Case Citation: (2026) ibclaw.in 2775 HC

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 8th OF MAY, 2026

MISC. PETITION No. 2037 of 2026

RANJEET

Versus

ANIL AND OTHERS

Appearance:

Shri Aniket Naik - Advocate for the petitioner.

ORDER

1. Present petition is preferred by the defendant under Article 227 of the Constitution of India, assailing order dated 06.03.2026 passed in RCS-A/171/2025 by Vth Additional District Judge, Dewas, District Dewas in a suit filed by the respondent No.1 for declaration and injunction, whereby the application filed by petitioner under Order VI Rule 16 of CPC was dismissed.

2. Short facts of the case are that, petitioner (hereinafter referred as defendant) and respondent No.1 (hereinafter referred as plaintiff) and other defendants are the members of Hindu Undivided family (hereinafter referred as 'HUF'). The plaintiff filed a suit for declaration and injunction in respect of the property bearing survey no. 719/1 and 720 of Village |Khatamba District Dewas and survey no.170/5/2 of Village Bilwali, District Dewas on the ground that these two properties were purchased in the name of defendant through registered sale deeds from the nucleus of the HUF and

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these properties are the not self-acquired properties of defendant no. 2. It is further pleaded in the plaint that the defendant No.2 has dedicated these properties for the benefit of HUF as the properties were purchased by HUF in the name of defendant No.2. By way of amendment, it is also incorporated in the petition that one of the property has already been auctioned by the bank in the proceedings initiated under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as 'SARFAESI ACT 2002') and the residue amount after the auction be not handed over to the defendant No.2 as the HUF is entitled to get that amount from the bank.

3. After appearance, the petitioner/defendant No.2 moved an application under Order VII Rule 11 of CPC for rejection of the plaint, which was also dismissed by the impugned order, however, the said part of the order is not under challenge in the instant petition.

4. Another application is moved on behalf of defendant No.2 under Order VI Rule 16 for striking off the pleadings in the plaint on the ground that the pleadings are self contradictory as the plaintiff on the one hand has pleaded that the properties were purchased by HUF itself from the nucleus of the HUF in the name of defendant No.2 for the benefit of family and on the other hand the plaintiff has pleaded that defendant No.2 has dedicated the properties to HUF for use of the family. It is further stated in the application that the relief, which was incorporated by way of amendment in respect of the payment of residue amount by the bank, the same cannot be sought in this suit as the civil court has no jurisdiction under Section 34 of the

SARFAESI Act in respect of the matters those may be decided by the Debts Recovery Tribunal and no injunction can be granted by any court or other authorities in respect of any action taken under the provisions of SARFAESI Act.

5. Plaintiff filed the reply of the application and opposed the application on the ground that the pleadings are not contradictory and no direction can be issued for striking off the pleadings. The plaintiff further submits that the plaintiff has not challenged the proceedings initiated by the bank under Section 13 of the SARFAESI Act, and therefore, the pleadings are not required to be struck out.

6. By the impugned order dated 06.03.2026, learned trial Court dismissed the application filed under Order VI Rule 16 on the ground that the relief sought by the defendant in the application cannot be granted as the pleadings of the plaint are neither unnecessary nor scandalous, frivolous, or vexatious. The said order of the trial Court has been challenged by the petitioner in the instant petition.

7. Learned counsel Mr. Aniket Naik appearing on behalf of petitioner submits that from bare readings of the plaint it appears that the plaintiff has taken a contradictory pleadings in the plaint and the plaintiff himself is not sure that whether the subject properties were purchased from the nucleus of the HUF in the name of defendant No.2 or defendant No.2 purchased the properties and dedicated to HUF later on. He further submits that the pleadings of the plaintiff are unnecessary, and therefore, the plaintiff should be directed to strike out the pleadings of para 5, 10 and 13 of the

plaint as well as the relief (Aa) and (Ea) of the plaint. He further submits that one of the property was mortgaged by defendant No.2 in guarantee of a loan and the proceedings were initiated by the bank for auction of the property and auction has already been taken place. He further submits that as per Section 13(7) of SARFAESI Act, the payment of the residue money to the person who is entitled thereto is an action, which is required to be taken by the secured creditor under the provisions of the act, and therefore, by virtue of Section 34, this can't be examined and entertained by the civil court. He further submits that no injunction can be issued by the Court in respect of any action taken or to be taken in pursuance to any powers conferred by or under SARFAESI Act and payment of residue amount to the mortgagor is an action, which is required to be taken under the provisions of SARFAESI Act.

8. He relied on the judgment delivered by the Supreme Court in **Central Bank of India and another vs. Prabha Jain and others, (2025) 4 SCC 38** and referred para 31 and 32 of the judgment, which reads as under:-

> **"31**. This Court in State Bank of Patiala v. Mukesh Jain [State Bank of Patiala v. Mukesh Jain, (2017) 1 SCC 53 : (2017) 1 SCC (Civ) 324] 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 : (SCC pp. 57-58, paras 16-17)
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> > "*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)
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> **32**. In Robust Hotels (P) Ltd. v. EIH Ltd. [Robust Hotels (P) Ltd. v. EIH Ltd., (2017) 1 SCC 622 : (2017) 1 SCC (Civ) 440] , this Court held that Section 34 bars the jurisdiction of the civil court for : (i) suits or proceedings relating to matters that the Debts Recovery Tribunal or the 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 the 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."

9. Learned counsel for the petitioner further submits that the pleadings are unnecessary and self contradictory and therefore, the trial Court has committed error in dismissing the application and not issuing the direction to the plaintiff to strike down the pleadings. He prays for allowing the present petition and setting aside the order passed by the trial Court on 06.03.2026.

10. The arguments advanced by the learned counsel for the petitioner are considered on the question of admission of the petition.

11. It appears that the plaintiff has filed a suit for declaration and injunction in respect of the two properties and claimed that the sale deeds of this properties were executed in favour of defendant No.2, but the payment of consideration was made from the funds of the HUF, and therefore, these properties belongs to the family and defendant No.2 is not the sole owner of the properties and this properties are not the self acquired property of the defendant No.2. The plaintiff further pleaded in the plaint that the defendant No.2 was holding the properties as the properties of the family and dedicated the properties to the family members for their use. The provisions of Order

VI Rule 16 of CPC reads as under:-

> "16. **Striking out pleadings** – Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading –
> (a) which may be unnecessary, scandalous, frivolous or vexatious, or
> (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
> (c) which is otherwise an abuse of the process of Court."

12. The court may at any stage of the proceedings pass an order to be struck out or amended any pleadings in any matter, if the court is of the opinion that the pleadings are unnecessary, scandalous, frivolous or vexatious or may tend to prejudice, embarrass or delay the fair trial of the suit, or is otherwise an abuse of the process of Court.

13. Plaintiff has to prove his own case and plaintiff is free to submit the pleadings before the court. The court can exercise the power of direction to struck down the pleadings only as per the provisions of the Order VI Rule 16 and if in the view of the court, the pleadings are not unnecessary or scandalous, or frivolous or vexatious, the court cannot issue any direction to struck out the pleadings.

14. From bare perusal of the plaint averments, it appears that at this stage, it cannot be accepted that the pleadings of the plaint in para 5, 10 and 13 are unnecessary or otherwise an abuse of the process of the court. The plaintiff has approached to the trial Court with a suit for declaration and injunction and the pleadings are completely relevant. Similarly relief sought by the plaintiff in clause (Aa) are also not contradictory and even otherwise the plaintiff may claim the reliefs in alternate also. The relief claimed by the plaintiff in clause (Ea) is not in respect of any proceedings initiated under the provisions of SARFAESI Act, 2002 and the Debts Recovery Tribunal cannot

decide the dispute in respect of the entitlement to receive the residue amount and the issue in respect of HUF. The plaintiff has not challenged the proceedings taken by the bank under the provisions of SARFAESI Act and the plaintiff is simply seeking injunction in respect of residue amount, if any, on the ground that the properties were purchased from the nucleus of the HUF, and therefore, in the opinion of this court, such type of relief is not barred under Section 34 of the SARFAESI Act, 2002.

15. The judgment delivered by the Supreme Court in the matter of Central Bank of India (**supra**) is based on the different set of facts and this issue has not been dealt with in that judgment that if some one is claiming that the property, which has already been auctioned by the bank was purchased by HUF from its nucleus in the name of mortgagor and HUF is entitled to get residue amount, whether this dispute will cover under the SARFAESI Act or not.

16. By no stretch of imagination, it can be accepted that the suits and proceedings relating to the declaration and injunction in respect of the properties of HUF, may be decided by Debts Recovery Tribunal or the Appellate Tribunal.

17. The plaintiff is not seeking any injunction against the proceedings initiated by the bank and whether such type of injunction can be issued or not, will be examined by the Court at the time of deciding the injunction application or passing the decree in the case. At this stage, the plaintiff can't be forced to delete the relief (Ea).

18. In view of this Court, the order passed by the learned Trial Court

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is just and proper and does not require any interference by this Court under the provisions of Article 227 of the Constitution of India.

19. Consequently, the admission is declined. Petition is dismissed.

(VINAY SARAF)
JUDGE

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