

**HIGH COURT OF BOMBAY****Bench: Justice Vrushali V. Joshi****Date of Decision: 15th May 2024**

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3034 OF 2024

**M/S. B. HIMMATLAL AGRAWAL ...PETITIONER****VERSUS****HDFC BANK THROUGH ITS MANAGING DIRECTOR AND ORS.****...RESPONDENTS****Legislation:**

Order VII Rule 11 of the Civil Procedure Code (CPC)

Sections 13(2), 13(4), and 14 of the SARFAESI Act

Section 34 of the SARFAESI Act

**Subject:** Writ petition challenging the rejection of plaint under Order VII Rule 11 CPC by the Trial Court, involving the return of title deeds and an injunction against a possession order.

**Headnotes:**

Civil Procedure – Rejection of Plaint – The petitioner challenged the Trial Court's decision under Order VII Rule 11 CPC, which dismissed the plaint for lack of jurisdiction, stating that the plaintiff had not provided documentary evidence of loan repayment and was thus barred under Section 34 of the SARFAESI Act – The Trial Court exceeded its jurisdiction by making observations on the merits of the case – Order by the District Judge affirmed the Trial Court's decision, rejecting the application for status quo on the basis of no response from the respondents [Paras 1-10].

Jurisdiction – SARFAESI Act – The petitioner’s claim for the return of title deeds based on a no dues certificate, argued to remain valid until invalidated by a competent authority – The court emphasized the need for proper adjudication of the validity of the no dues certificate at the trial stage – Status quo granted until the next hearing date to maintain the position of the parties [Paras 6-9].

Decision: The writ petition was partly allowed – The court granted status quo until the next hearing date and mandated a proper examination of the no dues certificate during the trial [Para 10].

**Referred Cases:**

- P. V. Guru Raj Reddy v. P. Neeradha Reddy (2015) 8 SCC 331
- Bharati Reddy v. State of Karnataka (2018) 6 SCC 162
- General Manager, North East Frontier Railway v. Dinabandhu Chakraborty (1971) 3 SCC 883
- Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd. (Civil Appeal No. 6669/2021)
- Punjab and Sind Bank v. Frontline Corporation Ltd. (Civil Appeal No. 2924/2023)
- Ram Swarup v. Shikar Chand (1965 SCC OnLine SC 41)

**Representing Advocates:**

Mr. M. G. Bhangde, Sr. Advocate with Mr. A. V. Shrivastava for the Petitioners.

Mr. Anand Jaiswal, Sr. Advocate with Mr. S. D. Ingole for the Respondents.

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. The petitioner is aggrieved by the order dated 30.04.2024 passed by the District Judge, Nagpur in Regular Civil Appeal No.118/2024.

2. The petitioner has filed civil suit for return of title deed as he has fulfilled the loan amount and nodues certificate is issued by the respondents. On the basis of the said certificate, the petitioner has claimed title deed and also prayed to grant injunction to the possession order issued by the District Magistrate in the year 2019. Initially, injunction was granted. The respondents have filed application under Order 7 Rule 11 of the Civil Procedure Code for rejection of plaint.

3. The learned Senior Counsel Shri Bhangde has pointed out that while deciding the application under Order 7 Rule 11, the Trial Court has made observations on merits of the case which is against the principles laid down by the Hon'ble Apex Court. Learned Senior Counsel has relied on the judgment of the Hon'ble Apex Court in the 2 wp.3034.24 case of P. V. Guru Raj Reddy and Anr. Vs. P. Neeradha Reddy and Ors. [(2015) 8 SCC 331] wherein the Hon'ble Apex Court has held in paragraph 6 as under :

"6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie discloses that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order VII rule 11 the stand of the defendants in the written statement would be altogether irrelevant."

4. I have perused the order dated 19.03.2024 passed below Exhibit- 20 by the Trial Court. The observations made by the Trial Court in the said order particularly in paragraph 30 are as under :

"30] From the record it appears that the defendant bank also initiated the proceeding under Section 13(2), 13(4) and Section 14 of the SARFAESI Act. It is pertinent to note that plaintiff contended in the suit that he has paid the entire loan amount but he has not filed any documentary evidence to show that which way and as per which document he has paid the entire loan

amount. Prima facie documentary evidence of defendant bank discloses that today amount of Rs.57,34,07,964.28/-Ps is due against the plaintiff and already proceeding is initiated against the plaintiff under SARFAESI Act. Therefore, as per Section 34 of the 3 wp.3034.24 Securitization Act this Court has no jurisdiction to entertain the said suit. It is admitted fact that if loan amount is not paid within time then only the DRT has right to entertain any dispute arising out of the loan and proceeding under SARFAESI Act. Therefore, defendant bank prima facie proved by filing the documents that plaintiff has not paid the loan amount and on basis of clerical mistake he has filed said suit. Under such circumstances and considering the above documentary evidence on record filed by the defendant, I hold that plaintiff has not paid the total loan amount. Hence, therefore, this Court has no jurisdiction to entertain the said dispute...."

5. The Trial Court has considered the documents filed by the defendant and come to the conclusion that the plaintiff has not paid the loan amount and on basis of clerical mistake has filed the said suit and allowed the application. The Trial Court has exceeded the jurisdiction. The said order was challenged by the petitioner before the District Court in Regular Civil Appeal and filed application for grant of status quo. While rejecting the application, District Court has observed that reply is not filed by the respondents and in absence of the reply, status quo cannot be granted. Though learned judge has made such observations, has decided the application on merits.

6. On the basis of no dues certificate, the petitioner has claimed the title deed. The said certificate is not cancelled by the respondents or the competent authority. The petitioner has relied on the judgment of the Hon'ble Apex Court in the case of Bharati Reddy Vs. State 4 wp.3034.24 of Karnataka and Ors. [(2018) 6 SCC 162] in support of his argument that the certificate is valid till it is invalidated by the competent authority. The petitioner has also relied on the judgment of the Hon'ble Apex Court in the case of General Manager, North East Frontier Railway and Ors. Vs. Dinabandhu Chakraborty [1971(3) SCC 883].

7. Learned Senior Counsel Shri Anand Jaiswal appearing for the respondents has opposed the prayer of the status quo stating that it

amounts to granting injunction which is barred by Section 34 of the SARFAESI Act. He has relied on the following judgments :

i] Electrosteel Castings Limited Vs. UV Asset Reconstruction Company Limited and Ors. [Civil Appeal No.6669/2021] ii] Punjab and Sind Bank Vs. Frontline Corporation Ltd. [Civil Appeal No.2924/2023].

8. The petitioner has placed reliance on the judgment of Full Bench in the case of Ram Swarup and Ors. Vs. Shikar Chand and Anr. [1965 SCC OnLine SC 41], wherein the Hon'ble Apex Court has made the observation in paragraph 13 which read as under :

"This conclusion, however, does not necessarily mean that the plea against the validity of the order passed by the District Magistrate, or the Commissioner, or the State Government, can never be raised in a civil court. In our opinion, the bar created by the relevant provisions of the Act excluding the jurisdiction of the civil courts cannot operate in cases where the plea raised before the civil court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity....."

5 wp.3034.24

9. In view of the above, no dues certificate issued by the respondents which is valid, will be adjudicated at the time of deciding the case on merits. Prima facie, the arguable case is made out. Hence, status quo is granted till the next date.

10. Stand over to 19.06.2024.

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