Central Bank Of India vs Smt. Prabha Jain on 9 January, 2025

REPORTABLE

2025 INSC 95

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1876 OF 2016

CENTRAL BANK OF INDIA & ANR. Appellant(s)

VERSUS

SMT. PRABHA JAIN & ORS. Respondent(s)

WITH

CIVIL APPEAL NO.1877 OF 2016

CIVIL APPEAL NO.1896 OF 2016

CIVIL APPEAL NO.1893 OF 2016

CIVIL APPEAL NO.1897 OF 2016

CIVIL APPEAL NO.1915 OF 2016

CIVIL APPEAL NO.1907 OF 2016

CIVIL APPEAL NO.1913 OF 2016

CIVIL APPEAL NO.1900 OF 2016

CIVIL APPEAL NO.1898 OF 2016

CIVIL APPEAL NO.1916 OF 2016

CIVIL APPEAL NO.1914 OF 2016

CIVIL APPEAL NO.1892 OF 2016
2

CIVIL APPEAL NO.1910 OF 2016

CIVIL APPEAL NO.1899 OF 2016

CIVIL APPEAL NO.1917 OF 2016

O R D E R

Since the issues raised in all the captioned appeals are the same, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. The Civil Appeal No.1876 of 2016 is treated as the lead matter. The disposal of this appeal shall govern the disposal of all connected appeals.

3. This appeal arises from the judgment and order dated 30.10.2012 passed by the High Court of Madhya Pradesh at Jabalpur in First Appeal No.408 of 2012 by which the High Court allowed the appeal filed by the respondents herein-original plaintiffs and thereby, set aside the order passed by the 5th Additional District Judge, Bhopal in Civil Suit No.25A/2011 rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, "the CPC").

4. The facts giving rise to this appeal may be summarised as under:-

> Respondent no.1 namely, Smt. Prabha Jain instituted Civil Suit No.25A/11 praying for the following reliefs:-
>
> "a. It be declared that the disputed sale deed and the mortgage deed described in para 6 above are a nullity and it be declared that the defendant numbers 4 and 5 had no right to sell the disputed plot, to the defendant number 3 and the possession taken by the defendant number 2 is against the law and the grant of loan by the defendant number 1 on the security of the plot is against the law.

b. That the possession of the plot of land shown in slanted red lines in the plan attached to the suit may be given to the plaintiff after demolishing the construction.

c. That the plaintiff may be awarded damages of Rs. 7200/- for period from December 2009 to December 2010.

d. That the mesne profit from the date of institution of the suit till possession may be granted to the plaintiff at the rate of Rs. 600/- p.m."

5. It is the case of the plaintiff that the suit land was purchased by her late father-in-law vide sale deed dated 19.06.1967 and after his death on 15.08.2005, the same was inherited in equal shares by her late husband Mahendra Kumar Jain, husband's elder brother Sumer Chand Jain (defendant no.4) and mother-in-law. After the death of Mahendra Kumar, his 1/3rd share was inherited by the plaintiff. However, Sumer Chand Jain without any partition amongst the heirs divided the land into several plots and sold them of illegally to different persons. Once such plot was sold to defendant no.3 (Parmeshwar Das Prajapati) vide registered sale deed dated 03.07.2008 who in turn, mortgaged the same with the Central Bank of India (defendant no.1) for the purpose of obtaining loan.

6. It seems that the person who obtained loan defaulted and that is how the Bank decided to proceed further in accordance with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act").

7. It is a case of the plaintiff that the sale deed as well as the mortgage could be said to be a nullity. She claimed possession of the suit land in the suit.

8. It appears that the appellant-Bank herein preferred an application under Order VII Rule 11 of the CPC and prayed that the plaint be rejected as the civil court has no jurisdiction to try the same in view of Section 17 of the SARFAESI Act. The trial court rejected the plaint. The original plaintiff carried the matter in appeal before the High Court. The High Court allowed the First Appeal holding in paras (9) and (10) respectively, as under:-

> "9. From the scheme of the SARFAESI Act narrated above, it is apparent that the Debts Recovery Tribunal has no jurisdiction to decide the question whether persons other than the mortgager had title in the mortgaged property. In that context the validity of the sale deed of a property mortgaged with the Central Bank of India cannot be decided by the Debts Recovery Tribunal. If the sale deed is held to be wholly or partially invalid it will immediately affect the validity of the mortgage of that property. The jurisdiction of civil court is ousted in respect of matters which the Debts Recovery Tribunal is empowered to decide. Absence of a provision to enable the Debts Recovery Tribunal for holding an enquiry on a particular question is indicative that jurisdiction of civil courts on that question is not excluded. The above question relating to the validity of the sale deed and its consequent effect on the mortgage are matters which the Debts Recovery Tribunal is not empowered to

> decide. The provision for appeal under section 17 of the SARFAESI Act by "any person" does not oust the jurisdiction of civil court on matters which cannot be decided by the Debts Recovery Tribunal. Therefore, the jurisdiction of the civil court to decide these matters cannot be held to be ousted under section 34 of the SARFAESI Act.
>
> 10. We also disagree, with the finding of the trial court that proper Court fee has not been paid by the plaintiff. The plaintiff is not a signatory or party in the sale deed as well as in the mortgage deed.

She is, therefore, not required to claim the consequential relief of the cancellation of these documents. And for the relief claimed by her for the declaration of sale deed and mortgage as illegal, she has paid the proper Court fee. The consequential relief which the plaintiff has claimed and which is appropriate in the circumstances of the case is possession of the suit land/plot. The suit land/plot is assessed to the land revenue at Rs.l/-. She has valued this relief at Rs.20/- and paid Rs.lOO/- Court fee as required under section 7 (v)(a) of the Court Fees Act, 1870. The plaintiff has thus paid the proper Court fee."

9. In such circumstances referred to above, the appellant-Bank is here before this Court with the present appeal. We have heard Mr. O. P. Gaggar, the learned counsel appearing for the appellant-

Bank and Mr. Umesh Babu Chaurasia, the learned counsel appearing for respondent no.1 i.e. the original plaintiff. The only argument canvassed before us on behalf of the Bank is that in view of Section 34 of the SARFAESI Act, the civil court has no jurisdiction to try the suit.

10. Having regard to the importance of the issue raised before us, we proposed to consider it in detail.

PLAINTIFF'S CASE IN THE PLAINT AS BORNE OUT FROM THE IMPUGNED JUDGEMENT
19.06.1967: Plaintiff's father-in-law purchased the suit land by way of a sale deed.

15.8.2005 Plaintiff's father-in-law died. Thereupon, the suit land was inherited by 3 persons in equal proportions:

> 1. Plaintiff's husband Mahendra Kumar Jain (1/3rd)
>
> 2. Plaintiff's husband's elder brother Sumer Chand Jain (1/3rd)
>
> 3. Mother-in-law (1/3rd) Upon the death of the Plaintiff's husband, the Plaintiff inherited her husband's 1/3rd share.

Plaintiff's brother-in-law Sumer Chand Jain without any partition divided the suit land into plots and illegally sold off the plots.

03.7.2008 By a sale deed, Sumer Chand Jain sold one of the plots to Parmeshwar Das Prajapati.

Parmeshwar Das Prajapati executed a mortgage deed mortgaging the said plot ("subject plot") to the Central Bank of India ("bank") for obtaining a loan.

From para 2 of the impugned judgement of the High Court, it appears that some construction was also raised on the land at some stage.

The bank took over possession of the subject plot under Section 13 of the SARFAESI Act and published an advertisement for the purpose of putting it to auction.

The Plaintiff filed a suit in a civil court praying inter alia for the following reliefs:

1. For a declaration that the sale deed executed by Sumer Chand Jain in favour of Parmeshwar Das Prajapati is illegal ("first relief")

2. For a declaration that the mortgage deed executed by Parmeshwar Das Prajapati in favour of the Bank is illegal ("second relief")

3. For being handed over the possession ("third relief") In the suit, the bank filed an application under Order VII, Rule 11 of the CPC raising the following contentions:

a) Suit is barred under Section 34 of the SARFAESI Act.

b) Plaint is written on insufficiently stamped paper.

10.2.2012 The Civil Court rejected the plaint on the following grounds:

1. The suit is barred by Section 34 of the SARFAESI Act.

2. The plaintiff has not paid the proper court fee.

09.04.2012 The Plaintiff filed First Appeal before the High Court challenging the judgement dated 10.2.2012.

30.10.2012 The High Court set aside the judgement and restored the suit on the following grounds:

1. The Civil Court's jurisdiction to decide the suit is not ousted by Section 34 of the SARFAESI Act.

2. The Plaintiff has paid the proper court fee.

RELEVANT PROVISIONS OF THE SARFAESI ACT

11. Section 34 of the SARFAESI Act reads thus:-

> "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)."

12. Section 34 of the SARFAESI Act provides that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter which Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine..." Hence, the Civil Court's jurisdiction is only ousted in respect of those matters which the Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under the SARFAESI Act to determine. The SARFAESI Act confers certain powers upon the Debts Recovery Tribunal by virtue of the following sections: Sections 5(5), 13(10), 17 and 19.

Except for Section 17, as such none of the other sections referred to above are relevant for the purposes of this matter.

13. Section 17 of the SARFAESI Act is as follows:

> Under Section 17(1) of the Act, "Any person (including borrower), aggrieved by any of the measures referred to in subsection (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application... to the Debts Recovery Tribunal..".
>
> From Section 17(2), (3) and (4) of the SARFAESI Act, it is clear that the Tribunal has the power to examine whether "..any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor are in accordance with the provisions of this Act and the rules made thereunder." The Tribunal has the power to pass consequential orders as provided in Section 17(3).

14. From Section 17, it is clear that it is only the Tribunal that has the jurisdiction to determine whether "any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor" are in accordance with the Act or Rules thereunder.

15. The plaintiff in her suit has prayed for 3 reliefs:

> a) The first relief is in relation to a sale deed executed by Sumer Chand Jain in favour of Parmeshwar Das Prajapati.

b) The second relief is in relation to a mortgage deed executed by Pramod Jain in favour of the bank.

c) The third relief is for being handed over the possession of the suit property.

16. So far as the first and second reliefs are concerned, they are not in relation to any measures taken by the secured creditor under Section 13(4) of the SARFAESI Act. Rather, they are reliefs in relation to the actions taken prior to the secured creditor stepping into the picture and well prior to the secured creditor invoking the provisions of the SARFAESI Act.

17. Therefore, the Tribunal would have no jurisdiction under Section 17 of the SARFAESI Act to grant the declarations sought in the first and the second reliefs.

18. Further, the SARFAESI Act is enacted essentially to provide a speedy mechanism for recovery of debts by banks and financial institutions. The SARFAESI Act has not been enacted for providing a mechanism for adjudicating upon the validity of documents or to determine questions of title finally. The DRT does not have the jurisdiction to grant a declaration with respect to the mortgage deed or the sale deed as sought by the Plaintiff. The jurisdiction to declare a sale deed or a mortgage deed being illegal is vested with the civil court under Section 9 of the Code of Civil Procedure. Therefore, the civil Court has the jurisdiction to finally adjudicate upon the first two reliefs.

19. In the aforesaid context, we may give few illustrations of the kind of disputes that can crop up. These illustrations would indicate that DRT can never have the jurisdiction to decide such civil disputes of title between a third person and a borrower. Two illustrations may be considered:

Illustration 1: A and B are sons of X. On X's death, A claims that X made a will bequeathing a particular parcel of land ("Land 1") exclusively to A. A mortgages Land 1 to a bank and the bank initiates proceedings under the SARFAESI Act. The other son i.e. B claims that father X had made a will bequeathing Land 1 exclusively to B. Hence, there are two conflicting wills propounded by each son. B files a suit praying for a declaration that he is the exclusive owner of the land on the basis of the will and other reliefs. The civil court will have jurisdiction to decide which of the two wills is valid. It is inconceivable that DRT would have the jurisdiction to decide which will is valid.

Illustration 2: X was married to Y (wife). They did not have any biological children. Hence, in 1985, the couple adopted Q. In 1990, Y died and left her entire estate to X by way of a will. X died in 1995 without making a will. The adopted child Q (claiming to be sole owner by intestate succession) mortgaged one of the lands in favour of the bank which initiated SARFAESI proceedings. However, X's only brother Z made a claim that the "adoption" of Q was not as per law and that there being no adoption in law, Q was not entitled to the estate of X. X filed a suit inter alia praying for the following declarations:

1. The adoption of Q was void and ineffective.

2. Z being the only heir as per intestate succession, Z was exclusively entitled to the land.

3. The Mortgage by Q in favour of the bank was invalid as it was a mortgage by Q who had no title.

20. The answer to the aforesaid would depend on whether Q's adoption was valid or not. If the adoption is valid, Q had title and the mortgage in favour of the bank would be valid. If the adoption was invalid, Z would be the owner & Q's mortgage would be invalid. The civil court will have jurisdiction to decide upon the validity of the adoption, not the DRT.

21. By way of third relief, the plaintiff is seeking possession.

22. The suit is of 2011. Hence, the SARFAESI Act as applicable prior to the 2016 Amendment will have to be examined. Section 17 (as it stood prior to the 2016 amendment) is reproduced below:

"17. Right to appeal.—(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.

(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 of the

business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order 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.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

> Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).
>
> (6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in subsection (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.
>
> (7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder." (emphasis supplied)

23. Unamended Section 17(3) of the SARFAESI Act as applicable to the present case:

> I. Section 17(3) as it stood prior to the 2016 amendment, provides that where the DRT finds that the measures taken by the secured creditor under Section 13(4) of the SARFAESI Act are not in accordance with the Act or Rules, it has the power to "restore the possession of the secured assets back to the borrower". In this context, there are two significant points that deserve to be considered:

> 1. While it is true that Section 17(1) uses the words "any person (including the borrower) aggrieved", Section 17(3) does not explicitly empower the DRT to restore the possession to anyone other than the borrower. Yes, in a given case, if the borrower has put someone else in possession, then perhaps, it could be contended that under Section 17(3), the DRT's power to restore possession to the "borrower" would include the power to restore possession to the person who was holding it on behalf of the borrower or claiming through the borrower.

However, it cannot be contended that under Section 17(3), the DRT can hand over possession to someone whose claim is adverse to that of the borrower.

2. What is even more important is that in the unamended Section 17(3), the word used is "restore" and not "hand over". As per Cambridge English dictionary, word "restore" means "to return something or someone to an earlier good condition or position". Under Section 17(3), the DRT has the power to "restore" possession which would mean that it has the power to return possession to the person who was in possession when the bank took over possession. DRT only has power to "restore" possession; it has no power to "hand over" possession to a person who was never in possession when the bank took over possession.

The word "restore" has been very rightly used by the Parliament. It is one thing to empower the DRT to hold that the actions of the secured creditor are not in accordance with the Act and to empower the DRT to give directions to the secured creditor to reverse its actions and to direct it to restore the property back to where it was. However, it would be quite illogical for the Parliament to empower the DRT to direct the secured creditor to hand over possession to some third party who was never in possession in the first place.

II. Now, the question that arises is this: whether the Plaintiff being not in possession could have sought for from the DRT under the unamended Section 17(3)? In our considered view for the following two reasons, the plaintiff could not have sought from DRT the relief of being given possession:

> 1. Plaintiff is neither a borrower nor a person claiming under/through the borrower. Plaintiff has a claim independent of and adverse to the borrower.
>
> 2. Plaintiff was not in possession. Hence, the question of DRT "restoring" possession to Plaintiff did not arise.

III. Hence, Plaintiff could not have sought from DRT, the relief of being handed over the possession. DRT would have no jurisdiction to grant such relief to her. Hence, the Plaintiff's third relief in her suit is also not barred by Section 34 of the SARFAESI ACT.

IV. The bank may contend that even if the plaintiff cannot seek the relief of being handed over possession under the expression "restore the possession.... to the borrower", she can still seek that relief under the widely worded expression appearing at the end of Section 13(3): "and pass such

order 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" appearing at the end of Section 13(3). We are of the view that even under such expression, the Plaintiff cannot seek the relief of being handed over possession for the following reasons:

> 1. Under the last phrase of Section 13(3), the civil court has the power to pass other orders as it may consider appropriate and necessary "in relation to any of the measures taken by the secured creditor under sub-section (4) of Section 13".
>
> 2. The measures taken by the secured creditor are of taking over possession from the borrower and not from the plaintiff. Hence, the Plaintiff's prayer to hand over possession is not at all "in relation to any of the measures taken by..." The passing of an order to hand over possession to Plaintiff is, therefore, not an order "in relation to any of the measures taken by the secured creditor".
>
> 3. Hence, even under the last phrase of Section 13(3), DRT has no power to pass an order directing the secured creditor to hand over possession to Plaintiff. Hence, Plaintiff could not have sought that relief from DRT.

V. Although Section 13(3) as amended by the the SARFAESI Act, 2016 does not arise for our consideration in this matter, yet it is pertinent to note that even the amended Section 13(3) uses the expression "restore the possession of secured assets". The expression "or such other aggrieved person" have been inserted after the word "borrower" in sub-clause (a). However, there is no power conferred to hand over the property to someone who was never in possession. The amended Section 13(3) is reproduced below:

> "(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."

24. Even if we would have been persuaded to take the view that the third relief is barred by Section 17(3) of the SARFAESI Act, still the plaint must survive because there cannot be a partial rejection of the plaint under Order VII, Rule 11 of the CPC. Hence, even if one relief survives, the plaint cannot be rejected under Order VII, Rule 11 of the CPC. In the case on hand, the first and second reliefs as prayed for are clearly not barred by Section 34 of the SARFAESI ACT and are within the civil court's jurisdiction. Hence, the plaint cannot be rejected under Order VII Rule 11 of the CPC.

25. If the civil court is of the view that one relief (say relief A) is not barred by law but is of the view that Relief B is barred by law, the civil court must not make any observations to the effect that relief B is barred by law and must leave that issue undecided in an Order VII, Rule 11 application. This is because if the civil court cannot reject a plaint partially, then by the same logic, it ought not to make any adverse observations against relief B. PRECEDENTS OF THIS COURT ON SECTION 34

26. This Court, in Mardia Chemicals Ltd. & Ors. v. Union of India & Ors. reported in (2004) 4 SCC 311, held that a meaningful reading of Section 34 of the SARFAESI Act indicates 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 i.e., in respect of any action taken or to be taken in pursuance of any power conferred under this Act. This Court also carved out an exception in the case where allegations of fraud are made. The relevant observations are as under:

> "50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in 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.)" (emphasis supplied)

27. This Court, in Jagdish Singh v. Heeralal & Ors. reported in (2014) 1 SCC 479, had held in the facts of the said case that the Civil Suit was barred by Section 34 of the SARFAESI Act. In the said case, the Civil Suit was filed after the original borrowers purchased the properties mortgaged with the Bank. This led to an auction and the subsequent dismissal of the applications before the DRT. Furthermore, the plaintiffs, who sought title, partition, and possession, did not raise any objections at any stage. In this case, the auction was conducted in 2005, the original borrowers lost before the DRT in 2006, and the Civil Suit was filed in 2007.

In these peculiar circumstances, the Civil Suit was held to be barred under Section 34 of the SARFAESI Act. At the same time, this Court reiterated that the jurisdiction of the civil court is barred in respect of any matter that the DRT alone can decide. Thus, the crucial question that is supposed to be asked and answered is as to whether the DRT would be able to determine the prayers made in the Civil Suit. The relevant paragraphs are as follows:

> "10. Bank of India had advanced a loan of Rs 25 lakhs to M/s Guru Om Automobiles, Respondent 10 herein, through its proprietor, Respondent 6 on 17- 2-2000. The loan was secured by equitable mortgage executed by Respondents 7 to 9 in respect of the land measuring one acre in Khasra Nos. 104/3 and 105/2, Patwari Halka No. 5, Village Seagon, Anjad Road, Barwani, M.P. Respondents 6 to 8 had also created equitable mortgage on three houses, which were in their respective names. Original title deeds of all the abovementioned properties were duly deposited with the Bank at the time of availing of the loan.
>
> 11. Since they committed default in re-paying the loan, the Bank issued notice under Section 13(2) of the Securitisation Act and took steps under Section 13(4) of the Securitisation Act in respect of properties on 1-3-2004. Auction notice was duly

published in the newspapers on 30-9-2005. No objection was raised by the plaintiffs and the suit land was auctioned on 8-11-2005, which was settled in favour of the highest bidder, the appellant herein. The entire auction price was paid by the auction-purchaser and the sale in his favour was duly confirmed. Respondents 7 to 9 challenged the sale notice, as already indicated, by filing Application No. 19 of 2005 before the DRT, Jabalpur, which was dismissed on 21-7-2006. No appeal was preferred against that order and that order has attained finality.

12. We notice, at this juncture, Respondents 1 to 5 filed Civil Suit No. 16A/07 in the Court of the District Judge, Barwani against the appellant, as well as the Bank and Respondents 6 to 9, alleging that the family members Respondents 1 to 9 herein being sons/grandsons of deceased Premji, constituted a HUF engaged in agriculture. It was stated that the said properties were purchased in the names of Respondents 7 to 9 out of the funds of HUF and House Nos. 41/1, 42/3 and 42/2 were also purchased in the names of Respondents 6 to 8 respectively, out of the funds of HUF and, therefore, were the properties of HUF. But, the facts would clearly indicate that the properties referred to above were purchased by Respondents 6 to 8 in their individual names, long after the death of Premji and that too by registered sale deeds and no claim was ever made at any stage by any member of the HUF that the suit land was a HUF property and not the individual property.

Respondents 7 to 9 had purchased those lands vide sale deed dated 14-9-1999 and Respondent 6 had also purchased in his individual name House No. 42/1 on 31-3-1998 vide registered sale deed. Similarly, Respondent 7 had also purchased House No. 42/3 in his individual name. No claim, whatsoever, was made at any stage by any member of the family that those properties and buildings were HUF properties and not the individual properties of Respondents 6 to 8 herein.

13. We find that the Bank had advanced loans on the strength of the abovementioned documents which stood in the names of Respondents 6 to 9. Due to non- repayment of the loan amount, the Bank can always proceed against the secured assets.

XXX XXX XXX

18. Any person aggrieved by any order made by the DRT under Section 17 may also prefer an appeal to the Appellate Tribunal under Section 18 of the Act.

19. The expression “any person” used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13(4) of the Securitisation Act. Reference may be made to the judgment of this Court in Satyawati Tondon case [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] .

20. Therefore, the expression “any person” referred to in Section 17 would take in the plaintiffs in the suit as well. Therefore, irrespective of the question whether the civil suit is maintainable or not,

under the Securitisation Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the Securitisation Act, in case the Bank (secured creditor) adopt any measure including the sale of the secured assets, on which the plaintiffs claim interest.

XXX XXX XXX

22. The scope of Section 34 came up for consideration before this Court in Mardia Chemicals Ltd. [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] and this Court held as follows:

> (SCC p. 349, para 50) "50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in 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."
>
> 23. Section 13, as already indicated, deals with the enforcement of the security interest without the intervention of the court or tribunal but in accordance with the provisions of the Securitisation Act.
>
> 24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets.

Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section

17. The opening portion of Section 34 clearly states that no civil court shall have the jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression "in respect of any matter" referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently, if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.

25. We are of the view that the civil court jurisdiction is completely barred, so far as the "measures" taken by a secured creditor under sub- section (4) of Section 13 of the Securitisation 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 "measures" taken. The Bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondents 6 to 8 (sic Respondents 1 to 5) have been crystallised, before creating security interest in respect of the secured assets.

26. In such circumstances, we are of the view that the High Court was in error in holding that only civil court has the jurisdiction to examine as to whether the "measures" taken by the secured creditor under sub-section (4) of Section 13 of the Securitisation Act were legal or not. In such circumstances, the appeal is allowed and the judgment [Heeralal Kulmi v. Govind Kulmi, First Appeal No. 130 of 2008, order dated 5-8-2010 (MP)] of the High Court is set aside. There shall be no order as to costs." (emphasis supplied)

28. Thus, in paras 18, 19 & 20 respectively referred to above, this Court held that the words "any person" are wide enough to cover any person affected by action taken under Section 13(4).

However, it appears that this Court overlooked the fact that while the words are wide enough, the DRT has powers only to grant reliefs with respect to the measures taken by the secured creditor under Section 13(4) and not beyond that. This Court missed to take note of the word "restore" used in Section 17(3) which means that the DRT can only restore back the possession to the one who was in possession and not to one who was not in possession.

29. In para 24, this Court held that DRT has jurisdiction with respect to "measures" taken by the secured creditor under Section 13(4) and that in respect of such matters, the civil court's jurisdiction is ousted. However, thereafter, there is no further discussion on the nature of the suit and without recording any finding that DRT has the power to decide partition suits, this Court straightaway affirmed the rejection of the plaint under Order VII, Rule 11. While doing so, this Court missed to consider that under Section 17, DRT has no power to partition properties and hence, civil court's jurisdiction to grant a decree of partition cannot be said to be ousted. When there is no finding in

the judgement that the DRT has the jurisdiction to grant the relief of partition, the judgement cannot be said to be a precedent on that point.

30. The aforesaid was looked into by a Division Bench of the Bombay High Court in Bank of Baroda v. Gopal Shriram Panda and Another, reported in (2021) SCC OnLine Bom 466 and the reasonings assigned in our view are very commendable. We quote the relevant observations made by the Bombay High Court as regards the Jagadish (supra):

> "21.3. In Jagdish v. Heeralal (supra), the appellant was an auction purchaser, who was not put in possession, acquired knowledge that civil suit for declaration of title, partition and permanent injunction was pending, in which a plea was raised, that the respondent nos. 1 to 5 therein being the sons/grandsons of deceased Premji, constituted a HUF engaged in agriculture and the auctioned property was purchased in the names of the respondent nos. 7 to 9 out of the funds of the HUF and the houses were also purchased in the names of the respondent nos. 6 to 8, out of the same HUF funds and therefore a declaration that the properties were HUF properties and the respondents nos. 1 to 5 had a right and share therein was claimed. The Bank filed an application raising a preliminary objection under Section 9 of C.P.C. in the suit regarding the bar of jurisdiction as contained in Section 34 of the SARFAESI Act, which was upheld. However, in a challenge to the said order, accepting the preliminary objection, the High Court, in appeal, considering that the plaint raised a question of title on the basis of joint Hindu Family property, held that the Civil Court had jurisdiction, which in turn, came to be challenged before the Apex Court. The Apex Court, found that the lands in question, were purchased by the respondent nos. 6 to 8 in their individual names, long after the death of the common ancestor Premji and that too by registered sale-deeds and no claim was ever made at any stage by any member of the HUF that the said properties were HUF properties and not the individual properties. It was further held that the respondent nos. 7 to 9 had also purchased properties in their individual names vide sale-deed dated 14/9/1999 and the sixth respondent had also purchased in his individual name house no. 42/1 on 31/3/1998 by registered sale-deed. The loan was advanced by the Bank on 17/2/2000 on the strength of the above documents, which stood in the names of the respondent nos. 6 to 9. It is in light of the above factual position, it was held that the expression "any person" used in Section 17 of the SARFAESI Act was of wide import and would include within its hold not only the borrower but also the guarantor or any other person, who may be affected by the action taken under Section 13 (4) of the SARFAESI Act including the persons/plaintiffs, who had filed the suit as mentioned above. ..."

31. This Court in State Bank of Patiala v. Mukesh Jain & Anr.

reported in (2017) 1 SCC 53 relied on Section 34 and declared that no civil court can entertain any suit wherein the proceedings initiated under Section 13 are challenged. Thus, this judgment highlighted that when the measures under Section 13 are challenged before the civil court, its

jurisdiction to look into the challenge is ousted under Section 34. The relevant paragraphs are:

> "16. Upon perusal of Section 34 of the Act, it is very clear that no civil court is having 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 the Act to determine the dispute. Further, the civil court has no right to issue any injunction in pursuance of any action taken under the Act or under the provisions of the DRT Act.
>
> 17. In view of a specific bar, no civil court can entertain any suit wherein the proceedings initiated under Section 13 of the Act are challenged. The Act had been enacted in 2002, whereas the DRT Act had been enacted in 1993. The legislature is presumed to be aware of the fact that the Tribunal constituted under the DRT Act would not have any jurisdiction to entertain any matter, wherein the subject-matter of the suit is less than Rs 10 lakhs." (emphasis supplied)

32. In Robust Hotels Private Limited & Ors. v. EIH Limited & Ors.

reported in (2017) 1 SCC 622, this Court held that Section 34 bars the jurisdiction of civil court for (i) suits or proceedings relating to matters that the Debts Recovery Tribunal or Appellate Tribunal can decide under this Act, and (ii) no injunction may be granted by any court or authorities regarding actions under this Act or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Therefore, the bar of jurisdiction of civil court has to correlate to the abovementioned conditions. This finding is central to the matter: the bar of jurisdiction correlates with the conditions mentioned in Section 34. The relevant paragraphs are:

> "31. The scope and ambit of Section 34 of the SARFAESI Act, 2002 have been considered by this Court in several cases. It is sufficient to refer to the judgment of this Court in Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corpn. [Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corpn., (2009) 8 SCC 646 :
>
> (2009) 3 SCC (Civ) 481] This Court held that the jurisdiction of the civil court is plenary in nature, unless the same is ousted, expressly or by necessary implication, it will have jurisdiction to try all types of suits.

32. Following was laid down in paras 110-111 :

> (Nahar Industrial case [Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corpn., (2009) 8 SCC 646 : (2009) 3 SCC (Civ) 481] , SCC p. 697) "110. It must be remembered that the jurisdiction of a civil court is plenary in nature. Unless the same is ousted, expressly or by necessary implication, it will have jurisdiction to try all types of suits.
>
> 111. In Dhulabhai v. State of M.P. [Dhulabhai v.

State of M.P., AIR 1969 SC 78] , this Court opined : (AIR p. 89, para 32) '32. ... The result of this inquiry into the diverse views expressed in this Court may be stated as follows:

> XXX XXX XXX (2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.'

33. A perusal of Section 34 indicates that there is express bar of jurisdiction of the civil court to the following effect:

> "(i) Any suit or proceeding in respect of any matter in which the Debts Recovery Tribunal or Appellate Tribunal is empowered by or under this Act to determine.
>
> (ii) Further, 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." Thus the bar of jurisdiction of civil court has to correlate to the abovementioned conditions. For the purposes of this case, we are of the view that this Court need not express any opinion as to whether suits filed by EIH were barred by Section 34 or not, since the issues are yet to be decided on merits and the appeal by Robust Hotels has been filed only against an interim order." (emphasis supplied)
>
> 33. In Authorised Officer, SBI v. Allwyn Alloys Private Limited & Ors. reported in (2018) 8 SCC 120, this Court, while dealing with a case in which the unregistered memorandum of understanding (which would not confer any right, title and interest) was subsequently created after the equitable mortgage, held that in such facts and circumstances, the suit was barred under Section 34. The relevant paragraphs are as under:
>
> "2. The Debts Recovery Tribunal (DRT) as well as the Debts Recovery Appellate Tribunal (DRAT), after examining the plea taken by Respondents 5 and 6, came to hold that the document styled as memorandum of understanding dated 13-3-2011, relied upon by Respondents 5 and 6, was subsequently created after the equitable mortgage and more so it was an unregistered document which would not confer any right, title and interest in their favour in the said flat. Further, the share certificate of the said flat has already been transferred by the Society in the name of the Directors

> of Respondent 1 Company i.e. Mrs Zahoor K. Dhanani, Mr Karim K. Dhanani and Mrs Habika K. Dhanani (Respondents 2, 3 and 4 herein). It is also held that the Society has contemporaneously recorded the factum of mortgage created by the said respondents in respect of the subject flat in favour of the Bank; and that the said respondents were not coming forward to deny the stated mortgage.
>
> xxx xxx xxx
>
> 8. After having considered the rival submissions of the parities, 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.
>
> 9. The fact that the stated flat is the subject-

matter of a registered sale deed executed by Respondents 5 and 6 (writ petitioners) in favour of Respondents 2 to 4 and which sale deed has been deposited with the Bank along with the share certificate and other documents for creating an equitable mortgage and the Bank has initiated action in that behalf under the 2002 Act, is indisputable. If so, the question of permitting Respondents 5 and 6 (writ petitioners) to approach any other forum for adjudication of issues raised by them concerning the right, title and interest in relation to the said property, cannot be countenanced. The High Court has not analysed the efficacy of the concurrent finding of fact recorded by DRT and DRAT but opined that the same involved factual issues warranting production of evidence and a full-fledged trial. The approach of the High Court as already noted hitherto is completely fallacious and untenable in law.

xxx xxx xxx

12. Be that as it may, since we are setting aside the impugned judgment [Meherangiz J. Rangoonwalla v. SBI, 2016 SCC OnLine Bom 8878] of the High Court, we direct that Writ Petition No. 7480 of 2014 shall stand restored to the file of the High Court to its original number for being decided on its own merits and in accordance with law. As the proceeding for recovery is pending since 2010, concerning the equitable mortgage created by Respondents 2 to 4 in respect of the subject flat and having failed to repay the loan amount, which is quite substantial, we request the High Court to dispose of the writ petition expeditiously, preferably by the end of July 2018." (emphasis supplied)

34. In Madhav Prasad Aggarwal & Anr. v. Axis Bank Limited & Anr.

reported in (2019) 7 SCC 158, this Court declared that under Order VII Rule 11, plaint cannot be rejected in part or against one of the defendants. The plaintiff's claim was based on allotment letters for agreement to specific flats, which were prior in time to the mortgage in favour of the bank by the builder. Hence when the plaintiff became aware of the subsequent mortgage it filed the suit against the builder and the bank. Bank moved an application under Order VII Rule 11.

A Ld. Single Judge of the High Court after considering Mardia Chemicals Ltd.(supra) & Jagdish Singh (supra)declined to reject the plaint in part.

A Division Bench took exception to the judgement of the Ld. Single Judge and by relying on Section 34 declared the suit to be barred in law.

This Court upheld the order of the Ld. Single Judge and also kept the question of law open regarding DRT's and Appellate Authority's power to pass a decree and decide the matters outside the scope of Section 17. The question at hand is extremely important because, although this Court kept it open, yet it acknowledged the limited jurisdiction of Section 17. Therefore, it left the issue open regarding the competence of the DRT to pass a decree and to decide matters outside the scope of Section 17. This question requires finality and the laying down of the law.

The relevant paragraphs are as follows:

> "2. The appellant(s) being the original plaintiff(s) in the respective suit(s) wanted to purchase flats in a project known as "Orbit Heaven" (for short "the project") being developed by Orbit Corporation Ltd. (In Liq.) (for short "the builder"), at Nepean Sea Road in Mumbai and in furtherance thereof parted with huge amounts of money to the builder ranging in several crores although the construction of the project was underway. The appellant(s) had started paying instalments towards the consideration of the flats concerned from 2009. Admittedly, no registered agreement/document for purchase of flats concerned has been executed in favour of the respective appellant(s). The appellant(s), however, would rely on the correspondence and including the letter of allotment issued by the builder in respect of the flats concerned — to assert that there was an agreement between them and the builder in respect of the earmarked flat(s) mentioned therein and which had statutory protection.
>
> 3. The Respondent 1 Bank gave loan facility to builder against the project only around year 2013, aggregating to principal sum of Rs 150 crores in respect of which a mortgage deed is said to have been executed between the builder and the bank.

That transaction came to the notice of the plaintiff(s) concerned only after publication of a public notice on 13-9-2016 in Economic Times, informing the general public that the said project (Orbit Heaven) has been mortgaged. The sum and substance of the assertion made by the appellant(s) is that the appellant(s) were kept in the dark whilst the mortgage transaction was executed between the builder and the bank whereunder their rights have been unilaterally jeopardised, to receive possession of the flats concerned earmarked in the allotment letter(s) and in respect of which the

appellant(s) concerned have paid substantial contribution and the aggregate contribution of all the plaintiff(s) would be much more than the loan amount given by the bank to the builder in terms of the mortgage deed for the entire project. In this backdrop, the appellant(s) concerned had asked for reliefs not only against the builder but also the parties concerned joined as the defendant(s) in the suit(s) filed by them and including Respondent 1 Bank.

xxx xxx xxx

6. Be that as it may, the notice of motion(s) in the appeals concerned came to be dismissed by the learned Single Judge of the High Court by a common judgment dated 26-7-2017 [Padma Ashok Bhatt v. Orbit Corpn. Ltd., 2017 SCC OnLine Bom 7740 :

> (2017) 6 Mah LJ 102] , on the finding that there was no bar from entertaining civil suit(s) in respect of any other matter which is outside the scope of matters required to be determined by the Debts Recovery Tribunal (for short "DRT") constituted under the 2002 Act. The learned Single Judge held that the facts of the present case clearly indicate that the cause of action and the reliefs claimed by the plaintiff(s) concerned fell within the excepted category and the bar under Section 34 read with Section 17 of the 2002 Act would be no impediment in adjudicating the subject-

matter of the suit concerned. The learned Single Judge referred to the decisions of this Court in Mardia Chemicals Ltd. v. Union of India [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] , Jagdish Singh v. Heeralal [Jagdish Singh v. Heeralal, (2014) 1 SCC 479 : (2014) 1 SCC (Civ) 444] and of the High Courts in SBI v. Jigishaben B. Sanghavi [SBI v. Jigishaben B. Sanghavi, 2010 SCC OnLine Bom 1868 : (2011) 3 Bom CR 187] and Arasa Kumar v. Nallammal [Arasa Kumar v. Nallammal, 2004 SCC OnLine Mad 250 : (2005) 2 BC 127] . However, the learned Single Judge rejected the argument/objection raised by the appellant(s) that it is impermissible to reject the plaint only against one of the defendant(s), in exercise of power under Order 7 Rule 11(d) CPC by relying on the decision of the Division Bench of the same High Court in MV "Sea Success I" v. Liverpool and London Steamship Protection and Indemnity Assn. Ltd. [MV "Sea Success I" v. Liverpool and London Steamship Protection and Indemnity Assn. Ltd., 2001 SCC OnLine Bom 1019 : AIR 2002 Bom 151] As the notice of motion moved by Respondent 1 Bank came to be dismissed, Respondent 1 carried the matter in appeal before the Division Bench by way of separate five appeals in the suit concerned. All these appeals came to be allowed by the Division Bench vide the impugned judgment [Axis Bank Ltd. v. Madhav Prasad Aggarwal, 2018 SCC OnLine Bom 3891 :

> (2018) 6 Bom CR 738] .

7. The impugned judgment has reversed the opinion of the learned Single Judge that bar under Section 34 will not come in the way of the appellant- plaintiffs. The Division Bench also opined that the averments in the plaint concerned do not spell out the case of fraud committed by the Bank and/or the builder. As a result of which, the Court held that the suit(s) instituted by the appellant(s) did not come within the excepted category predicated in Mardia Chemicals Ltd. [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] and thus the plaint against Respondent 1 Bank was not

maintainable, being barred by Section 34 of the 2002 Act.

xxx xxx xxx

10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780 :

(2018) 5 SCC (Civ) 256] is directly on the point.

In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.

11. In view of this settled legal position we may now turn to the nature of reliefs claimed by Respondent 1 in the notice of motion considered by the Single Judge in the first instance and then the Division Bench of the High Court of Bombay. The principal or singular substantive relief is to reject the plaint only qua the applicant, Respondent 1 herein. No more and no less.

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses

(a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by Respondent 1 in the notice of motion(s) which commended to the High Court, is clearly a jurisdictional error. The fact that one or some of the reliefs claimed against Respondent 1 in the suit concerned is barred by Section 34 of the 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly.

13. Resultantly, we do not wish to dilate on the argument of the appellant(s) about the inapplicability of the judgments taken into account by the Division Bench of the High Court or for that matter the correctness of the dictum in the judgment concerned on the principle underlying the exposition in Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corpn. [Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corpn., (2009) 8 SCC 646 : (2009) 3 SCC (Civ) 481] to the effect that DRT and also the appellate authority cannot pass a decree nor is it open to it to enter upon determination in respect of matters beyond the scope of power or jurisdiction endowed in terms of Section 17 of the 2002 Act. We leave all questions open to be decided afresh on its own merits in accordance with law.

14. A fortiori, these appeals must succeed on the sole ground that the principal relief claimed in the notice of motion filed by Respondent 1 to reject the plaint only qua the said respondent and which commended to the High Court, is replete with jurisdictional error. Such a relief "cannot be entertained" in exercise of power under Order 7 Rule 11(d) CPC. That power is limited to rejection of the plaint as a whole or not at all." (emphasis supplied)

35. This Court in Sree Anandhakumar Mills Ltd. v. Indian Overseas Bank & Ors. reported in (2019) 14 SCC 788, has followed the case of Jagdish Singh (supra) and declared the suit for partition as not maintainable.

36. This Court in Electrosteel Castings Ltd. v. UV Asset Reconstruction Co. Ltd. & Ors. (2022) 2 SCC 573 has held that mere allegations of fraud in the plaint will not overcome the bar under Section 34. The said case involved the assignment deed whereby Section 13(2) notice was issued to the plaintiff. The plaintiff claimed the assignment deed to be fraudulent and filed the suit.

This Court declared that the suit was barred under Section 34. The case is crucial because it hinged on the fact that there were only allegations of fraud in the plaint without anything further. The drafting was clever to overcome Section 34. Thus, if there is something more than mere allegations of fraud, certainly, the civil court's jurisdiction won't be ousted. The relevant paragraphs are:

> "9. Having considered the pleadings and averments in the suit more particularly the use of word "fraud" even considering the case on behalf of the plaintiff, we find that the allegations of "fraud" are made without any particulars and only with a view to get out of the bar under Section 34 of the SARFAESI Act and by such a clever drafting the plaintiff intends to bring the suit maintainable despite the bar under Section 34 of the SARFAESI Act, which is not permissible at all and which cannot be approved. Even otherwise it is required to be noted that it is the case on behalf of the plaintiff-appellant herein that in view of the approved resolution plan under IBC and thereafter the original corporate debtor being discharged there shall not be any debt so far as the plaintiff-appellant herein is concerned and therefore the assignment deed can be said to be "fraudulent".
>
> 10. The aforesaid cannot be accepted. By that itself the assignment deed cannot be said to be "fraudulent". In any case, whether there shall be legally enforceable debt so

far as the plaintiff-

appellant herein is concerned even after the approved resolution plan against the corporate debtor still there shall be the liability of the plaintiff and/or the assignee can be said to be secured creditor and/or whether any amount is due and payable by the plaintiff, are all questions which are required to be dealt with and considered by the DRT in the proceedings initiated under the SARFAESI Act.

11. It is required to be noted that as such in the present case the assignee has already initiated the proceedings under Section 13 which can be challenged by the plaintiff-appellant herein by way of application under Section 17 of the SARFAESI Act before the DRT on whatever the legally available defences which may be available to it. We are of the firm opinion that the suit filed by the plaintiff-appellant herein was absolutely not maintainable in view of the bar contained under Section 34 of the SARFAESI Act. Therefore, as such the courts below have not committed any error in rejecting the plaint/dismissing the suit in view of the bar under Section 34 of the SARFAESI Act." (emphasis supplied) PRECEDENT ON "IN RESPECT OF ANY MATTER ARISING UNDER SARFAESI ACT

37. This Court in Bank of Baroda v. Moti Bhai & Ors. reported in (1985) 1 SCC 475, had to consider the maintainability of the recovery suit filed by the Bank. The claim of the respondents therein was that the suit was not maintainable in light of the Rajasthan Tenancy Act, 1955. The High Court accepted the said contention. This Court took exception to the judgement of the High Court and relied on the expression "in respect of any matter arising under this Act" to conclude that the State Act did not encompass the recovery suit within it's ambit. The relevant paragraphs are:

> "3. Section 207 of the Act reads thus:
>
> "207. Suit and applications cognizable by revenue court only.—(1) All suits and applications of the nature specified in the Third Schedule shall be heard and determined by a revenue court.
>
> (2) No court other than a revenue court shall take cognizance of any such suit or application or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suit or application.

Explanation.—If the cause of action is one in respect of which relief might be granted by the revenue court, it is immaterial that the relief asked for from the civil court is greater than, or additional to, or is not identical with, that which the revenue court could have granted."

4. Section 256 of the Act, which is complementary to Section 207, reads thus:

> "256. Bar to jurisdiction of civil courts.—(1) Save as otherwise provided specifically by or under this Act, no suit or proceeding shall lie in any civil court with respect to any matter arising under this Act or the Rules made thereunder, for which a remedy by way of suit, application, appeal or otherwise is provided therein.

> (2) Save as aforesaid, no order passed by the State Government or by any revenue court or officer in exercise of the powers conferred by this Act or the Rules made thereunder shall be liable to be questioned in any civil court."

5. A combined reading of these two sections would show that the jurisdiction of civil courts is barred only in respect of suits and applications of the nature specified in the Third Schedule to the Act and in respect of suits or applications based on a cause of action in respect of which any relief could be obtained by means of a suit or application of the nature specified in the Third Schedule. The civil court has no jurisdiction to entertain a suit or proceeding with respect to any matter arising under the Act or the Rules made thereunder, provided that a remedy by way of a suit, application or appeal or otherwise is provided in the Act.

6. The legal position of the question of jurisdiction which is stated above requires examination of the various entries in the Third Schedule. That schedule is divided into three parts, the first of which is called "Suits", the second is called "Applications", and the third is called "Appeals". We are concerned in this appeal with the 35 entries which are comprehended in the first part which deals with suits. It is common ground, and the High Court has not held to the contrary, that none of the specific Entries 1 to 34 is applicable to the suit filed by the appellant Bank. The argument is that the residuary Entry 35 would govern the suit and, therefore, by reason of Sections 207 and 256 of the Act, the revenue court alone could entertain it. Entry 35 is described in the Third Schedule as a "General" entry, that is to say, not relatable to any particular section of the Act. The description of the entry as "General" is given in column 2 of the Third Schedule which is headed "Section of Act". The third column of the Schedule carries the heading "Description of suit, application or appeal". Under that column, the relevant description runs thus:

> "Any other suit in respect of any matter arising under this Act, not specifically provided for elsewhere in this Schedule." We are unable to appreciate how the suit filed by the Bank can fall under this "General" or residuary entry. The suit of the Bank to recover the loan is not in respect of any matter arising under the Act. The long title of the Act shows that it was passed in order "to consolidate and amend the law relating to tenancies of agricultural lands, and to provide for certain measures of land reforms and matters connected therewith". A loan given by a Bank to an agriculturist, which is in the nature of a commercial transaction, is outside the contemplation of the Act and can, by no stretch of imagination, be said to be in respect of any matter arising under the Act.
>
> 7. The High Court has relied on Section 43 of the Act in order to come to the conclusion that the deed of mortgage was executed by Respondent 1 in favour of the Bank in accordance with that section and, therefore, the suit for the sale of the tenancy rights of the mortgage by enforcement of the mortgage is a suit in respect of a matter arising under the Act. The High Court holds that such a suit would attract the residuary entry since the matter to which it relates has not been specifically provided for elsewhere in the Third Schedule. With respect, we are unable to accept this line of reasoning. Section 43(1) of the Act, which is relevant for this purpose,

reads thus:

> "43 Mortgage.—(1) Khatedar tenant, or, with the general or special permission of the State Government or any officer authorised by it in this behalf, a Ghair Khatedar tenant, may hypothecate or mortgage his interest in the whole or part of his holding for the purpose of obtaining loan from the State Government or a Land Development Bank as defined in the Rajasthan Cooperative Societies Act, 1965 (Act 13 of 1965) or a Cooperative Society registered or deemed to be registered as such under the said Act or any Scheduled Bank or any other institution notified by the State Government in that behalf." The High Court is in error in saying that "it cannot be disputed" that the mortgage was executed by Respondent 1 in pursuance of the provisions of Section 43. The business of the Bank, insofar as lending transactions are concerned, is not to lend moneys on mortgages but the business is to lend moneys. In this particular case, the Bank lent a certain sum of money to Respondent 1 in the usual course of its commercial business and nothing could be further removed from the contemplation of the Act than such a transaction. It is only by way of a collateral security that the Bank obtained a hypothecation bond and a deed of mortgage from Respondent 1 and a letter of guarantee from Respondents 2 and 3. The entire judgment of the High Court is based on the assumption that the mortgage was executed in pursuance of Section 43 of the Act and, therefore, residuary Entry 35 of the Third Schedule is attracted. Once it is appreciated that the mortgage executed by Respondent 1 is outside the scope of the Act, the reasoning of the High Court has to be rejected.
>
> 8. On the question of jurisdiction, one must always have regard to the substance of the matter and not to the form of the suit. If the matter is approached from that point of view, it would be clear that, primarily and basically, the suit filed by the Bank is one for recovering the amount which is due to it from the respondents on the basis of the promissory note executed by Respondent 1 and the guarantee given by Respondents 2 and 3. The relief sought by the Bank is that the suit should be decreed for the repayment of the amount due from the respondents. By the second prayer, the Bank has asked that "in case of" non-payment of the decretal amount", the mortgaged property should be brought to sale and if the proceeds of that sale are not enough to meet the decretal liability, the other movable and immovable properties of the respondents should be put to sale.

The suit is not one to enforce the mortgage and, even assuming for the purpose of argument that it is, the mortgage not having been executed under Section 43 of the Act, nor being one relatable to that section, the residuary Entry 35 can have no application. If that entry is out of way, there is no other provision in the Act which would apply to the instant suit. The civil court has, therefore, jurisdiction to entertain the suit filed by the appellant Bank." (emphasis supplied) TRIBUNAL IS A CREATURE OF STATUTE AND CANNOT GO BEYOND THE FOUR CORNERS OF THE SARFAESI ACT.

38. 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 the Parliament. Interestingly, when this Court in Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd.

reported in (2014) 6 SCC 1 held that the tenant cannot approach the DRT because the re-possession can be only in favour of the borrower, the 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.

39. This Court in M.P. Wakf Board v. Subhan Shah (Dead) by LRs.

reported in (2006) 10 SCC 696 has held that the Tribunal in absence of any power vested in it cannot transgress beyond the four corners of the Act. The relevant paragraphs are:

> "28. The Tribunal had been constituted for the purposes mentioned in Section 83 of the 1995 Act. It is an adjudicatory body. Its decision is final and binding but then it could not usurp the jurisdiction of the Board. Our attention has not been drawn to any provision which empowers the Tribunal to frame a scheme. In absence of any power vested in the Tribunal, the Tribunal ought to have left the said function to the Board which is statutorily empowered therefor. Where a statute creates different authorities to exercise their respective functions thereunder, each of such authority must exercise the functions within the four corners of the statute." (emphasis supplied)

40. The Constitution Bench in Om Prakash Gupta v. Dr. Rattan Singh & Anr. reported in 1962 SCC OnLine SC 111, has declared that the tribunals being creatures of the statute have limited jurisdiction.

The relevant paragraphs are as under:

> "4.....The Controller, therefore, must be taken to have decided that there was a relationship of landlord and tenant between the parties, and secondly, that the tenant was entitled to the protection under the Act. It is true that the Act does not in terms authorise the authorities under the Act to determine finally the question of the relationship of landlord and tenant. The Act proceeds on the assumption that there is such a relationship. If the relationship is denied, the authorities under the Act have to determine that question also, because a simple denial of the relationship cannot oust the jurisdiction of the tribunals under the Act. True, they are tribunals of limited jurisdiction, the scope of their power and authority being United by the provisions of the Statute. But a simple denial of the relationship either by the alleged landlord or

> by the alleged tenant would not have the effect of ousting the jurisdiction of the authorities under the Act, because the simplest thing in the world would be for the party interested to block the proceedings under the Act to deny the relationship of landlord and tenant. The tribunals under the Act being creatures of the Statute have limited jurisdiction and have to function within the four-corners of the Statute creating them. But within the provisions of the Act, they are tribunals of exclusive jurisdiction and their orders are final and not liable to be questioned in collateral proceedings like a separate suit or application in execution proceedings. In our opinion, therefore, there is no substance in the contention that as soon as the appellant denied the relationship of landlord and tenant, the jurisdiction of the authorities under the Act was completely ousted. Nor is there any justification in the contention that the provision of sub-section (7) of Section 15 of the Act had been erroneously applied to the appellant. ……" (emphasis supplied) MAINTAINABILITY OF THE CIVIL SUIT AGAINST THE BANK UNDER THE RDB ACT, 1993

41. In Bank of Rajasthan Ltd. v. VCK Shares & Stock Broking Services Ltd., reported in (2023) 1 SCC 1, due to conflicting decisions of Benches comprising of two Judges, a reference Bench of this Court was called upon to decide whether the jurisdiction of the civil court is ousted as regards an independent suit against the Bank in the context of the provisions of the RDB Act, 1993, and whether such a suit can be transferred to the DRT with or without consent. This Court held:

> (a)That civil court's jurisdiction to entertain the suit is not ousted.
>
> (b) In the absence of any power, the independent suit cannot be transferred to the DRT.
>
> (c)As there is no power, the transfer of the suit cannot be done with or without consent.
>
> (d) That the barring of jurisdiction of the civil court is to be strictly interpreted and not to be readily inferred.

(emphasis supplied)

42. The relevant paragraphs are:

> "39. On a plain reading of the provisions, the conclusion reached was that Section 17 of the RDB Act bars the jurisdiction of the civil court only in respect of applications filed by the Bank or financial institution. This provision did not bar the jurisdiction of the civil court to try a suit filed by the borrower. There was also an absence of provisions in the Act for transfer of suits and proceedings except Section 31, which relates to pending suit proceedings by a bank or financial institution for recovery of debt.
>
> xxx xxx xxx

Our view

43. We must note at the threshold itself that there are no restrictions on the power of a civil court under Section 9 of the Code unless expressly or impliedly excluded. This was also reiterated by a Constitution Bench of this Court in Dhulabhai v.

State of M.P. [Dhulabhai v. State of M.P., (1968) 3 SCR 662 : AIR 1969 SC 78] Thus, it is in the conspectus of the aforesaid proposition that we will have to analyse the rival contentions of the parties set out above. Our line of thinking is also influenced by a three-Judge Bench of this Court in Dwarka Prasad Agarwal v. Ramesh Chander Agarwal [Dwarka Prasad Agarwal v. Ramesh Chander Agarwal, (2003) 6 SCC 220] where it was opined that Section 9 of the Code confers jurisdiction upon civil courts to determine all disputes of civil nature unless the same is barred under statute either expressly or by necessary implication and such a bar is not to be readily inferred. The provision seeking to bar jurisdiction of a civil court requires strict interpretation and the Court would normally lean in favour of construction which would uphold the jurisdiction of the civil court.

44. Now, if we turn to the objective of the RDB Act read with the scheme and provisions thereof; it is abundantly clear that a summary remedy is provided in respect of claims of Banks and financial institutions so that recovery of the same may not be impeded by the elaborate procedure of the Code. The defendant has a right to defend the claim and file a counterclaim in view of sub-sections (6) and (8) of Section 19 of the RDB Act. In case of pending proceedings to be transferred to DRT, Section 31 of the RDB Act took care of the issue of mere transfer of the Bank's claim, albeit without transfer of the counterclaim. Thus, if the debtor desires to institute a counterclaim, that can be filed before DRT and will be tried along with the case. However, it is subject to a caveat that the Bank may move for segregation of that counterclaim to be relegated to a proceeding before a civil court under Section 19(11) of the RDB Act, though such determination is to take place along with the determination of the claim for recovery of debt.

45. We are thus of the view that there is no provision in the RDB Act by which the remedy of a civil suit by a defendant in a claim by the Bank is ousted, but it is the matter of choice of that defendant. Such a defendant may file a counterclaim, or may be desirous of availing of the more strenuous procedure established under the Code, and that is a choice which he takes with the consequences thereof.

xxx xxx xxx

47. We may also refer to the judgment of this Court in Transcore [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] opining that DRT, being a Tribunal and a creature of the statute, does not have any inherent power which inheres in civil courts such as Section 151 of the Code.

48. We now draw our attention to Chapter 5 of the RDB Act, which deals with recovery of debt determined by DRT. Section 25 of the RDB Act prescribes the mode of recovery of debts, which takes place pursuant to a certificate issued under sub-section (7) of Section 19 to recover the amount

of debt specified in the certificate by any of the modes specified therein. The expanse of the reliefs the defendant may claim in the suit proceeding can certainly go beyond mere adjustments of the amounts of claim, for which DRT would not have any power.

49. Now, turning to the issue of the power of the civil court to transfer an independent proceeding instituted by a defendant to be tried alongside a recovery proceeding before DRT. There is gainsay that there is no specific power to transfer a suit to DRT. A plaint can be returned only under the provisions of Order 7 Rule 10 of the Code for the reasons specified therein. In the absence of such reasons, Section 151 of the Code cannot be utilised as a residuary power to achieve the transfer, which is really a consequence of return of the plaint when the grounds under Order 7 Rule 10 of the Code are not satisfied. The absence of any legislative power cannot give a power by implication to the civil court. We believe that it would not be appropriate to read such power to transfer a suit to a DRT under Section 151 of the Code when DRT is a creature of a statute and that statute does not provide for such eventuality.

50. We must also notice an important aspect that even where a defendant is to invoke the jurisdiction of DRT by filing a counterclaim, the Bank has a right to seek a relegation of that claim to the civil court and DRT has been empowered to do so, albeit, at the final adjudication stage. This is so in view of the summary nature of remedy provided before DRT and thus, if certain inquiries beyond the contours of what DRT does are envisaged, a civil court remedy may be considered as appropriate.

xxx xxx xxx

56. In view of the discussion aforesaid, the questions framed above are to be answered as under:

> (c) Is the jurisdiction of a civil court to try a suit filed by a borrower against a bank or financial institution ousted by virtue of the scheme of the RDB Act in relation to the proceedings for recovery of debt by a bank or financial institution?

The aforesaid question ought to be answered first and is answered in the negative.

(a) Whether an independent suit filed by a borrower against a bank or financial institution, which has applied for recovery of its loan against the plaintiff under the RDB Act, is liable to be transferred and tried along with the application under the RDB Act by DRT?

In the absence of any such power existing in the civil court, an independent suit filed by the borrower against the Bank or financial institution cannot be transferred to be tried along with application under the RDB Act, as it is a matter of option of the defendant in the claim under the RDB Act. However, the proceedings under the RDB Act will not be impeded in any manner by filing of a separate suit before the civil court.

(b) If the answer is in the affirmative, can such transfer be ordered by a court only with the consent of the plaintiff?

Since there is no such power with the civil court, there is no question of transfer of the suit whether by consent or otherwise." (emphasis supplied) HOW TO INTERPRETE THE CLAUSES WHICH BAR THE CIVIL COURT'S JURISDICTION

43. This Court in Dwarka Prasad Agarwal (Dead) by LRs. & Anr. v.

Ramesh Chander Agarwal & Ors. reported in (2003) 6 SCC 220 (3 Judge Bench) has explained that bar of jurisdiction of the civil court is not to be readily inferred. Such a provision requires strict interpretation. It was further held that this Court would lean in favour of construction which would uphold the retention of the civil court's jurisdiction. The relevant paragraphs are:

> "22. The dispute between the parties was eminently a civil dispute and not a dispute under the provisions of the Companies Act. Section 9 of the Code of Civil Procedure confers jurisdiction upon the civil courts to determine all disputes of civil nature unless the same is barred under a statute either expressly or by necessary implication. Bar of jurisdiction of a civil court is not to be readily inferred. A provision seeking to bar jurisdiction of a civil court requires strict interpretation. The court, it is well settled, would normally lean in favour of construction, which would uphold retention of jurisdiction of the civil court. The burden of proof in this behalf shall be on the party who asserts that the civil court's jurisdiction is ousted. (See Sahebgouda v. Ogeppa [(2003) 6 SCC 151 : (2003) 3 Supreme 13].) Even otherwise, the civil court's jurisdiction is not completely ousted under the Companies Act, 1956.
>
> xxx xxx xxx
>
> 25. In that view of the matter, we are of the opinion that the civil suit was maintainable. In any event, we fail to understand and rather it is strange as to how the High Court while rejecting relief to the original plaintiff (late Dwarka Prasad Agarwal), granted a similar relief in favour of the first respondent herein." (emphasis supplied)

44. Before we close this litigation, we deem it necessary to observe that Banks should remain very careful with inadequate title clearance reports, more particularly, when such reports are obtained cheaply and at times for external reasons. This concerns the protection of public money and is in the larger public interest. Therefore, it is essential for the Reserve Bank of India and other stakeholders to collaborate in developing a standardized and practical approach for preparing title search report before sanctioning loans and also for the purpose of determining liability (including potential criminal action) of the Officer who approves loan. Additionally, there should be standard guidelines for fees and costs associated with title search reports so as to ensure that they maintain high quality.

45. In such circumstances referred to above, no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order.

46. In the result, this appeal fails and is hereby dismissed. The interim order earlier granted by this Court stands vacated. The civil suits shall now proceed further expeditiously in accordance with law. All connected appeals stand disposed of in the aforesaid terms.

47. Pending application(s), if any, shall stand disposed of.

... ... J . [J . B . P A R D I W A L A] .....J. [R. MAHADEVAN] NEW DELHI;

09th JANUARY 2025.

ITEM NO.121 COURT NO.14 SECTION IV-C S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Civil Appeal No(s).1876/2016 CENTRAL BANK OF INDIA & ANR. Appellant(s) VERSUS SMT. PRABHA JAIN & ORS. Respondent(s) ([FOR DIRECTIONS]) WITH C.A. No. 1877/2016 (IV-C) C.A. No. 1896/2016 (IV-C) C.A. No. 1893/2016 (IV-C) C.A. No. 1897/2016 (IV-C) C.A. No. 1915/2016 (IV-C) C.A. No. 1907/2016 (IV-C) C.A. No. 1913/2016 (IV-C) C.A. No. 1900/2016 (IV-C) C.A. No. 1898/2016 (IV-C) C.A. No. 1916/2016 (IV-C) C.A. No. 1914/2016 (IV-C) C.A. No. 1892/2016 (IV-C) C.A. No. 1910/2016 (IV-C) C.A. No. 1899/2016 (IV-C) C.A. No. 1917/2016 (IV-C) Date : 09-01-2025 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA HON'BLE MR. JUSTICE R. MAHADEVAN For Appellant(s) Mr. O. P. Gaggar, AOR Mr. Sachindra Karn, Adv.

For Respondent(s) Mr. Umesh Babu Chaurasia, Adv.

Ms. Prity Kumari, Adv.

Ms. Manjula Chaurasia, Adv.

Mr. Maneesh Pathak, Adv.

Mr. Rameshwar Prasad Goyal, AOR Ms. Pragati Neekhra, AOR Mr. Aditya Bhanu Neekhra, Adv.

Mr. Atul Dong, Adv.

Mr. Aniket Patel, Adv.

UPON hearing the counsel the Court made the following O R D E R These civil appeals are disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(SAPNA BISHT) (POOJA SHARMA)
COURT MASTER (SH) COURT MASTER (NSH)
(Signed order is placed on the file)