

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 43 OF 2020

Maharashtra Gramin Bank .. Applicant
Through its Regional Manager, [original
Mr.Ashok s/o. Nandlal Gattani, defendant]
Age. 58 years, Occ. Service,
R/o. Latur, Dist. Latur.

Versus

Anwar s/o. Haji Ajij Kachchi, .. Respondent
Age. 46 years, Occ. Business, [original
R/o. Qureshi Manzil, Grain Market, plaintiff]
Ganjgolai, Latur, Dist. Latur.

Mr.Milind M. Patil (Beedkar), Advocate for the applicant.
Mr.G.R. Syed, Advocate for the respondent.

CORAM : N.J.JAMADAR, J.
RESERVED ON : 19.03.2021
PRONOUNCED ON : 23.04.2021

J U D G M E N T :-

01. The legality, propriety and correctness of an order passed by the learned 6th Joint Civil Judge, Junior Division, Latur, on an application [Exh.16] for rejection of plaint, under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 [the Code], whereby the learned

Civil Judge was persuaded to reject the application preferred by the petitioner/defendant-bank, is assailed in this revision application.

02. The background facts leading to this revision application can be stated, in brief, as under :-

a] The respondent/plaintiff deals in the business of rice. In the year 2013, the plaintiff had availed cash credit facility of Rs.25 lakhs from the defendant. The limit came to be enhanced by Rs.20 lakhs in the year 2014. Against the said facility, the plaintiff had mortgaged immovable property being plot No.2 in land Survey No.334/B/2 [suit plot]. The suit plot in which security interest was created was valued at Rs.1,20,00,000/-. The plaintiff committed default in payment of the instalments and the interest accrued on the amount advanced by the bank. The defendant/bank issued a notice of sale of the suit plot, in which security interest has been created, by issuing a

publication in the newspaper dated 30th August, 2018.

b] The plaintiff instituted a suit being RCS No.476 of 2018 with the assertions that the defendant/bank proceeded to invoke the provisions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [Act, 2002] in a highhanded manner and utter disregard to the offer made by the plaintiff to clear the due amount under one time settlement plan. The plaintiff averred that the defendant had not issued notice under section 13(2) of the Act, 2002, which is a peremptory requirement before initiating measures under section 13(4) of the Act, 2002. The defendant/bank prepared a false record to show that it has obtained possession of the suit plot, which was to be sold by way of auction in terms of notice of sale dated 30th August, 2018.

c] The defendant/bank preferred an application [Exh.16] for rejection of the plaint as jurisdiction of

the Civil Court to entertain and try the subject matter of the dispute is expressly barred by the provisions of Section 34 of the Act, 2002. Since special forums have been constituted to entertain the dispute arising out of measures taken under section 13(4) of the Act, 2002, the Civil Court has no jurisdiction to entertain, try and decide the suit. Thus, the plaint be rejected.

d] The plaintiff resisted the application. It was contended that the Trial Court had considered the challenge to the jurisdiction of the Court while deciding the application for interim injunction, and restrained the defendant from conducting auction sale of the suit property till decision of the suit. The appeal there against also came to be dismissed. Thus, the defendant cannot again agitate the issue of jurisdiction of the Civil Court to entertain the suit.

e] The learned Civil Judge, after appraisal of the rival contentions and submissions across the Bar, was

persuaded to reject the application for rejection of the plaint. The learned Civil Judge was of the view that the provisions of the statute in question; Act, 2002, have not been complied as the plaintiff claimed that the defendant had not issued notice under section 13(2) of the Act, 2002 and thus the jurisdiction of the Civil Court was not ousted. It was further observed that the question as to whether such notice was infact issued by the defendant was a matter for trial and, thus, the application came to be rejected. Being aggrieved by and dissatisfied with the aforesaid order, the defendant/bank has invoked the revisional jurisdiction of this Court.

03. I have heard Mr.Patil, learned Counsel for the applicant/defendant and Mr. Syed, learned Counsel for the respondent/plaintiff.

04. Mr.Patil, learned Counsel for the applicant would urge that the learned Civil Judge committed a grave error in assuming the jurisdiction over the subject

matter of the suit, which is clearly within the province of the forum constituted under the Act, 2002. It was urged that the learned Civil Judge completely misdirected herself in taking a view that since it was averred in the plaint that notice under section 13(2) of the Act, 2002 was not issued before initiating the measures under section 13(4) of the Act, 2002, section 34 of the Act, 2002 would not oust the jurisdiction of the Civil Court. A bald assertion in the plaint that notice under section 13(2) of the Act, 2002 was not issued, would not confer jurisdiction on the Civil Court, canvassed Mr. Patil. In view of the provisions contained in section 17 of the Act, 2002, the question as to whether the measures referred to in sub-section (4) of Section 13 of the Act, 2002 taken by the secured creditor are in accordance with the provisions of the Act, 2002 and the Rules made thereunder, squarely falls within the province of the authority of the Debt Recovery Tribunal and, thus, the learned Civil Judge could not have assumed the jurisdiction on the said count, submitted Mr. Patil.

05. In order to lend support to the aforesaid submissions Mr.Patil placed reliance on the judgments of the Supreme Court in the cases of Jagdish Singh Vs. Hiralal and Ors, (2014) 1 SCC 479, Authorized Officer, State Bank of India Vs. Allwyn Alloys Private Limited and Ors., (2018) 8 SCC 120 and of this Court in the case of Bank of Baroda Vs. Paramount Conductors Ltd., 2020(2) BCR 76.

06. In opposition to this, Mr. Syed, learned Counsel for the respondent/plaintiff, supported the impugned order. It was stoutly submitted that the learned Civil Judge committed no error in rejecting the application, as it is a clear case of non-compliance of the mandatory notice under section 13(2) of the Act, 2002. From the pleadings of the parties, according to Mr.Syed, it becomes evident that there is no clear contention on the part of the defendant that such notice under section 13(2) of the Act, 2002 was issued and served on the

plaintiff. Despite notice to produce, the defendant has not produced documents, which evidence the issue and service of notice. Taking the Court through provisions of the Act, 2002 and The Security Interest [Enforcement] Rules, 2002 [Rules, 2002], Mr.Syed urged with tenacity that recourse to the provisions of section 13(4) of the Act, 2002 without complying with the mandatory requirement of issue of notice to the borrower, is wholly impermissible. Thus, the Civil Court would be within its right in entertaining the suit where a clear case of non-compliance is made out, urged Mr.Syed.

07. To bolster up his submissions, Mr.Syed, placed a strong reliance on the judgment of the Supreme Court in the case of M/s. Hindon Forge Pvt. Ltd. & Anr. Vs. State of Uttar Pradesh through District Magistrate, Ghaziabad & Anr, (2019) 2 SCC 198.

08. In the case of Hindon Forge (Supra), the Supreme Court considered the question as to whether an

application under section 17(1) of the Act, 2002, at the instance of a borrower is maintainable even before physical or actual possession of secured assets is taken by banks/financial institutions in exercise of their powers under section 13(4) of the Act read with Rule 8 of Rules, 2002. The question arose as a Full Bench of the Allahabad High Court had ruled that Securitization Application under section 17 of the Act, 2002 is maintainable only when actual or physical possession is taken by secured creditor or the borrower loses actual possession of the secured assets.

09. The Supreme Court reversed the judgment of the Full Bench of the Allahabad High Court and held that the borrower/debtor can approach the Debt Recovery Tribunal under section 17 of the Act at the stage of possession notice referred to in Rule 8(1) and 8(2) of the Rules, 2002. The Supreme Court, thus, held that application under section 17 of the Act, 2002 at the instance of borrower is maintainable even before physical or actual

possession of the secured assets is taken by the secured creditor.

10. The aforesaid pronouncement, as is evident, may not govern the controversy at hand, save to the extent the learned Counsel for the respondent/plaintiff endeavoured to import its analogy to canvass the submission that in the event there is non-compliance with the provisions of the Act, 2002 and Rules, 2002, the Civil Court can entertain the suit even before the actual physical possession of the secured assets is taken over by the secured creditor.

11. It may be advantageous to have recourse to the relevant provisions of Act, 2002.

. The "security interest" is defined under clause (zf) of Section 2 of the Act, 2002 as under :-

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

(i) any mortgage, charge, hypothecation,

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

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

. Relevant part of section 13, which subsumes the provisions for enforcement of security interest, reads as under :-

"13. Enforcement of security interest - (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

Provided that -

(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(3-A) If on receipt of the notice under sub-section (2) the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17-A.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security or the debt owner.

Provided further that where the management of whole of the business or part of the business is severable the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

XXXXXXXXXXXXXXXX " .

Section 17 of the Act, 2002, which provides for remedies against measures initiated under section 13(4) of the Act, 2002, reads as under :-

"17. Application against measures to recover secured debts -
(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, 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 measures 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.

1-A. An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction -

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial

institution is maintaining account in which debt claimed is outstanding for the time being.

(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 secured assets to the borrower 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 the 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 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.

4-A. Where -

(i) any person in an application under sub-section (1), claims any tenancy or leasehold rights upon secured assets, the Debts Recovery Tribunal after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purpose of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy -

- (a) has expired or stood determined; or
- (b) is contrary to section 65-A of the Transfer of Property Act, 1882 (4 of 1882); or
- (c) is contrary to terms of mortgage; or
- (d) is created after the issuance of notice of default and demand by the bank under sub-section (2) of section 13 of the Act; and

(ii) the Debts Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debts Recovery Tribunal may pass such orders as it deems fit in accordance with the provisions of this Act.

(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 sub-section (5), any party 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 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."

. Section 34 of the Act, 2002, which bars jurisdiction of the Civil Court, reads as under :-

"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].

. Section 35 of the Act, 2002 gives overriding effect to the provisions of the said Act. It reads as under :-

"35. The provisions of this Act to override other laws - The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

12. From a conjoint reading of the aforesaid provisions it becomes evident that under section 13(1) of the Act, 2002, the security interest created in favour of unsecured creditor may be enforced without intervention of the Court or Tribunal by such creditor, in accordance with the provisions of the Act. In the event borrower fails to discharge the contractual liability, the secured creditor can initiate measures enlisted in section 13(4)

of the Act, 2002, so as to recover the loan amount. The borrower against whom the measures are initiated is not rendered remediless. Section 17 of the Act, 2002 envisages that a person aggrieved by any of the measures referred to in sub-section (4) of section 13 of the Act initiated by the secured creditor may approach the Debts Recovery Tribunal, assailing the legality, propriety and correctness thereof. The Legislature has designately used the expression 'any person' and taken care to further clarify that it includes a borrower. Thus, not only the borrower but guarantor or any other person aggrieved by the action of the secured creditor may invoke the provisions under section 17 of the Act, 2002.

13. The exclusion of the jurisdiction of the Civil Court is to be construed in the context of the statutory remedy by way of application under section 17 of the Act, 2002. Section 34 thus provides that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or

Appellate Tribunal is empowered by or under the said Act to determine.

14. The ambit of bar envisaged by section 34 of the Act is no longer res-integra. It may be apposite to refer to the Constitution Bench judgment in the case of Mardia Chemicals Vs. Union of India, 2004 (2) Mh.L.J. 1090, wherein the nature and import of bar under section 34 was expounded in the following words :-

"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."

[emphasis supplied]

15. In the case of Jagdish Singh (Supra), after adverting to the aforesaid pronouncement in the case of Mardia Chemicals (Supra), the Supreme Court reiterated the legal position in the following words :-

"22. 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 realizing 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 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. 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.

23. We are of the view that the civil court jurisdiction is completely barred, so far as the "measure" 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. xxxxxxxxxx "

[emphasis supplied]

16. In the light of aforesaid enunciations of the legal position, reverting to the facts of the case, it appears that the Trial Court was of the view that the defendant/bank has not complied with the provisions of the special Act i.e. Act, 2002 and thus the Civil Court's jurisdiction was not ousted. The Trial Court has also observed that the Civil Court has jurisdiction as statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. However, the facts of the case would reveal that there was no occasion for assuming the jurisdiction on the said count, as the plaintiff/respondent had not invoked the jurisdiction of the Civil Court on the count that the tribunal has not acted in conformity with the fundamental principles of judicial procedure.

17. The aforesaid observations evidently draw support from the pronouncement of the Supreme Court in the case of Dhulabhai Vs. State of Madhya Pradesh & Anr., AIR 1969 SC 78, wherein the principles for exclusion of the jurisdiction of the Civil Court were illuminatingly postulated. The relevant propositions read as under :-

"(1) Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(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.

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(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

18. It has to be seen whether in the facts of the instant case even on the touchstone of the principles enunciated above, the Civil Court could have assumed the jurisdiction. It is trite that a plea for rejection of plaint is a plea of demurer. It has to be decided on the basis of averments in the plaint and nothing more. The relevant averments in the plaint in the case at hand are to be found in paragraph Nos.8 and 11 of the plaint.

"8) That, on the very first time dtd. 30/08/2018 plaintiff issued a publication in the news paper i.e. Lokmat (Hallo Latur) and showed due amount of Rs.55,32,452/- on the name of plaintiff and showed the suit property has been taken into possession of the defendant and said suit property will be sale out in auction to the approximate amount of Rs.25,61,400/- and the auction purchaser who is ready to purchase the suit property, can file tender till 03/10/2018.

11) That, the defendant Bank has not issued any notice U/s.13(2) of securitization & reconstruction of financial assets and enforcement of security interest Act 2002, prior to publish the auction notice in news paper Lokmat. Therefore, the record prepared by the defendant by seating the office for showing the public auction without possession of the suit property is false one. It is learned to the plaintiff that, the defendant is about to attach the suit property without following the due procedure of law and also about the sale out in auction the suit property. On the contrary the plaintiff is ready to settled the matter to the extent of one plot its valued come of Rs.60,00,000/-. But, the defendants are inhaste to sale out the suit property in auction and turn deaf ear to the oral request of the plaintiff. Therefore, having regard to the act of the agent of the defendant, the plaintiff has filed the present suit against the defendant."

19. From the aforesaid averments, it becomes evident

that the respondent/plaintiff has challenged the action of the defendant/bank on two principal counts; one, notice under section 13(2) of the Act, 2002 has not been issued before initiating action under section 13(4) of the Act, 2002; and two, the value of the suit property is far in excess of the amount sought to be recovered and the defendant has shown reserve price of Rs.25,61,400/- only.

20. This Court is not expected to delve into the question as to whether notice under section 13(2) of the Act, 2002 was, infact, given by the defendant/bank. From the perusal of the material on record, it becomes evident that the said question is put in contest, and requires determination on facts. However, the crucial question which warrants consideration is whether an assertion in the plaint that the mandatory notice under section 13(2) of the Act, 2002 is not given by the secured creditor would, in itself, be sufficient to remove the embargo created by section 34 of the Act, 2002. For an answer,

it has to be seen as to what the special forum i.e. Debt Recovery Tribunal is to examine in an application under section 17 of the Act and what reliefs it is empowered to grant.

21. From the text of section 17(3) of the Act, it becomes evident that the Debt Recovery Tribunal is statutorily enjoined to examine as to whether 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 the Act, 2002 and Rules, 2002 [Rules 8 and 9 in particular] and if it comes to the conclusion that the measures so taken are not in conformity with the Act, 2002 and Rules, 2002, it is empowered to require restoration of the management or restoration of possession of the secured assets to the borrower or other aggrieved person and also pass an order declaring that recourse to any one or more measures referred in sub-section (4) of section 13 taken by the secured creditor is invalid and pass any such other

directions as may be necessary.

22. The aforesaid provisions, thus, make it abundantly clear that the Act, 2002 has created a forum, which is obligated to examine the legality and correctness of measures initiated under section 13(4) of the Act, 2002 on the touchstone of their conformity with the provisions of the Act, 2002 and Rules, 2002 and is further empowered to pass appropriate declaratory and consequential orders, which could be passed by the Civil Court. Non-compliance with the provisions of the Act, 2002 [special enactment] is thus a ground for grant of remedy by the Tribunal constituted under the Act. In this view of the matter, in my considered opinion, the Civil Court could not have assumed jurisdiction on the premise that the provisions of section 13(2) of the Act have not been complied with, even if such assertion of the plaintiff is taken at par.

23. If it is held that bar under section 34 of the

Act would not operate once there is an averment in the plaint to the effect that there is non-compliance with the provisions under section 13(2) of the Act, there is a danger of the provisions of the Act, 2002 being rendered otiose. The question as to whether action of the secured creditor is in conformity with the provisions of the Act is essentially a matter which the Debt Recovery Tribunal is empowered to determine under the provisions of the Act, 2002.

24. A useful reference can be made to a recent Division Bench judgment in the case of Bank of Baroda and Others Vs. Gopal Shriram Panda and Ors., decided on 25th March, 2021 in CRA No.29,30/2011 [MANU/MH/0987/2021], wherein the following question was referred for the decision of the Larger Bench.

"Whether the jurisdiction of a Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Section 17 of the Securitisation Act, in relation to enforcement of security interest of a secured creditor, is barred by Section 34 of the Securitisation Act?"

. After an elaborate analysis of the relevant

provisions and governing precedents the Division Bench answered the question in the following words:-

The answer, looking to the nature of the question, in our view, is in parts :-

(A) Jurisdiction of the Debts Recovery Tribunal, to decide all matters relating to Sections 13 and 17 of the SARFAESI Act, is exclusive.

(B) In all cases, where the title to the property, in respect of which a 'security interest', has been created in favour of the Bank or Financial Institution, stands in the name of the borrower and/or guarantor, and the borrower has availed the financial assistance, it would be only the DRT which would have exclusive jurisdiction to try such matters, to the total exclusion of the Civil Court. Any pleas as raised by the borrowers or guarantors, vis-a-vis the security interest, will have to be determined by the DRT.

(C) The jurisdiction of the Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Section 13 and 17 the SARFAESI Act, in relation to enforcement of security interest of a secured creditor, is not barred by Section 34 of the SARFAESI Act.

(D) Where civil rights of persons other than the borrower(s) or guarantor (s) are involved, the Civil Court would have jurisdiction, that too, when it is prima facie apparent from the face of record that the relief claimed, is incapable of being decided by the DRT, under Section 17 of the DRT Act, 1993 read with Sections 13 and 17 of the SARFAESI Act.

(E) Even in cases where the enforcement of a security interest involves issues as indicated in Mardia Chemicals (supra) of fraud as established within the parameters laid down in A. Ayyasamy (supra); a claim of discharge by a guarantor under Sections 133 and 135 of the Contract Act [Mardia Chemicals (supra)]; a claim of discharge by a guarantor under Sections 139, 142 and 143 of the Contract Act; Marshaling under Section 56 of the Transfer of property Act [J.P. Builders (supra)]; the Civil Court shall have jurisdiction.

(F) Examples as indicated in para 22.3, are illustrative of the Civil Court's jurisdiction.

(G) The principles laid down in para 33 (i) to (ix) of Sagar Pramod Deshmukh (supra) are in accordance with what we have discussed and held above.

30. The law is therefore well settled that where any person is aggrieved by any notice or action pursuant thereto under the provisions of SARFAESI Act, the only remedy available to such person would be to approach the DRT by filing an appropriate application under the provisions of the Act."

[emphasis supplied]

25. The upshot of the aforesaid consideration is that the learned Civil Judge was not justified in holding that the Civil Court has jurisdiction to entertain the suit and the bar under section 34 of the Act, 2002 did not come into play. As the action initiated by the defendant/applicant emanated from the provisions of the Act, 2002 and the Debt Recovery Tribunal has exclusive jurisdiction under section 17 of the Act, 2002, the plaint is liable to be rejected.

26. I am conscious of the fact that the Civil Court has granted interim injunction restraining the defendant from conducting auction sale of the suit property till decision of the suit and the said order was upheld by the learned District Judge in Misc. Civil Appeal No.82 of

2018. However, the grant of the interim protection would not preclude the Civil Court from entertaining an application for rejection of plaint as it can be entertained at any stage of the suit. This Court, in the exigency of the situation, however, deems it in the fitness of things to direct that the applicant shall not take action in terms of the notice of sale for a certain period so as to facilitate the plaintiff/respondent to institute appropriate proceedings before the appropriate forum, if so advised. Hence, the following order :-

ORDER

The Civil Revision Application stands allowed.

The impugned order passed by the Civil Judge, dated 20th February, 2019 stands quashed and set aside.

The application for rejection of plaint [Exh.16] stands allowed.

The plaint in RCS No.476 of 2018 stands rejected under the provisions of Order VII Rule 11(d) of the Code.

(30)

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The applicant/defendant bank shall not take any action on the basis of the notice of sale dated 20th August, 2018, till 31st May, 2021.

No costs.

[N . J . JAMADAR , J .]

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