

# Riddhi Aggarwal & Anr vs Aditya Bhutani & Anr on 5 March, 2024

**Author: Prateek Jalan**

**Bench: Prateek Jalan**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 9/2023 & O.A. 60/2023

RIDDHI AGGARWAL & ANR.

Through: Mr. Prashant  
Karanwal & Mr.  
Advocates.  
9899195597, 9

ADITYA BHUTANI & ANR.

Through: Mr. Naveen Ku  
Advocate for  
Mr. Sunil Ya  
2.  
Mr. Anupam S  
Axis Bank Lt

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

% 05.03.2024 I.A. 3864/2024 (Application on behalf of defendant No. 2 under Order 1 Rule 10(2) to delete/strike out his name from the array of parties)

1. Defendant No. 2 has filed this application in which one of the contentions is that a counsel engaged by him, Mr. Lalit Kumar, is now appearing for the plaintiff in this matter.

2. Mr. Lalit Kumar, Advocate is present before this Court and has sought to argue I.A. 3858/2024 and I.A. 4228/2024 on behalf of the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/03/2024 at 21:24:51 plaintiffs. It may also be placed on record that he has appeared and argued the matter on behalf of the plaintiffs on the last few dates of hearing before this Court, including 19.02.2024 and 22.02.2024, but I find that his appearance has not been recorded. Evidently, his name was not

included in the appearance slips handed over to the Court staff. His appearance has, however, been recorded on behalf of the plaintiffs, in the order of the learned Joint Registrar dated 25.01.2024 and order of the Court dated 10.11.2023. Mr. Lalit Kumar [Enrolment No. BH/543/2006] states that his appearance was not given as he was only assisting Mr. Prashant Sharma [Enrolment No. D/4372/2022], who is the main counsel. Mr. Prashant Sharma is also present and accepts that he is the main counsel. It may be noted that Mr. Prashant Sharma was present on the last two dates of hearing also, but the case was argued by Mr. Lalit Kumar.

3. Alongwith this application, defendant No. 2 has annexed an email dated 22.09.2022 from "Lalit Kumar and Company (LalitkumarandCo@hotmail.com)" addressed to both the defendants - Mr. Darshan Lal and Mr. Aditya Bhutani. It appears to enclose an "Amended Reply to Ms. Jahnvi Aggarwal Etc. towards 2/9 Kalkaji, New Delhi". Ms. Jahnvi Aggarwal is one of the plaintiffs in this suit, and 2/9 Kalkaji, New Delhi is the address of the suit property. Mr. Lalit Kumar accepts that this email address is his, and that he forwarded a draft reply to be addressed to the plaintiffs in this suit. He states that this draft was sent to him by one of the defendants, who were interested in engaging him, but he was not able to accept the case. This explanation is required to be place on affidavit. In fact, Mr. Lalit Kumar's appearance is also This is a digitally signed order.

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4. In order to show the circumstances in which the suit was filed, defendant No. 2 also makes an allegation that the chamber address of Mr. Prashant Sharma, who is the counsel on record for the plaintiffs, [Chamber No. 416, Civil Wing, Tis Hazari, Delhi-110054] is also the address of a counsel who was engaged to represent the defendants in this matter namely, Mr. Chanchal Kumar Jha. Mr. Chanchal Kumar Jha's appearance on behalf of the defendants is recorded in the orders dated 06.02.2023, 13.03.2023, 22.03.2023 and 29.03.2023. According to the application, Mr. Chanchal Kumar Jha was the erstwhile counsel of the defendants, who was engaged through Mr. Lalit Kumar, to whom the defendants have given a blank vakalatnama.

5. To support this contention, learned counsel for the defendants draw my attention to a communication addressed by Mr. Chanchal Kumar Jha to the defendant which was annexed to I.A. 13075/2023 filed by him. In the said communication, he mentions two chamber addresses, one in the Saket Court Complex and other one being "Chamber No. 416, Civil Side, Tis Hazari Courts, Delhi-110017".

6. Mr. Prashant Sharma accepts that his chamber address is No. 416, Civil Wing, Tis Hazari, Delhi-110054. However, he states that neither he, nor Mr. Chanchal Kumar Jha are the allottees of Chamber No. 416, but both of them use it.

7. Mr. Lalit Kumar seeks permission to withdraw from the present case. However, before considering whether it is appropriate to permit him to do so, Mr. Lalit Kumar and Mr. Prashant Sharma are both directed to file affidavits in response to the allegations contained in this application

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8. Mr. Lalit Kumar and Mr. Prashant Sharma, learned counsel, are directed to remain personally present in Court on the next date of hearing also.

9. List before the Court on 05.08.2024.

I.A. 3858/2024 (Application on behalf of the plaintiffs for ex-parte ad- interim injunction) & I.A. 4228/2024 (For impleadment of Axis Bank as a defendant)

1. The plaintiffs have filed I.A. 4228/2024 for impleadment of Axis Bank as a party to the suit, and I.A. 3858/2024 for an ex-parte ad-interim injunction restraining the proposed defendant - Axis Bank, from disposing of the suit property [Ground Floor, Property No. 2/9, Kalkaji, New Delhi] during the pendency of the said application.

2. The present suit is for specific performance of an agreement to sell dated 07.07.2021. According to the plaintiffs, the parties to the agreement to sell are the plaintiffs and defendant Nos. 1 and 2. The plaintiffs claim that the consideration for the suit property was fixed at 4.25 crores, out of which 3.30 crores was paid between 29.05.2019 and 09.01.2020, and a sum of 78 lakhs was paid thereafter. According to the plaintiffs, they have thus paid approximately 96% of the agreed consideration to the defendants.

3. The allegation in I.A. 3858/2024 is that, despite the agreement to sell, which was entered into concealing the factum of a mortgage in favour of Axis Bank, Axis Bank has taken physical possession of the suit property under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFAESI Act"] and proposes to auction the property. An order dated 31.08.2023 of the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/03/2024 at 21:24:52 learned Chief Metropolitan Magistrate under Section 14 of SARFAESI Act has been placed on record, as has an e-auction notice dated 30.12.2023. It is also been stated that defendant No. 1 challenged these actions before the Debts Recovery Tribunal ["DRT"], but his request for an interim order has been rejected by an order dated 29.01.2024.

4. The provisions of Section 34 of the SARFAESI Act bar the jurisdiction of the Civil Court with regard to any matter which is within the jurisdiction of the DRT or the appellate tribunal under the SARFAESI Act. Section 34 further provides that no injunction would be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of power conferred by the SARFAESI Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

The relief sought in I.A. 3858/2024, therefore, appears to be barred by Section 34 of the SARFAESI Act.

5. The Supreme Court has explained the importance of this provision, particularly read with the overriding effect provided in Section 35 of the SARFAESI Act, in several cases<sup>1</sup>. The judgments of the Supreme Court make it clear that the remedy under Section 17 of the SARFAESI Act is available to any person aggrieved, not just a borrower or guarantor, and that it is an efficacious remedy.

6. Mr. Anupam Singh, learned counsel for Axis Bank, appears on Reference, for example, may be made to the judgments in *Mardia Chemicals Ltd. vs. Union of India*, (2004) 4 SCC 311 [paragraphs 50 and 51], *United Bank of India vs. Satyawati Tondon*, (2010) 8 SCC 110, [paragraphs 26 and 42], *Jagdish Singh vs. Heeralal*, (2014) 1 SCC 479, [paragraphs 18 to 25], *State Bank of Travancore vs. Mathew K.C.*, (2018) 3 SCC 85, [paragraphs 3 and 10], *Sree Anandhakumar Mills Ltd. vs. Indian Overseas Bank*, (2019) 14 SCC 788, [paragraphs 4 and 6], *Electrosteel Castings Ltd. vs. UV Asset Reconstruction Co. Ltd.*, (2022) 2 SCC 573, [paragraph 11] and *Punjab and Sind Bank vs. Frontline Corporation Ltd.*, judgment dated 18.04.2023 in Civil Appeal No. 2924/2023 (arising out of SLP(C) No. 16657 of 2017), [paragraph 15].

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7. Mr. Prashant Sharma, learned counsel for the plaintiffs, does not suggest that the DRT does not have jurisdiction under Section 17 of SARFAESI Act. However, he draws my attention to two judgments, which according to him, provide an exception to Section 34 of the SARFAESI Act. The first is the judgment of the Supreme Court in *Mrs. Leelamma Mathew vs. M/s Indian Overseas Bank & Ors.*, 2022 SCC OnLine SC 1601, wherein the Court has inter alia observed as follows:-

"25. Now so far as the submission on behalf of the plaintiff and the finding recorded by the High Court that the suit was barred by Section 34 of the SARFAESI Act is concerned, at the outset it is required to be noted that the suit was for damages/compensation, with respect to the balance land, which could not have been decided by the DRT or Appellate Tribunal, Section 34 of the SARFAESI Act shall be applicable only in a case where the Debt Recovery Tribunal and/or Appellate Tribunal is empowered to decide the matter under the SARFAESI Act. The plaintiff was not challenging the sale/sale certificate. The plaintiff claimed the

damages/compensation with respect to the less area. Therefore, the High Court has seriously erred in holding that the suit was barred by Section 34 of the SARFAESI Act."

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8. I do not find this observation to be applicable to the facts of the present case, as it is confined to a situation where the DRT/appellate tribunal is not empowered to decide the matter under the SARFAESI Act. It is specifically observed that the plaintiff in that case was not challenging the sale or sale certificate. In the present case, the plaintiffs by the present application, are squarely challenging the proposed sale by the Bank under the SARFAESI Act.

9. The second judgment cited by Mr. Sharma is of a coordinate bench of this Court dated 04.07.2023 in CS(OS) 984/2014 [Simmi Dhawan vs. Navin Malhotra & Ors.]. Mr. Sharma refers to paragraph 102 of the said judgment, which reads as follows:-

"102. The objection raised on behalf of the respondents that this Court will have no jurisdiction to decide the various issues in view of bar under Section 34 of the SARFAESI Act, is totally erroneous and liable to be rejected. Under Section 34 of the SARFAESI Act, jurisdiction of the Civil Court is barred only in respect of matters which a Debt Recovery Tribunal or Appellate Tribunal, is empowered to determine in respect of any action taken or to be taken in pursuance of any power conferred by or under the SARFAESI Act. However, the DRT is not a Civil Court and cannot pass a decree determining the right, title and interest of the parties to the property in question. The jurisdiction of the DRT is limited and circumscribed by the provisions of the SARFAESI Act. The DRT cannot undertake full-fledged trial in terms of the provisions of the CPC or the Evidence Act."

10. The aforesaid observation is also inapplicable as it deals with passing of a decree determining the right, title and interest of the parties to the property in question. In the present case, the question at this stage is not whether the suit for specific performance is barred by the provisions of SARFAESI Act, but whether the relief sought in I.A. 3858/2024 is so barred.

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11. To permit a plaintiff, relying only upon an agreement to sell with the borrower, to bypass the provisions of the SARFAESI Act can, in a given case, provide an easily available route to defeat the objectives of SARFAESI Act. The plaintiffs have failed to make out a prima facie case for lifting the

bar of Section 34 of the SARFAESI Act, and thus for grant of the injunction sought.

12. It may be noted that, by order dated 19.02.2024, the plaintiffs were specifically granted liberty to approach the DRT under the SARFAESI Act during the pendency of these proceedings, which they have failed to do. They were also impleaded and represented before the DRT in SA No. 29/2024, filed by defendant No. 1.

13. Mr. Singh has made an allegation of collusion between the plaintiffs and defendants in this case, based upon the allegations made by defendant No.2 in I.A. 3864/2024, noted above, and upon the facts that the plaintiffs were impleaded and represented in SA No. 29/2024, filed by defendant No. 1. However, I am of the view that it is not necessary to return any findings in this regard at this stage.

14. The plaintiffs having failed to make out a prima facie case, I.A. 3858/2024 is dismissed.

15. Mr. Sharma submits that in view of the dismissal of I.A. 3858/2024, he does not wish to press I.A. 4228/2024. I.A. 4228/2024 is also dismissed.

16. The plaintiffs will pay costs of these applications to Axis Bank, assessed at 30,000/-, within two weeks from today. CS(OS) 9/2023

1. List before the learned Joint Registrar on the date fixed i.e. This is a digitally signed order.

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2. List before the Court on 05.08.2024.

PRATEEK JALAN, J MARCH 5, 2024/'pv'/ This is a digitally signed order.

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