Item No.14
20.07.2026
Court. No. 08
Sandip/gb

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

C.O. 20 of 2026

Regional Manager, State Bank of India
VS
Smt. Supriya Das & Ors.

Mr. Milindo Paul,
Mr. Nabankur Paul,
Ms. Bedashruti Bose,
Mr. Suybham Das,
Ms. Shiksha Goyal

... for the Petitioner.

Mr. Sandip Mondal,
Mr. Amit Saha

... for the Opposite parties.

1. The petitioner being the banking authorities and defendants in Title Suit No. 256 of 2017 pending before the Learned Civil Judge (Junior Division), Jalpaiguri has filed the instant revisional application under Article 227 of the Constitution of India challenging inter alia, order No. 85 dated 01.12.2025 whereby the Learned Civil Judge (Junior Division), Jalpaiguri rejected the application under order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 filed by the petitioner.

2. The opposite parties/plaintiffs instituted the said suit praying inter alia, for a decree of perpetual injunction in respect of the suit property. It is the case of the plaintiff that the said property has been sold in their favour by the borrower namely Shri Kanchan Mondal vide deed 631 of 2006 presented for registration on 5.10.2005.

3. Learned counsel appearing for the petitioner submits as follows:

i. That the petitioner bank has already taken symbolic/physical possession of the suit property under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002(*SARFAESI* Act), 2002.

ii. That in view of Section 34 of the said Act, the jurisdiction of the Civil Court is expressly barred. No injunction shall be granted by any Court in respect of any matter which the Debt Recovery Tribunal or the Appellate Tribunal is empowered to determine.

iii. That the suit instituted by the plaintiff is not maintainable and is barred under the *SARFAESI* Act, 2002 and the Recovery of Debt and Bankruptcy Act, 1993. The only remedy available to the plaintiffs is to approach the Debt Recovery Tribunal under Section 20 of the *SARFAESI* Act, 2002.

iv. That the Learned Trial Judge has committed a jurisdictional error by not allowing the application under Order VII Rule 11, CPC at the threshold.

4. Learned advocate for the petitioner places reliance of the judgment of the Hon'ble Supreme Court in the case of **Canara Bank –Vs- P.Selathal & Ors** reported in **(2020) 13 Supreme Court Cases 143** wherein it has been observed in paragraph nos. 2.4 to 2.8 to demonstrate that as per Section 20(1) of the RDDBFI Act, the appeal is provided to Debt Recovery Appellate Tribunal against the order of DRT and therefore the civil court has no jurisdiction to entertain the suits challenging the decree passed by DRT and also paragraph no. 11 of the Division Bench of the Principal Bench of this Court in the case of **Master Rupak Saha Chowdhury –Vs- Sri Subir Saha Chowdhury & Ors** (**FMAT No. 1131 of 2010**) the extract of the relevant portion is reproduced below:

> *"It further appears to us that under Section 34 of the SARFAESI Act the jurisdiction of the Civil Court has already been curtailed and it has been specifically stated that no injunction shall be granted by any Court in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act is to determine in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Therefore, in this case, in our opinion, the jurisdiction of*

the Court is limited even the question that whether such mortgage created in favour of the bank is bad or not that also cannot be determined by the Civil Court since it is a fact that under Section 2(zf) of the SARFAESI Act the right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor which also includes any mortgage, charge, hypothecation, assignment other than those specified in Section 31."

5. In view of the above the impugned order has been passed arbitrarily in excess of jurisdiction and not sustainable in the eye of law and is liable to be set aside.

6. Mr. learned counsel appearing for the opposite parties submits as follows;

i. That the alleged suit property has been sold by the borrower Shri Kanchan Mondal in favour of the plaintiffs much prior to any action initiated by the petitioner bank.

ii.That the present suit involved disputed question of facts and law regarding the validity, genuineness and priority of the registered deed in favour of the plaintiffs vis a vis the alleged equitable mortgage claimed by the bank.

iii. The documents relied upon by both parties have an evidentiary value and required to be considered in the proper perspective after trial.

iv. That the question of jurisdiction under Section 34 of the *SARFAESI* Act, cannot be decided summarily under Order VII Rule 11 of the CPC without giving an opportunity to the plaintiff to prove their case.

v. That the Learned Trial Judge has rightly rejected the application under Order VII Rule 11 of the CPC and there is no infirmity in the impugned order warranting interference under Article 227.

7. The opposite parties place reliance upon judgment of the Hon'ble Supreme Court in the case of **Central Bank of India & Anr. –Vs- Smt. Prabha Jain and Ors** in **Civil Appeal No. 1876 of 2016** as observed in paragraph 8 and 18 which are reproduced below:-

"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.1/. She has valued this relief at Rs.20/- and paid Rs.100/-Court fee as required under section 7 (v) (a) of the Court Fees Act, 1870. The plaintiff has thus paid the proper Court fee."

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."

8. Having heard the parties and upon perusing the records made available including the impugned order and documents annexed thereto, this Court is of the view that the core issue involved herein is as to whether a Civil Suit for perpetual injunction is maintainable in respect of a secured asset, after the bank has initiated measures under Section 13 (4) of the *SARFAESI* Act, 2002.

9. It further appears that under Section 34 of the *SARFAESI* Act, 2002, the jurisdiction of the Civil court has been curtailed and it has been specifically provided that no injunction shall be granted by any court in respect of any action taken or to be taken in pursuance of any power conferred under the said act.

10. However, in the present case, it appears there are disputed questions of fact regarding the landed properties mortgaged with the banking authorities and also with respect to the respective registered deeds executed in favour of the plaintiffs by the borrwer Shri Kanchan Mondal, as well as the deeds against which equitable mortgages have been created by the banking authorities.

11. The question as to ***'which mortgage has priority'*** and whether ***'the action of the bank is in accordance with law'*** cannot be decided in summary manner under order VII Rule 11 CPC. The documents on record have evidentiary value and are required to be considered in detail.

12. In view of the conflicting claims and complex factual matrix, it would be appropriate that the Learned Trial Court reconsiders the application under order VII Rule 11 CPC after appreciating the documents on records and the judgments cited by both parties.

13. In view of the above discussions and observations, the impugned order dated 1.12.25 passed by the Learned Civil Judge (Junior Division), Jalpaiguri in Title Suit No. 256 of 2017 is hereby set aside.

14. The matter is remanded back to the Learned Civil Judge (Junior Division), Jalpaiguri to reconsider and dispose of the application Order VII Rule 11 CPC afresh, in accordance with law, after giving an opportunity to both parties.

15. Learned Civil Judge (Junior Division), Jalpaiguri shall complete the entire exercise preferably within 2 weeks from the date of communication of this order. The parties are directed not to seek undue adjournments.

16. With the above observations and directions the revisional application is disposed of without going into the merits of the case.

17. Learned Civil Judge (Junior Division), Jalpaiguri shall not be influenced by the observations made in the said order and shall be at liberty to take an independent decision to adjudicate the issues involved herein.

18. There shall be no order as to costs.

19. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Smita Das De, J.)