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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION(L) NO. 10519 OF 2026
IN
COMMERCIAL SUIT NO. 111 OF 2015

Asset Reconstruction Company (India) Ltd	]	
A company registered under the	]	
Companies Act, 1956 and a Secularization	]	
Company within the meaning of Section 3	]	
of the Secularization and Reconstruction of	]	
Financial Assets and Enforcement of	]	
Security Interest Act, 2002 having its	]	
registered office at the Ruby, 29, 10th	]	
Floor, Senapati Bapat Marg, Dadar	]	… Applicant/
(West), Mumbai – 400 028.	]	Defendant No.2

IN THE MATTER OF

IndusInd Bank	]	
A company registered under the	]	
Companies Act, 1956 having its registered	]	
office at 2401, Gen. Thimmayya Road	]	
Cantonment), Pune – 411 001 and branch	]	
office at F-Block, Ground Floor,	]	
International Trade Tower, Nehru Place,	]	
New Delhi – 110019.	]	… Plaintiff

V/s.

1. Union of India	]	
Through the Assistant	]	
Commissioner of Customs	]	
Customs House, Mumbai	]	… Defendant No.1

2.	Asset Reconstruction Company (India) Ltd. A company registered under the Companies Act, 1956 and a Securitization Company within the meaning of Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 having its registered office at the Ruby, 29, 10th Floor, Senapati Bapat Marg, Dadar(West), Mumbai – 400 028.	] … Defendant No.2
3.	Stressed Asset Stabilization Fund A trust constituted under the Indian Trust Act, 1962 and a Financial Institution within the meaning of The Recovery of Debts due to Banks and Financial Institutions Act, 1993 having its registered office at IDBI Towers, WTC Complex, Cuffee Parade, Mumbai-400 005.	]… Defendant No.3
4.	Indian Bank A bank having its registered office at 16, Rajaji Street, Chennai-600 001.	] … Defendant No.4

Mr. Dhruva Gandhi a/w. Ms. Bulbul Singh Rajpurohit i/b. M/s. Crawford and Bayley and Co., for the Plaintiff.

Mr. Bhalchandra Palav, Aniket Dighe a/w. Pinky Pawar i/b. Bhal and Co., for Defendant No.2.

Mr. Manaswini Shah i/b. Aryan Shah for Defendant No.4.

CORAM : GAURI GODSE, J.

RESERVED ON : 6th MAY 2026

PRONOUNCED ON : 18th AUGUST 2026

JUDGMENT :-

1) This application is filed by defendant no.2 for rejection of the plaint under Order VII Rule 11(d) of the Civil Procedure Code, 1908 ('**CPC'**) on the ground that the suit is barred under Section 18 of the Recovery of Debts and Bankruptcy Act, 1993 ('**RDB Act'**). Defendant No.2 has also prayed for rejection of the plaint on the ground that the suit is barred by Section 80 of CPC and that it is liable to be rejected for want of cause of action under Order VII Rule 11(a) of the CPC.

2) Learned counsel for defendant no.2 submitted that the prayers in the suit pertain to the distribution of the sale proceeds on the ground that the plaintiff has the charge on the properties attached under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI ACT'). He referred to the provisions of Section 25 of the

RDB Act to support his submissions that on receipt of a copy of the recovery certificate under sub-section (7) of Section 19 of the RDB Act, the mode of distribution of sale proceeds is provided under the said Act. Hence, the plaintiff's claim, if any, is to be adjudicated by the recovery officer while deciding the mode of recovery of debts. He submitted that the plaintiff is admittedly a second-charge holder in respect of the fixed assets of Daewoo Motors India Ltd ('**Daewoo Motors'**), which is in liquidation. Defendant nos. 2 and 3 have the first charge over the fixed assets of Daewoo Motors, the subject matter of recovery proceedings before the Debt Recovery Tribunal, in which the plaintiff is also a party. The plaintiff seeks a declaration that the MOU executed between defendant nos. 1 and 2 to determine the distribution of the assets of Daewoo Motors may be considered by the recovery officer in the proceedings before the Debt Recovery Tribunal ('**DRT**'). The plaintiff's entitlement, if any, to sale proceeds would always be subservient to that of defendant nos. 1 to 3.

3) In view of the proceedings pending before the DRT, the present suit does not disclose any meaningful cause of action for seeking a declaration. The Memorandum of Understanding ('**MOU**') sought to be challenged in this suit was executed by the Union of India and defendants nos. 2 and 3. The plaintiff is well aware that the

President of India, who has signed on behalf of the Union of India, cannot be sued in view of the immunity granted under Article 361 of the Constitution of India. The suit is filed without compliance with the mandatory notice under Section 80 of the CPC. By referring to the provisions of the RDB Act, learned counsel for defendant no.2 submitted that the plaintiff has already filed an application under the SARFAESI Act with similar prayers made in the present suit. Hence, only to bring the suit within the purview of the civil court's jurisdiction, the plaintiff has made prayers of damages in the form of compensation. Thus, the cause of action in the suit and the prayers are only a result of clever drafting. The plaint neither discloses a meaningful cause of action nor would the prayers fall within the civil court's jurisdiction in view of the bar under Section 18 of the RDB Act.

4) Learned counsel for defendant no.2 referred to the relevant pleadings in the plaint and the contents of the MOU to support his submissions that the plaintiff would not be entitled to any declaration from the civil court, as the grounds raised for challenging the MOU pertain to the plaintiff's claim made before the DRT in the application filed under the SARFAESI Act. Hence, the plaint deserves to be rejected at the threshold. He submits that the Hon'ble Apex Court held that at the stage of adjudication under Section 17 of the RDB Act

and at the stage of execution of certificate under Sections 25 and 28 of the RDB Act, exclusive jurisdiction is vested with the recovery officer to decide the issues involved for distribution of the sale proceeds. Learned counsel for defendant no.2 relied upon the decision of this court in the case of ***ICICI Bank Ltd. v. SREI Multiple Asset Investment Trust and Ors***[1]

5) He submits that Section 2(g) of the RDB Act covers several components with the widest possible amplitude. Hence, in view of Section 18 of the RDB Act, the civil court's jurisdiction is ousted to decide any issue as a debt under Section 2(g) of the RDB Act. To support his submissions, learned counsel for defendant no. 2 relied upon the Apex Court's decision in ***Allahabad Bank Vs Canara Bank***[2]. He submits that when the plaint is drafted with an illusory cause of action to wriggle out of the bar of jurisdiction and seek reliefs based on a non-existing cause of action, the plaint is liable to be rejected at the threshold. To support his submissions, learned counsel for defendant no.2 relied upon the decision of the Hon'ble Apex Court in the case of ***T. Arivandandam Vs. T.V. Satyapal***[3] and the decision in the case of ***ITC Vs. DRAT***[4]***.***

1 Interim Application(L) No. 834/2022 in COMS(L) No. 8530/2022
2 (2000) 4 SCC 406
3 (1977) 4 SCC 467
4 AIR 1998 SC 634

6) Learned counsel for defendant no. 2 further submitted that the plaintiff has no claim against defendant no. 2; hence, there is no cause of action to file a suit against defendant no.2. Hence, in view of the decision of the Division Bench of this Court in ***Sheela Ram Vidhani and Ors Vs. S.K. Trading Company and Ors***[5]***,*** the plaint as a whole is liable to be rejected on the ground of non-disclosure of cause of action against defendant no.2. Learned counsel for defendant no.2 submitted that although a written statement is already filed, the court's power under Order VII Rule 11 of the CPC can be exercised at any stage of the suit before conclusion of the trial. Hence, this application be allowed for rejection of the plaint at the threshold.

7) Learned counsel for defendant no.2 further pointed out that the documents and orders which are the subject matter of the DRT proceedings are referred to in the plaint. However, the public documents, i.e., the orders, were not produced along with the plaint. Learned counsel for defendant no.2 therefore submitted that the orders passed by the DRT and the Hon'ble Apex Court are suppressed by the plaintiff, though they are relevant for deciding the civil court's jurisdiction. Learned counsel for defendant no.2 therefore

5 2021 SCC Online Bom 864

submitted a compilation of documents to produce the orders passed by the DRT against Daewoo Motors and a recovery certificate dated 11th October 2004. The order passed by the Hon'ble Apex Court in the SLP filed by defendant no.2 is also tendered to support his submissions that, in view of an amicable settlement, the Hon'ble Apex Court directed the Central Customs Department and defendant no.2 to implement the MOU, which is challenged in this suit. Learned counsel for defendant no. 2 therefore submits that the remedy of the plaintiff is before the DRT and the challenge to the MOU cannot be independently dealt with in a civil suit in view of the bar of civil court's jurisdiction under Section 18 of the RDB Act.

8) Learned counsel for the plaintiff submitted that the main cause of action and the reason to file the suit is to invoke the plaintiff's right of subrogation, which is sought to be defeated by executing the MOU. He relied upon the relevant pleadings in the plaint to support his submissions that the impugned MOU was to settle the matters between defendant nos. 1 to 3 in respect of selling and distributing the sale proceeds of the properties belonging to Daewoo Motors. As per the terms and conditions of the MOU, defendant no.1 would receive, out of the net sale proceeds, 45% share less the amount already recovered by encashment of bank

guarantees. He submits that it was further agreed that defendant nos. 2 and 3 would receive a balance 55% and defendant no.2 would provide for the settlement of defendant no.4's claim on a pro-rata basis. He submits that the amount recovered by defendant no. 2 was by encashing bank guarantees that were issued by the plaintiff's bank. Hence, despite recovering the amount by encashing bank guarantees, defendant no.1 seeks to receive 45% share without any provision for the plaintiff's right to recover its charge.

9) Learned counsel for the plaintiff submitted that by issuing notice, the plaintiff sought to monetise the right of subrogation, since defendant no.1 has already recovered the amount by encashing bank guarantees issued by the plaintiff. Hence, the plaintiff's entitlement to enforce the right of subrogation needs to be protected. Hence, in view of the conduct of defendant nos. 1 and 2 to enter into the settlement agreement without intimating the plaintiff and cause prejudice to the plaintiff's right and contentions, the plaintiff is entitled to maintain the suit before the civil court. He therefore submits that the MOU is entered into only to defeat the subrogation right in favour of the plaintiff. Hence, the challenge to the MOU on the ground of enforcing the plaintiff's right of subrogation cannot be made subject matter of the jurisdiction of the DRT. Since the prayer made in the suit cannot

be dealt with by the DRT, the bar under Section 18 would not apply. To support his submissions, learned counsel for the plaintiff relied upon the decision of the Hon'ble Apex Court in the case of ***Bank of Baroda, through its Branch Manager Vs. Gopal Shriram Panda and Another*[6]*.*** To support his submissions to interpret the scope of the bar under the RDB Act, learned counsel for the plaintiff relied upon the decisions of the Hon'ble Apex Court in the case of ***Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corporation***[7] and in the case of ***Central Bank of India and Anr Vs. Smt. Prabha Jain and Ors*[8]*.***

10) In response to the legal principles relied upon by the learned counsel for the plaintiff, learned counsel for defendant no.2 submitted that the decisions relied upon by the learned counsel for the plaintiff pertain to the provisions of the SARFAESI Act and the bar under Section 34. The right of subrogation would be in the nature of a refund against defendant no. 1 in view of the amount received under the MOU and the distribution of the assets of Daewoo Motors. Hence, even under the ground of enforcing the right under subrogation, the bar under Section 18 of the RDB Act applies.

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6 2021 SCC Online Bom 466
7 (2009) 8 SCC 646
8 (2025) 2 S.C.R. 263

11) I have carefully perused the pleadings and documents on record. The prayer in the suit is for directing defendant no.1 to deposit a sum of Rs. 102,53,27,121/- to secure the plaintiff's claim; alternatively, order and direct defendant nos. 2 to 4 to jointly and/or severally deposit in this Court a sum of Rs. 102,53,27,121/- to secure the plaintiff's claim. The plaintiff further prayed for issuing a direction against defendant nos. 1 to 4 to jointly and severally deposit the entire sale proceeds of the immovable properties of Daewoo Motors received from defendant nos. 1 and 2. To support the prayers, the plaintiff has referred to the plaintiff's right as a creditor of Daewoo Motors in the twin capacity. Firstly, the subrogee of the debt of defendant no. 1, and secondly, the secured creditors in respect of their own debt. The right of subrogation is pleaded based on the letter dated 9th November 2002 to defendant no.1. Defendant no.2 is made a party as the MOU under challenge is executed to benefit defendant no.2. Considering that the plaintiff's right of subrogation is defeated in view of the MOU, the plaintiff has claimed damages in the form of compensation against defendant no.1. In the alternative the plaintiff has also prayed for a decree to recover amount from defendant nos. 2 to 4.

12) In view of the terms and conditions of the MOU, defendant

no. 1, i.e. the Union of India, is held to be entitled to the share, which would include the encashment of the bank guarantees issued by the plaintiff. Hence, the issue of bar of jurisdiction needs to be determined by considering the plaintiff's contentions that the MOU would not bind the plaintiff as it affects the plaintiff's rights and causes prejudice to the plaintiff. Hence, the issue of cause of action or civil court's bar of jurisdiction would raise a triable issue and cannot be decided at the threshold under Order VII Rule 11 of the CPC. Since the cause of action is clearly disclosed in the pleadings against defendant no.2, there would not arise any question of rejecting the plaint as a whole only against defendant no.2. Hence, the decision in the case of ***Sheela Ram Vidhani*** would not be of any assistance to defendant no.2.

13) In ***Allahabad Bank***, the Hon'ble Apex Court dealt with the scope of application as a secured creditor filed before the tribunal for the recovery of debt from some debtors. While deciding the scope of application under Section 19 of the RDB Act, the scope of the DRT's jurisdiction vis-à-vis the company court in winding-up petition is discussed. It is held that leave of the company court is not necessary to initiate proceedings under the RDB Act. The Hon'ble Apex Court held that under Section 17 of the RDB Act, the tribunal can decide the

application for recovery of debt with reference to the definition of Section 2(g) of the RDB Act, which includes a claim by a bank and liability incurred as well as liability under the decree. The word 'proceedings' is also explained to include the exclusion of proceedings. It is held that the tribunal's jurisdiction with regard to debt recovery adjudication is exclusive and that the civil court or the company court can go into the questions relating to the liability and the recovery, except as provided under the said Act.

14) Similarly, in the decision of ***Nahar Industrial Enterprises Ltd*** and ***Central Bank of India and Anr,*** the Hon'ble Apex Court dealt with the jurisdiction of the civil court to decide the company law rights of the party vis-à-vis the jurisdiction of the DRT to decide the claim of recovery of debt. The Hon'ble Apex Court in ***Central Bank of India*** held that the declaration on the liability of the sale deed or mortgage deed would not lie within the jurisdiction of the DRT. In the ***Nahar Industrial Enterprises Ltd*** case, the Hon'ble Apex Court held that the RDB Act was enacted for a specific purpose, but having regard to the exclusion of jurisdiction expressly provided for in Sections 17 and 18, it cannot be held that the civil court's jurisdiction is completely ousted. It is held that the liabilities and rights of the parties have not been created under the said Act, and recourse to the other provisions of

CPC will have to be resorted to for redressal of individual grievances. In ***Bank Of Baroda,*** this Court held that Section 17 of the RDB Act does not confer on the tribunal the power to entertain any claim other than one for the recovery of debts due to banks and financial institutions. It is further held that the jurisdiction of a tribunal is not plenary or omnipotent, as is the case under Section 9 of the CPC of the civil courts; hence, the exclusion of the jurisdiction of the civil court cannot be readily inferred. Hence, the jurisdiction of the civil court, which is plenary in nature, cannot be ousted unless there is an express bar.

15) In the present case, the reliefs prayed in the suit do not pertain to the actual recovery of the debt or adjudication on the plaintiff's right to recover the debt. The plaintiff has sought to enforce the right of subrogation on the ground that defendant no.1 had recovered the dues by encashing bank guarantees given by the plaintiff. Hence, the division of the sale proceeds agreed between defendant nos. 1 and 2 in the MOU defeats the plaintiff's right to subrogation. Hence, the declaration on the liability of the MOU cannot be dealt with by the DRT under Section 25 of the RDB Act. The bar of jurisdiction under Section 18 of the RDB Act would not apply, as the prayers in the suit would not fall within the scope of the proceedings

before the DRT. In view of the different facts of the present case, as discussed above, the decision of this Court in ***ICICI Bank Ltd.*** would not apply in the present case. Hence, in the light of the legal principles settled in the decisions discussed in the above paragraphs, the jurisdiction of this Court cannot be said to be barred from deciding the validity of the MOU and the prayers in this suit.

16) There are substantial pleadings disclosing a cause of action against defendant no. 2. Hence, the decisions relied upon in ***T. Arivandandam*** and ***ITC*** regarding an illusory cause of action, warranting the rejection of the plaint for want of a meaningful cause of action, would not apply in the present case. The objection raised by referring to Section 80 of the CPC and Article 361 of the Constitution of India is no ground to reject the plaint at the threshold at the behest of defendant no. 2. The pleadings in the plaint warrant a trial. The legal principles governing the rejection of a plaint under Order VII Rule 11 of the CPC are no longer *res integra*. The Hon'ble Apex Court in the decision of ***Dahiben v. Arvindbhai Kalyanji Bhanusali***[9]**,** held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to. There is no substance in the

9 (2020) 7 SCC 366

grounds of objection raised in the application for rejecting the plaint at the threshold under Order VII Rule 11 of the CPC.

17) Hence, the interim application is rejected.

(GAURI GODSE, J.)