

(2019) 11 BOM CK 0047

In the Bombay High Court

Case No : Civil Revision Application No. 173 Of 2018

Bank Of Baroda

APPELLANT

Vs

Paramount Conductors Ltd.

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Securities Interest Act, 2002 — Section 2(o), 13, 13(2), 13(4), 17, 17(3), 18, 20, 20D, 26(d), 34, 35, 37
Transfer Of Property Act, 1882 — Section 7, 54, 69, 69A
Indian Contract Act, 1872 — Section 23
Code Of Civil Procedure, 1908 — Section 9, 151, Order 7 Rule 11, Order 2 Rule 3

Citation : (2019) 11 BOM CK 0047

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : S.N. Kumar, S.N. Tapadia, Swatilina Barik

Final Decision : Disposed Of

Judgement

1. Heard.
2. Admit. This revision application is taken up for final disposal with the consent of the learned counsel for the rival parties.
3. By this revision application, the applicant-Bank (original defendant) has challenged order dated 26/04/2018 passed by the Court of 2nd Joint Civil Judge, Junior Division, Nagpur, whereby an application filed by the applicant-Bank under Order VII Rule 11 of Civil Procedure Code for rejection of plaint filed by the respondent has been rejected.
4. The respondent filed a suit for declaration and injunction bearing Regular Civil Suit No.379 of 2018, contending that the applicant-Bank had violated mandatory circulars and guidelines of the Reserve Bank of India (RBI), thereby arbitrarily rejecting restructuring and proposal of the loan taken by the respondent from the applicant-Bank and that by doing so the applicant-Bank had fraudulently

taken recourse to action under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "Securitization Act").

5. The facts leading up to filing of the aforesaid civil suit by the respondent are that on 23/10/2017, the applicant-Bank had issued a notice to the respondent under section 13(2) of the Securitization Act, stating that the outstanding loan/ credit facility and the liability thereunder came to 1176.92 lakhs along with unapplied interest from 01/10/2017 and 2% penal interest. This notice was issued by the applicant-Bank on the basis that the loan account of the respondent had become a non performing asset (NPA) as defined under section 2(o) of the Securitization Act. The respondent sent a letter dated 21/12/2017 in response to the said notice, inter alia stating that due to the difficult economic condition, as also crunch suffered by the respondent on account of demonetization, its account had indeed become an NPA as on 30/09/2017. Thereafter, by letter dated 27/12/2017, the respondent sought certain documents from the applicant-Bank in order to make a representation under the provisions of the Securitization Act. One of the documents sought by the respondent was the basis of classification of its account as NPA by the applicant-Bank. It is an admitted position that subsequently the said letter seeking documents was withdrawn by a letter dated 05/01/2018, sent by the respondent.

6. As the respondent failed to comply with the notice sent by the applicant-bank under section 13(2) of the Securitization Act, on 05/02/2018, the applicant-Bank took symbolic possession of the mortgaged assets of the respondent. It was specifically stated in the possession notice dated 05/02/2018 that the possession was taken in exercise of powers under section 13(4) of the Securitization Act.

7. Thereafter, on 07/02/2018, the RBI issued a circular granting certain relief to micro small and medium enterprises who had borrowed loans from banks, wherein certain conditions were specified for applicability of such relief. On 20/02/2018 the respondent sent an application to the applicant-bank seeking benefit of the said RBI circular and consequent restructuring of the loan. On 28/02/2018 the applicant-Bank sent a reply giving its own version and interpretation of the RBI circular, stating that the same was not applicable to the case of the respondent. At this stage, on 26/03/2018, the respondent filed the aforesaid suit for declaration and injunction against the applicant-Bank, claiming that the action sought to be undertaken by the applicant-Bank under the provisions of the Securitization Act was sustainable. The prayers made in the suit read as follows:-

"PRAYER :- It is therefore, most humbly and respectfully prayed that this Hon'ble Court may kindly be pleased to:

a) Declare that the defendant has violated mandatory circular/guideline dated 07/02/2018 issued by the Reserve Bank of India;

b) Declare that the defendant has arbitrarily rejected restructuring proposal;

c) Pass decree in favour of the plaintiff and against the defendant that defendant has fraudulently, illegally and wrongfully classified accounts of the plaintiff as non-performing assets and said classification is in violation of mandate of law laid down by Hon'ble Apex Court in a case reported in (2004) 4 SCC 311 in the matter of Mardia Chemicals Limited etc. Versus Union of India & Others etc. and Reserve Bank of India's mandate consequentially hold and that subsequent action based thereupon against plaintiff is illegal, non-est in law, void-ab-initio and not binding upon the plaintiff;

d) Pass decree in favour of the plaintiff and against the defendant that the defendant has played fraud on the plaintiff based upon fraudulent classification of accounts to garb rights, title and interest of the plaintiff over the suit property consequentially hold and that entire action of defendant in respect of the suit property is void-ab-initio, does not exist in the eyes of law, illegal and in violation of Reserve Bank of India's mandatory guidelines and not binding on the plaintiff;

e) Pass decree in favour of the plaintiff and against the defendant that action of alienation, transfer or otherwise in respect of the suit property based upon alleged classification of accounts as non-performing asset without following due process of law and consequential based upon fraudulent claim of possession is in violation of section 7 r/w section 54 of the Transfer of the Property Act and section 23 of the Indian Contract Act r/w sections 20, 20D, 37 of the Securitization and Reconstruction of Financial Assets and Enforcement of the Security Interest Act and void-ab-initio, does not exist in the eyes of law;

f) Pass decree in favour of the plaintiff and against the defendant that the defendant has not maintained statement of accounts as per law laid down by the Hon'ble Apex Court in the matter of Central Bank of India versus Ravindra reported in AIR 2001 SC 3095;

j) Pass decree of consequential relief in favour of the plaintiff and against the defendant thereby restraining defendant from proceeding further on basis of arbitrarily treating plaintiff account as non-performing asset and consequentially restraining to affect right, title, interest of the plaintiff and consequently against the defendant, their agents, servants, brokers or any person acting on their behalf from interfering, alienating, transferring or creating any third party interest or disturbing possession in respect of the suit property based upon alleged classification of accounts as non-performing asset and consequential actions thereof;

h) Grant leave of this Hon'ble Court under Order 2, Rule 3 r/w S.151 of Code of Civil Procedure to claim damages and other legally enforceable claims arising out of same cause of action;

i) Saddle costs of the suit on the defendant;

j) Grant any other consequential and further reliefs, as this Hon'ble Court deems fit in the facts and circumstances of the present case, in the interest of justice."

8. In this suit, the applicant-Bank filed an application for rejection of plaint under Order VII Rule 11 of Civil Procedure Code invoking sections 34 and 35 of the Securitization Act, claiming that the jurisdiction of the Civil Court was barred for the reliefs sought by the respondent. It was contended that the respondent could have challenged the action of the applicant-Bank only under the provisions of the Securitization Act, particularly section 17 thereof. This application was opposed on behalf of the respondent. By the impugned order dated 26/04/2018, the Court below held that the suit was maintainable and that the application was liable to be rejected, because the reliefs sought by the respondent fell within the jurisdiction of the Civil Court as laid down by the Hon'ble Supreme Court in the case of *Mardia Chemicals Limited and others v. Union of India and others*, reported in 2004 (2) Mh.L.J. 1090. It was further found by the Court below that fraud was pleaded on behalf of the respondent, which indicated that jurisdiction of the Civil Court could not be taken away and further that the secured interest credited in favour of the applicant-Bank was not registered as was mandatorily required under section 26-D of the Securitization Act and that therefore, the entire action sought to be undertaken by the applicant-Bank was stillborn, due to which the Civil Court clearly had jurisdiction to entertain the suit.

9. Mr. S.N.Kumar, the learned counsel appearing for the applicant-Bank, submitted that the approach adopted by the Court below in holding that the suit filed by the respondent was maintainable was in the teeth of the position of law laid down by the Hon'ble Supreme Court in the case of *Mardia Chemicals Limited and others v. Union of India and others* (supra) and subsequent judgments of the Hon'ble Supreme Court reiterating the said position. It was submitted that this Court and other High Courts had also followed the same position of law and it was categorically held that any measures undertaken by the bank under section 13(4) of the Securitization Act could be challenged only by way of application under section 17 of the Securitization Act and that therefore, the jurisdiction of the Civil Court was barred. It was submitted that other than using the word 'fraud', the respondent had failed to show as to how the Civil Court had jurisdiction in the present case. It was further submitted that even if the respondent was seeking relief under the aforesaid RBI circular dated 07/02/2018 and consequent restructuring of loan, the same fell within the ambit of measures taken under section 13 of the Securitization Act by the applicant-Bank and therefore, only an application under section 17 of the Securitization Act would be maintainable and that the suit was clearly barred under section 34 of the Securitization Act.

10. It was further pointed out that the Court below erred in relying on section 26-D of the said Act, because the same had not been brought into force, as was evident under the notification dated 01/09/2016 issued by the Department of Financial Services of Ministry of Finance, indicating that the provisions of mandatory registration of security interest created, before the Central Registry was not in force. Therefore, the Court below could not have relied upon the same to hold that the Civil Court had jurisdiction. It was submitted that even

otherwise, there was document on record showing that the security interest in the present case was indeed already registered and that therefore, there was no reason for the Court below to have relied upon section 26-D of the Securitization Act to reject the application filed by the applicant-Bank. The learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of Jagdish Singh v. Heeralal and others, reported in (2014) 1 SCC 479, judgment of Division Bench of this Court in the case of State Bank of India v. Jigishaben B. Sanghavi and others, reported in 2011 (2) Mh.L.J. 342 and the judgment of the Calcutta High Court in the case of Core Ceramics Ltd.and Ors. v. Union of India and Ors. passed in Writ Petition No.256 of 2004, decided on 08/02/2008.

11. On the other hand, Ms S.A. Barik and Ms Shilpa Tapdiya, learned counsel appearing on behalf of the respondent, submitted that in order to consider the application for rejection of plaint under Order VII Rule 11 of Civil Procedure Code, only the contents of the plaint and the specific prayers made therein could be perused. It was submitted that, what was argued on behalf of the applicant-Bank before this Court was a defence, which could certainly be raised before the Court below and it could not become the basis for seeking rejection of plaint. It was submitted that the entire action undertaken by the applicant-Bank was fraudulent and that therefore, the Civil Court indeed had jurisdiction in the present case. Reliance was sought to be placed on the judgment of the Hon'ble Supreme Court in the case of Mardia Chemicals Limited and others v. Union of India and others (supra), particularly para-51 thereof, to claim that when a borrower was alleging fraud, the Civil Court certainly had jurisdiction to entertain the suit.

12. In order to examine as to whether the Court below was justified in rejecting the application filed by the applicant-Bank under Order VII Rule 11 of Civil Procedure Code, holding that the Court did have jurisdiction to entertain the suit filed by the respondent, it would be necessary to refer to the relevant provisions of the Securitization Act. Since specific submissions have been made on behalf of the applicant-Bank referring to the definition of NPA under the provisions of the Securitization Act and other such provisions, relevant portions of the said provisions are being quoted below:-

"2. Definitions.- (1) In this Act, unless the context otherwise requires,-

(o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, [doubtful or loss asset,-

(a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;

(b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank];

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).....

(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 business of the borrower including the right to transfer by way of lease, assignment or sale for realising 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 for the debt:

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.

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.]

[(1A) 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 an 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 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.]

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).

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."

13. The provisions of the Securitization Act came up for scrutiny before the Hon'ble Supreme Court in the case of Mardia Chemicals Limited and others v. Union of India and others (supra), wherein the Hon'ble Supreme Court discussed the background in which the said Act had to be enacted. During the course of analysis of provisions and the said Act, the Hon'ble Supreme Court took into consideration sections, 17, 18, 34 and 35 of the said Act.

After analyzing the said provisions, the Hon'ble Supreme Court in paras-50 and 51 held as follows:-

"50. It has also been submitted that an appeal is entertainable before the Debt 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 Debt 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 respondents that there would be no bar to approach the Civil Court. Therefore, it cannot be said 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 Debt Recovery Tribunal or 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 Debt 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 Debt 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 their 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 (supra) p.135 at p.141 and 144, a judgment of the learned single Judge where it is observed as follows in para 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 (Eng.) 213 (Z49). 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 Rashbehary Ghose Law of Mortgages, Vol.II, Fourth Edn., page 784)."

14. It is relevant that in para-59 of the said judgment, the Hon'ble Supreme Court held that proceedings under section 17 of the Securitization Act are not appellate proceedings and that such a proceeding is in fact an initial action like filing of suit before the Civil Court. The Hon'ble Supreme Court further specifically held that, as a matter of fact, the proceeding under section 17 of the Securitization Act are in lieu of a civil suit, which remedy is ordinarily available, but for the bar under section 34 of the Securitization Act.

15. The said provision regarding jurisdiction of the Civil Court being barred, was reiterated by the Hon'ble Supreme Court in the case of Jagdish Singh v. Heeralal and others (supra). It was categorically held in para 24 of the said judgment-

"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 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 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. "

16. A Division Bench of this Court in the case of *State Bank of India v. Jigishaben B. Sanghavi and others* (supra) followed the said position of law and held that the powers of the Debts Recovery Tribunal under section 17 of the Securitization Act are of width and amplitude, taking note of the fact that if the Tribunal came to the conclusion that the measures taken under section 13(4) of the Securitization Act were not in accordance with the provisions of the said Act and the Rules, the Tribunal could require restoration of management of the business of the borrower or restoration of possession of the secured asset of the borrower.

17. The Calcutta High Court in the case of *Core Ceramics Ltd. and Ors v. Union of India and Ors* (supra) went on to hold that the Tribunal under section 17 of the Securitization Act, while examining the validity of the measures taken by the secured creditor in classifying an account as an NPA could also examine whether it was or was not in accordance with RBI guidelines.

18. The aforesaid position of law laid down by the Hon'ble Supreme Court in the case of *Mardia Chemicals Limited and others v. Union of India and others* (supra) and reiterated thereafter needs to be kept in mind while examining as to whether the impugned order passed by the Court below can be sustained in the eyes of law. A perusal of the impugned order shows that the reasons why the Court below found that the suit was maintainable and that the application filed by the applicant-Bank deserved to be rejected, are found in para-12 of the impugned order. The reasons discernible from the said portion of the impugned order are firstly, that the action of the applicant-Bank fell foul of the mandatory requirement of section 26-D of the Securitization Act, as the security interest created in favour of the borrower had not been registered with the Central Registry. Secondly, it was found that there was absence of a total bar of jurisdiction of the Civil Court under the provisions of the Securitization Act,

particularly in the backdrop of the law laid down by the Hon'ble Supreme Court in the case of *Mardia Chemicals Limited and others v. Union of India and others* (supra). Thirdly, that the applicant-Bank could not be allowed to merely rely on notice dated 23/10/2017 issued by it under section 13(2) of the Securitization Act to counter the plea of 'fraud' raised on behalf of the respondent.

19. The contention pertaining to failure of the applicant-Bank to adhere to the mandatory requirement of section 26-D of the Securitization Act ought to have been rejected on the short ground that even if the same could be said to be applicable, it would still be a ground to show that action taken by the applicant-Bank under section 13(4) of the Securitization Act was not in consonance with the provisions of the Securitization Act and the Rules. This was clearly an aspect, which fell within the jurisdiction of the Debts Recovery Tribunal under section 17 of the said Act and consequently, under section 34 thereof, jurisdiction of the Civil Court would be barred. The interpretation placed by the Court below on the law laid down by the Hon'ble Supreme Court in the case of *Mardia Chemicals Limited and others v. Union of India and others* (supra) is fallacious, because having noted that the Civil Court has very limited jurisdiction, the Court below went on to hold that in the facts of the present case, on a bare reading of the plaint, it could not be said that the suit filed by the respondent was not maintainable. A proper application of the law laid down by the Hon'ble Supreme Court in the aforesaid judgment, which had been reiterated in subsequent judgments, would show that the prayers made in the suit filed on behalf of the respondent, quoted above, clearly indicate that all the reliefs sought, pertained to measures taken by the applicant-Bank under section 13(4) of the Securitization Act, which fell within the purview of section 17 of the said Act. Therefore, the said reason given by the Court below is found to be unsustainable. That leaves this Court only with the contention of "fraud" to be dealt with. A bare perusal of the plaint and the prayers would show that the word "fraud" and "fraudulent" has been used without any iota of material to support such contention. The emphasis appears to be entirely on failure of the applicant-Bank to apply the relevant RBI circular, denial of restructuring of the loan and such pleadings according to the respondent have resulted in "fraud". The said pleadings seem to have been incorporated in the plaint only with a view to somehow claim that the Civil Court would have jurisdiction. This Court is of the opinion that mere use of words like "fraud" and "fraudulent" as a mantra cannot be permitted to foist jurisdiction on the Civil Court, which is specifically barred under section 34 of the Securitization Act.

20. The learned counsel appearing for the applicant-Bank is justified in contending that what in essence is the challenge raised on behalf of the respondent is the action undertaken by the applicant-Bank under section 13(4) of the Securitization Act. It is relatable to the notice issued under section 13(2) thereof, which in turn refers to the loan account of the respondent being rendered NPA as defined under section 2(o) of the said Act. The question as to whether the relevant RBI circular would apply, thereby taking out the loan

account of the respondent from being classified as an NPA, is the question that can clearly be agitated under section 17 of the Securitization Act, which the Court below completely failed to appreciate while passing the impugned order. The Court below did not properly interpret the words used in section 34 of the Securitization Act, which states that no Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter, which the Tribunal is empowered to entertain under the provisions of the Securitization Act. In the present case, the nature of grievances sought to be raised by the respondent could have been agitated only under section 17 of the Securitization Act, which under section 17(3) of the said Act has the power to grant relief to the respondent if the respondent proves that the action undertaken by the applicant-Bank was not in consonance with the provisions of the Securitization Act and the Rules framed thereunder.

21. In view of the above, it is found that the impugned order passed by the Court below is unsustainable. Accordingly, the present revision application is allowed. The impugned order is quashed and set aside and the application filed by the applicant-Bank under Order VII Rule 11 of Civil Procedure Code for rejection of plaint is allowed.

22. Needless to say, this Court has not expressed any opinion on the merits of the challenge sought to be raised by the respondent against the action undertaken by the applicant-Bank.

23. The application is disposed of in the above terms. No order as to costs.