(2025) 09 GUJ CK 1078

In the Gujarat High Court

Case No : R/Civil Revision Application No. 433 Of 2024

Punjab National Bank & Anr — APPELLANT

Vs

Raghuvorbhai Brujlal Gondaliya & Ors — RESPONDENT

Date of Decision : 01-09-2025

Acts Referred:

Code Of Civil Procedure, 1908 — Order 7 Rule 11
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13, 13(4), 14, 17, 34

Citation : (2025) 09 GUJ CK 1078

Hon'ble Judges : Sanjeev J.Thaker, J

Bench : Single Bench

Advocate : Manish M Kaushik, Mehul M Mehta, Medha N Pandya

Final Decision : Allowed

Judgement

Sanjeev J.Thaker, J

1. Rule returnable forthwith. With the consent of learned advocates appearing for the respective parties, the matter is taken up for final hearing. Learned advocate Mr.Mehul Mehta waives service of notice of rule on behalf of respondent nos.3.

2. The present Civil Revision Application is filed challenging the order passed, below Exhibit 17, in Special Civil Suit No.5 of 2023, whereby the Trial Court has rejected the application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short "the Code") by an order dated 07.03.2023.

3. For the sake of brevity and convenience, the parties are referred to as per their original status as that in the suit.

4. The brief facts arising in the present suit are that the plaintiff filed Civil Suit No.5 of 2023, against the defendants wherein a relief has been sought that pursuant to the mortgage deed dated 13.03.2013, which is registered with Sub-Registrar Rajula under Sr. No.466, financial assistance of Rs.50 lakhs was sanctioned to the plaintiff and as the plaintiff defaulted in repayment of the loan

amount, the account of the plaintiff was classified as Non Performing Asset, in accordance with RBI guidelines on 29.07.2021 and pursuant there to, measures under Section 13(4) of the Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 (for short "SARFAESI Act") took place and possession of the secured assets has been taken on 06.02.2023, and the plaintiff filed a suit and sought for a relief that the defendants be restrained from transferring the suit property by E-Auction and in view of the settlement arrived on 03.03.2023, the defendant be directed to recover an amount of ☐ 10,000/- per month as installment.

5. The defendant appeared in the said suit and filed an application vide Exhibit 17, under the provisions of Order VII Rule 11 of the Code. It is the case of the defendant that the defendant has taken measures under Section 13(4) of the SARFAESI Act, and the physical possession of the suit property is also handed over to the defendant and by way of mortgage deed, dated 13.03.2013, the suit property was a secured asset and in view the fact that action has been taken under Section 13 of the SARFAESI Act and as the plaintiffs failed to pay the due amount, even after the plaintiff filing S.A. No.533 of 2022, before Debt Recovery Tribunal, Ahmedabad, and during the pendency of the said proceedings, the plaintiff approached for One Time Settlement proposal which was sanctioned by the defendant Bank and the plaintiff had agreed to make a payment of ☐ 45 lakhs, being the amount of One Time Settlement, as per the One Time Settlement letter, however, plaintiff failed to keep their commitment and failed to pay the outstanding amount. After considering the plaint and the documents annexed with the plaint, the Trial Court rejected the said application. Aggrieved by the said order the present Civil Application has been filed.

6. Learned advocate for the defendant has mainly argued that the measures that have been taken by the defendant are under Section 13(4) of the SARFAESI Act, which reads as under:-

"13.(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: [Substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, Section 8 (30 of 2004), for Cl.(b) (w.e.f. 11.11.2004).]

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.]

Prior to its substitution, Clause(b) read;(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;

(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."

7. Even after the proposal of One Time Settlement was approved, the plaintiff has failed and thereafter the defendant proceeded further under the SARFAESI Act and had sold the mortgaged property in the E-auction held on 20.07.2023 and a sale certificate is also issued under Rule 9(6) of the said Act and the owner of the suit property is Vinubhai Jadavbhai Kalsaria and the same is after due process of law. Moreover, the suit property is sold by the bank in E-Auction under SARFAESI Act and as the plaintiffs are challenging the action of the bank initiated under the Act, the only remedy that the plaintiff has is under Section 17 of the SARFAESI Act which 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 alongwith such fee, as may be prescribed,] [Substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 10, for "may prefer an appeal" (w.r.e.f. 21.6.2002).] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:

8. Moreover, it has also been argued that under Section 34 of SARFAESI Act bars the jurisdiction of the Civil Court Section 34 which 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)."

9. Therefore, in view of the said fact it has been argued that the mandate of Section 13 and 14 of the SARFAESI Act clearly bars filing of a suit and therefore the Trial Court could not have rejected the application and therefore the application is required to be allowed.

10. Per contra, learned advocate for the plaintiff has argued that the possession of the suit property is with the plaintiff and that the plaintiff has never handed over the suit property to the defendant moreover, the plaintiffs have always been ready and willing to abide by the One Time Settlement proposal, and it is the defendant who are not abiding with the said letter of One Time Settlement and therefore the suit that has been filed by the plaintiff is for his civil rights, with respect to the possession of the plaintiff in the suit property and for ensuring the One Time Settlement agreement between the plaintiff and the defendant and therefore it cannot be said that the plaint is barred by law.

11. Moreover, learned advocate for the plaintiff has also argued that the application that has been filed under the provisions of Order VII Rule 11 states that it is the case for the defendant that no cause of action has arisen for the plaintiff to file the present suit, but if the entire plaint is taken into consideration, the plaintiff has clearly stated that the cause of action is there, in view of the fact that the defendants are trying to dispossess the plaintiff's from their possession, without due process of law and the fact that the defendants are not complying with the One Time Settlement agreement that has been entered into between the plaintiff and the defendant and therefore it cannot be said that the plaint is barred by law and the Trial Court has rightly rejected the application under the provisions of Order VII Rule 11 of the Code.

12. Having heard learned advocate for the parties having considered the fact that it is not in dispute that the suit property was mortgaged by the plaintiff to the defendant and the same is a secured asset and the fact that the defendant bank has taken measures under Section 13(4) of the SARFAESI Act and has also sold the suit property by E-auction on 20.07.2023 after following due process of law, therefore, the entire action that the defendant has done are under the provisions of SARFAESI Act. The only remedy that the plaintiff has in view of being aggrieved by the action of the defendant bank to initiate action under Section 13 (4) of the SARFAESI Act is to file appeal under Section 17 of the SARFAESI Act, which specifically provides that as the plaintiff is aggrieved by any of the measures undertaken by the defendant under Section 13(4) of the SARFAESI Act will have to file an application under Section 17 of the SARFAESI Act.

13. Moreover, Section 34 of the SARFAESI Act clearly bars the jurisdiction of the Civil Court in respect of any matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered by under the said act to determine and therefore the fact remains that in the present proceedings, the action of the defendant which has been initiated under Section 13 (4) of the SARFAESI Act has been challenged by the plaintiff in the Civil Court will have no jurisdiction to hear and decide the said dispute, in view of the fact that the mandate of Sections 13

and 34 of the SARFAESI Act clearly bars filing of a Civil Suit. In view of the said fact, no Civil Court can exercise jurisdiction to entertain any suit or proceeding in respect of any action taken in pursuance of any power conferred by the SARFAESI Act.

14. In view of the said fact the Trial Court could not have come to the conclusion that the plaint discloses the cause of action and therefore the plaint can not be rejected. In view of the fact that the suit that has been filed by the plaintiff is against the action taken by the defendant under the provisions of Section 13(4) of the SARFAESI Act the Civil Court did not have jurisdiction to decide the same.

15. Moreover the fact remains that by E-auction the property has already been sold by the defendant to a third party and a sale certificate is also issued. In view of the same, as Sections 13 and 34 of the SARFAESI Act, mandates, clear bar of filing the suit and in view the fact that the suit that has been filed by the plaintiff clearly state that the plaintiff is challenging the action of defendant pursuant to the action taken under section 13 (4) of SARFAESI Act and the plaintiff has also sought for a relief of restraining the defendants from E-auctioning the suit property which also falls under Section 13(4) of the SARFAESI Act. Therefore, the only remedy that the plaintiff has, is, to file a application under Section 17 of the SARFAESI Act and view the fact that Section 34 clearly bars the jurisdiction of the Civil Court, the plaint that has been filed by the plaintiff is barred by law and therefore the plaint is required to be rejected.

16. In view the same. The present Civil Revision Application is allowed. Rule is made absolute. The plaint in Special Civil Suit No.5 of 2023 is required to be rejected, which is here by rejected.