

12. In the present case, the plaintiff does not allege any defect in title



of the mortgator, but merely asserts herself to be a subsequent purchaser, having purchased many years after the vendor created mortgage in favour of the Bank. Therefore, in the opinion of this Court, she raises no question that the DRT cannot decide.

13. The Apex Court in the case of *Jagdish Singh vs. Heeralal and others 2014 (1) SCC 479*, vide judgment dated 30.10.2013 on almost similar facts after an elaborate consideration of different provisions of SARFAESI Act has laid down that:-

“the jurisdiction of Civil Court is completely barred, so far as the measures taken by a Secure Creditor under subsection (4) of Section 13 of the Act against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal to determine as to whether there has been any illegality in the measure taken. The Bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of respondent No.6 to 8 have been crystallized, before security interest in respect of the secured assets. In such circumstances, we are of the view that the High Court was in error in holding that only civil Court has jurisdiction to examine as to whether the measure taken by the Secured Creditor under sub-section (4) of Section 13 of the Securitization Act were legal or not. In such circumstances, the appeal is allowed and the judgment of the High Court is set aside. There shall be no order as to costs.”

14. The above principle has been followed by the Apex court in the case of *M/S. Sree Anandhakumar Mills Ltd. vs M/S. Indian Overseas Bank And Ors., 2019 (14) SCC 788*. In view of the above, learned Court below ought to have dismissed the civil suit under the provisions of Order 7 Rule 11 (D) of the C.P.C.

15. In *SBI v. Allwyn Alloys (P) Ltd.*, reported in (2018) 8 SCC 120, the Hon'ble Supreme Court has held as under:-

"8. After having considered the rival submissions of the parties, we have no



hesitation in acceding to the argument urged on behalf of the Bank that the mandate of Section 13 and, in particular, Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the 2002 Act"), clearly bars filing of a civil suit. For, no civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under this Act to determine and no injunction can be granted by any court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act."

16. In view of the aforesaid judgment of Hon'ble Supreme Court and bare language of Section 17 and 34 of SARFAESI Act the suit clearly appears to be barred by law.

17. However counsel for the petitioner had relied on a Division Bench judgment of the Bombay High Court to submit that the suit would be maintainable. However in the said judgment the Division Bench of the Bombay High Court has held that civil rights of persons other than the borrower can be determined by the civil court only when it prima facie appears from the record that relief claim is incapable of being decided by the DRT. However, in the present case nothing of that sought has been placed on the record to indicate that the DRT is not equipped to decide the questions arising between the parties. The plaintiff is transferee after creation of mortgage.

18. It was vehemently argued before the court that the alleged mortgage in this case is not a mortgage at all because Stamp Duty has been paid on agreement as per Article 6 of schedule 1-A to Indian Stamp Act 1899, as applicable in the State of Madhya Pradesh. The relevant article is as under :-

6. *Agreement or Memorandum of an agreement-*



<i>(g) If relating to secure repayment of a loan or debt</i>	<i>0.25 percent of the amount of loan or debt, subject to a maximum of five lakh rupees.</i>
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19. From the strength of the aforesaid provision, it was argued that the alleged mortgage is a simple agreement and stamp duty has been paid as an agreement whereas in view of Article 43 of the same schedule stamp duty on mortgage deed has to be paid as bond or conveyance. The relevant provision of Schedule 1-A is as under:-

43. Mortgage deed, no being an agreement relating to the deposit of title deeds, Pawn, Pledge or Hypothecation (No.7), Bottomry bond (No.15) Mortgage of Crop (No. 44), Respondentia Bond (No. 55), or a Security bond (No.56)-	
(a) When possession of the property or any part of the property comprised in such deed is given by mortgagor or agreed to be given.	The same duty as a conveyance (No. 25) for the amount secured by such deed.
(b) When possession is not given or agreed to be given as aforesaid.	The same duty as a Bond (No. 14) for the amount secured by such deed.

20. In the opinion of this Court, the aforesaid argument is not relevant for the purpose of present dispute because as per Section 2(zb) of SARFAESI Act, "security agreement" is defined and as per 2(zf), "security interest" is defined, which are as under:-

"(zb) "security agreement" means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;"

"[(zf) "security interest" means right, title or interest of any kind, other than those specified in section 31, upon property created in favour of any secured



creditor and includes—

(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or

(ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset;]"

21. The aforesaid definitions do not imply that only a mortgage deed can be a Security Agreement creating a Security Interest. On the other hand, it can be any agreement, instrument or any other document or arrangement under which security agreement is created in favor of the secured creditor. Security interest can be created by mortgage , charge, hypothecation, assignment, hire, conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset, or an obligation incurred or any credit provided to enable the borrower to acquire the asset.

22. The expressions "security agreement" and "security interest" being widely worded and not limited to a mortgage deed only, therefore even if the mortgage deed is deemed to be a agreement, it is valid and lawful agreement for which separate Stamp Duty has been provided in the State of Madhya Pradesh in the matter of loans extended by banks @ 0.25% and it would fall within the definition of security agreement in terms of Section 2(zb) of SARFAESI Act.

23. Therefore this court does not find that the suit is maintainable



because this suit has been filed only to avoid the measures taken by the bank under Section 13(4) and for no other real purpose. This suit is clearly barred by Section 34 of SARFAESI Act and the remedy would lie to be plaintiff, who is a subsequent purchaser after creation of Security Interest, before the DRT under Section 17 of SARFAESI Act.

24. In view of the aforesaid, the impugned order is set aside. The plaint filed by the plaintiff is rejected holding the suit to be barred by law in terms of Section 34 of SARFAESI Act. Plaintiff is set at liberty to approach the DRT under Section 17 of SARFAESI Act within 30 days of this order.

21. The revision petition stands *allowed*.

(VIVEK JAIN)
JUDGE

MISHRA