

---

**(2009) 10 RAJ CK 0076**  
**In the Rajasthan High Court**

State Bank of India

APPELLANT

Vs

Sharda Spuntex Pvt. Ltd.

RESPONDENT

---

**Date of Decision :** 22-10-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 2

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 17, 2, 34

**Citation :** AIR 2010 Raj 1 : (2010) 1 BC 562 : (2009) 4 WLN 385

**Hon'ble Judges :** Gopal Krishan Vyas, J

**Bench :** Single Bench

**Final Decision :** Allowed

---

## Judgement

Gopal Krishan Vyas, J.

BY THE COURT:

1. In this revision petition, the petitioner State Bank of India, Bhilwara is challenging order dated 29.05.2009 passed by the District Judge, Bhilwara in Civil Original Suit No. 126/2009, by which, the learned District Judge dismissed the application filed by the petitioner Bank under Order VII Rule 11, C.P.C.

2. Facts of the case indicate that plaintiff-respondent filed suit for declaration and permanent injunction against the action of the Bank for declaring company's bank accounts as NPA and making debit entries. Along with the said suit, application for temporary injunction was filed. Upon service of summonses/notices issued in the said suit, petitioner Bank filed application under

3. In the application filed under Order VII Rule 11, C.P.C., it is stated by the petitioner Bank that the original suit itself is barred by provisions of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter, in short, to be called "the Act of 2002"),

so also, by Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter, in short, to be called "the Act of 1993"), therefore, learned trial Court has no jurisdiction to entertain the suit but the trial Court rejected the said plea of the petitioner Bank and entertained the suit while rejection the application filed by the Bank under Order VII Rule 11, C.P.C.

4. Learned Counsel for the petitioner Bank vehemently contended that after enactment of the Act of 2002, the Debt Recovery Tribunal has jurisdiction to adjudicate the matter and no civil Court can entertain such disputes. Learned Counsel for the petitioner invited my attention towards an important material fact of the case that admittedly the respondent-plaintiff is a Private Ltd. company registered under the Companies Act, 1956 and pursuing business since 1994 of production and trade of yarn while availing financial facilities from the petitioner State Bank of India, Bhilwara. This fact itself is pleaded in the suit.

5. Further, it is pleaded in the suit that mostly the company is doing business of export and getting payment in foreign currency, therefore, the company has executed Forward Exchange Purchase Contract with the Bank to get "Forward Contract Limit" of 80 crore rupees; meaning thereby, admittedly, the Bank is providing financial assistance to the respondent-plaintiff company and, for the purpose of granting forward- contract limit by the Bank, plaintiff company and petitioner Bank have executed Forward Exchange Purchase Contract. Therefore, for all purposes, the respondent-plaintiff company is "borrower" of the petitioner Bank as defined in the Acts of 2002 and (g) of the Act of 1993 and, as per Section 34 of the Act of 2002 the civil suit itself is barred by law because as per Section 34 no civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter for which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under the Act of 2002 to determine and no injunction can 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 the Act of 2002 or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Further, it is pointed out that as per Section 18 of the Act of 1993 there is complete bar upon the civil Court to entertain civil suit.

6. It is further submitted that in *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, , the Hon"ble Supreme Court while upholding the validity of the provisions of the Act of 2002 held that civil Court has no jurisdiction to entertain such disputes arising out in between the Bank and borrower as per Section 34 of the Act of 2002, in which, complete bar has been imposed. Learned Counsel for the petitioner invited my attention towards para 50 of the said judgment rendered in *Mardia Chemicals"* case (supra).

7. Learned Counsel for the petitioner further argued that as per Order VII Rule 11 (d), C.P.C. at the time of deciding application the trial Court is required to take into consideration the pleadings in the plaint and plaint only and no other material can be taken into consideration and, in this case, admittedly, in para 1 and 2 of the plaint itself, it is admitted by the plaintiff company that the company

is pursuing business and, for the purpose of business, availing financial facilities from the petitioner Bank including "forward contract limit", for which, forward exchange purchase contracts were executed by the company and the Bank, therefore, if any action has been taken by the Bank with regard to declaring bank-accounts of the company as forward exchange purchase contracts" are instruments towards guarantee for the repayment of the forward contract limit of eighty crore rupees which is sanctioned by the Bank in favour of the company. Therefore, in the event any dispute arises between the plaintiff-respondent company and petitioner Bank, the Bank has all jurisdiction to take action under the Act of 2002 and if the company is aggrieved by the action of the Bank, then, the company is required to take recourse to the remedy provided u/s 17 of the Act of 2002 because there is complete bar to entertain civil suit .

8. While inviting attention of the Court towards other facts of the case, it is contended by learned Counsel for the petitioner that admittedly certain forward exchange purchase contracts mentioned in para 2 of the plaint were signed by the Bank and respondent company and, as per the company, letter dated 26.02.2008 was sent to the Bank by the company, by which, out of contracts No. 1 to 11, some of the contracts partly and some of the contracts as a whole were cancelled; but, ignoring this fact, the Bank has taken action against the company, whereby, company's bank-accounts have been declared NPA and order has been made for recovery while making the debt entries.

9. It is contended that as per provisions of the Act of 2002, the Bank has rightly taken action against the company but suit is barred against said action because there is complete bar imposed u/s 34 of the Act of 2002 and this fact was brought to the notice of the learned trial Court but the trial Court rejected the application filed by the petitioner company under Order VII Rule 11, C.P.C. and entertained the suit. Learned Counsel for the petitioner invited my attention towards the judgment of the Hon'ble Supreme Court in *Mardia Chemicals*" case (supra) and submitted that in view of the said adjudication made by the Hon'ble apex Court, civil suit is completely barred and upon perusal of the plaint itself it is apparently clear that suit is barred by law, therefore, in view of the provisions of Order VII Rule 11 (d), C.P.C. learned trial Court has committed error while entertaining the suit. Therefore, while quashing impugned order dated 29.05.2009 the application filed by the defendant-petitioner Bank under Order VII Rule 11 (d) of the CPC may be allowed and suit may be dismissed as barred by law.

10. On the other hand, learned Counsel for the respondent urged that the learned trial Court has rightly rejected the application filed under Order VII Rule 11, C.P.C. because the suit is filed by the company for alleged breach of terms and conditions of contract and it is specifically pleaded in the plaint that it is a case of breach of contract Further, it is submitted that the company is doing export business of yarn and, for the purpose of said business, respondent-plaintiff company is availing financial assistance from the petitioner Bank but

forward exchange purchase contract has nothing to do with financial assistance provided by the Bank. More so, these contracts which were executed are governed under the norms of Foreign Exchange Dealers Association of India independently and contracts No. 1 to 11, as mentioned in para 2 of the plaint, were cancelled by the company while sending letter dated 26.02.2008 and said letter was delivered to the Bank and receipt was obtained and, later on, one more letter dated 27.06.2008 was delivered to the Bank, by which, other contracts were cancelled and, in response to that, the per US dollar. Just after receiving letter dated 20.11.2008, the plaintiff company sent a protest letter to the Bank and along with that letter, letter dated 26.02.2008 was also sent; but, the Bank has completely ignored the letter dated 26.02.2008 and no reply whatsoever given by the Bank for taking action in pursuance of letter dated 26.02.2008.

11. As per learned Counsel for the respondent-plaintiff company, the Bank has illegally acted upon and taken action whereby it has declared the company's bank accounts NPA and all dispute has arisen out in between company and the Bank as a consequence of cancellation of forward exchange purchase contract and the same has nothing to do with the financial facility availed by the company as borrower of the Bank. The learned civil Court has jurisdiction to entertain civil suit filed the company for breach of terms and conditions of the forward exchange purchase contract. Therefore, the Act of 2002 is not applicable, so also, the bar imposed u/s 34 of the Act of 2002 and Section 18 of the Act of 1993 will not come in to play to restrict the civil Court's jurisdiction to entertain the suit because due to the action of the petitioner Bank the plaintiff company will suffer in its business substantially. At the time of filing the suit, it was prayed that the Bank may be restrained from declaring the bank account of the company NPA and, it was further prayed that if such action will be taken by the Bank, then, the company's reputation will suffer irreparable loss and business of the company will come to an end and the company will not be able to run its business and with that problem for employment of the employees will also arise, therefore, the Bank may be restrained from taking any action and, further, it may be declared that all the forward exchange purchase contracts shall be treated to be cancelled from the date 26.02.2008 and 27.06.2008 respectively from the said date. It is further prayed that it may be declared that the Bank has no power to make debit entries arising out of cancellation of the forward exchange purchase contracts and the Bank may be restrained from declaring the company's bank accounts as NPA. Learned Counsel for the respondent vehemently submitted that the action of the petitioner Bank is totally malafide, therefore, judgment rendered in *Mardia Chemicals*" case (supra) will not come in the way for entertaining the suit by the civil Court. So also, learned trial Court has rightly entertained the suit and granted temporary injunction in favour of the plaintiff company. Learned Counsel for the respondent company invited my attention towards following judgments:

(1) Union of India (UOI) Vs. Raman Iron Foundry,

(2) (2008) 10 SCC 99,

(3) (2008) 12 SCC 661, and

(4) Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.,

12. While inviting attention towards para 51 of the judgment rendered in Mardia Chemicals" case (supra), it is submitted by learned Counsel for the respondent company that Hon"ble Supreme Court has held in the said judgment that where the action of the secured creditor is alleged to be fraudulent or his 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.

13. Learned Counsel for the respondent company has vehemently argued that admittedly the dispute arise out of cancellation of forward exchange purchase contracts because the suit has been filed for breach of terms and conditions of the forward exchange purchase contracts which has nothing to do with the debt and, for the purpose of the said contracts the company cannot be defined as "borrower", so also, no presumption on the basis of the said forward exchange purchase contract can be drawn that respondent-plaintiff company is borrower, therefore, this revision petition may be dismissed with cost because the conduct of the petitioner Bank is not fair in view of the fact that till today interim order passed by the trial Court is not complied with. On this ground also the petitioner Bank is not entitled to be heard, therefore, this revision petition may be dismissed and impugned order passed by the trial Court may be maintained.

14. After hearing both the parties and perusing the plaint as well as application filed under Order VII Rule 11, C.P.C., first of all, the language of Order VII Rule 11 (d), C.P.C. may be seen which is as follows:

11. Rejection of plaint.-The plaint shall be rejected in the following cases:

(a) ....

(b) ....

(c) ....

(d) where the suit appears from the statement in the plaint to be barred by any law;

From perusal of the above provision, it is abundantly clear that at the time of deciding application filed under Order VII Rule 11(d), C.P.C., the pleadings of the plaint are required to be seen and if after perusal of the plaint it emerges that relief sought is barred by law by the civil Court and suit is not maintainable, then and there, upon the said application the suit is required to be dismissed.

Section 34 of the Act of 2002 and Section 18 of the Act of 1993 read 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 for which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under the Act of 2002 to determine and no injunction can 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 the Act of 2002 or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

18. Bar of Jurisdiction.- On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matter specified in Section 17.

15. Now, coming to the facts of the present case, pleadings are required to be seen. In para 1 and 2 of the plaint, it is admitted by the plaintiff-respondent company that their company is registered under the Companies Act, 1956 and is doing business of trading and manufacturing yarn and exporting the same. Further, it is admitted in the suit that for the purpose of business they are getting financial facilities from the petitioner Bank. Details have been given in para 1 (kha) of the plaint; meaning thereby, the respondent company is getting financial facilities from the petitioner Bank. In para 1 and relevant portion of para 2 of the plaint, following assertion has been made:

1?d? ;g fd oknh dEiuh dEiuht ,DV 1956 ds izko/kkukUrxZr izkbZosV fyfeVsM dEiuh ds :i esa fnukad 29-09-1994 ls budksjiksjsVsM gS ,oa ;kuZ ds Vs?fMax ,oa diM+s ds fuekZ.k esa O;olk;jr gS A djhc 16 djksM :i;s Hkwfe] Hkou IykUV ,oa e"khujh] QuhZplZ vkfn esa fuos"k gS rFkk djhc 350 Jfed ,oa deZpkjh dk;Zjr gSA

?[k? izfroknh cSad ls oknh us vius O;olk; ds dk;Zdykiks dks lqxrkiwoZd pykus ds fy, fUkEu Qkbusuf"k;y QslhyhVt ys j[kh gS%

Fund Based Limit (in Crore rupees) Cash credit (Hypof stock & Book debts) 6.25 EPC/PCFC 4.00 FBD/FBP 20.75 TOTAL FBWC 31.00 Term Loan - I 0.68 Term Loan - II 2.26 Total FB 33.94 Non fund Based Letter of Credit 31.00 Bank guarantee 0.25 Total NFB 31.25 Stand by limit 3.50 Total (FB + NFB + SLC) 68.69 izfroknh ls mDr QslhyhVht ysus ls iwoZ ;qfu;e cSad ,oa jhdks ls QkbZusfu"k;y QslhyhVht ys j[kh Fkh muls Hkh ,oa izfroknh ds lkFk Hkh dHkh oknh dEiuh dk [kkrk vkWojM?ku ugh gqvK A oknh dEiuh ds izfroknh cSad esa [kkrs gS ftuds vdkmUV uEcj fuEu gS&

(i) Cash Credit A/c 10385818376

(ii) EPC A/c 10385818795

(iii) Bill Discount A/c 30361882862

(iv) Bill Discount A/c 30425937027

(v) Term Loan A/c 10385821783

(vi) Term Loan A/c 30118740202

mDr Qkbusfu"K;y QsflfyfVt ds cKcr~ dEiuh dh vksj ls izfroknH cSad essa dksysVjy fID;qfjVht izLrqR dj j[kh gS blfy;s izfroknH cSad dk \_\_.k lEiw.kZ :i ls lqjf{kr gSA

?x? ;g fd oknH dEiuh dk iwoZ 3 o"KksZ esa dqy O;olk; fuEu izdkj ls jgk%

YEAR SALES (Rs. IN CRORES RUPEES TOTAL DOMESTIC EXPORTS 2005-2006 61.02 32.37 99.39 2006-2007 88.55 79.13 167.68 2007-2008 129.49 74.29 203.78 ??k? ;g fd izfroknH cSad dh dkWef"kZ;y czkap HkhyokM+k esa oknH dEiuh lcls cM+s vdkmUV gksYMIZ esa ,d gS oknH dEiuh dh dszfMV ofnZusl dkQH mPpre Lrj ij gS tks fd Export fctusl esa ,d vge Hkwfedk vnk djrh gS CRISIL dEiuh tks fd dszfMV okfnZusl dh jsfVax djrh gS A mlus oknH dEiuh dks bUosfLVax dsVsxjh esa BBB Lvscy dh dsVsxjh esa j[kk gS vkSj bldks ns[kdj ds gh izfroknH cSad us oknH dEiuh dks fyfeV lSD"ku dh gS ,oa Export fctusl ls lEcFU/kr O;kikjh bl dszfMV ofnZusl dks ns[kdj laO;ogkj djrs gSA

?M? ;g fd oknH dEiuh ikSyS.M ds ckbZysVjy O;kikj esa lcls cM+h bafM+; dEiuh gS bl rF; dks js[kkafdr djrs gq, vHkh fnukad 24-4-2009 dks ikSyS.M ljdkj us Hkkjr ds jk"V?ifr egksn;k dh mifLFkfr esa csLV V?sMj dk iqjLdkj iznku fd;k gSA

2- ;g fd oknH dEiuh dk vf/kdka"K O;olk; Export dk gS vkSj fons"Kks esa fodz; fd;s x;s eky dk Hkqxrku fons"kh eqnzK es gksrk gS bl dkj.k izfroknH ls oknH dEiuh }kjk QksjoMZ ,Dlpsat ijpst dkWUV?sDV~l (Forward exchange purchase contracts) fd;s tkrs jgs gS A ,rn~ gsrq 80 djksM+ :i;s dh QksjoMZ dkWUV?sDV fyfeV izfroknH cSad }kjk oknH dEiuh dks lsaD"ku (Sanction) dh gqbZ gSA

16. Upon perusal of para 2, it is abundantly clear that the company has executed forward exchange purchase contracts for the purpose of getting forward contract limit from the petitioner Bank and it has been sanctioned by the Bank; meaning thereby, for securing the financial assistance of eighty crore rupees of forward contract limit these contracts were got executed by the Bank and if any contravention is made, then, of course, the Bank can take action for securing the balance of limit. For the purpose of adjudicating the contention of learned Counsel for the respondent- plaintiff that they are not borrower, the definition of borrower provided u/s 2(f) of the Act of 2002 is required to be perused which runs as under:

2(f).-"borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

Upon perusal of the above definition, it is abundantly clear that borrower means any person who has been granted financial assistance by the Bank or financial institution or who has given any guarantee or created any mortgage or pledge as

security for the financial assistance granted by any Bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any Bank or financial institution in relation to such financial assistance.

17. Here, in this case, para 2 of the plaint itself speaks that forward exchange purchase contracts were executed for the purpose of sanction of forward contract limit; meaning thereby, as per pleading itself the case of the respondent-plaintiff company falls within the definition of borrower because the company has given guarantee to get forward contract limit by way of executing forward exchange purchase contracts. Therefore, the company falls within the definition of borrower.

18. I have carefully perused the order passed by the learned trial Court under Order VII Rule 11, C.P.C. upon the application filed by the petitioner Bank. It is required to be said that while deciding the said application although the contentions with regard to falling of respondent-plaintiff company within the definition of "borrower" was mentioned in the application, so also, it was specifically pleaded that financial assistance by way of granting forward credit limit is given by the Bank, it does fall under the definition of "debt", therefore, the Act of 2002 is applicable, in which, there is complete bar for entertaining civil suit for the action taken by the Bank for recovery of debt; but, learned trial Court has not even considered or even perused the definition of "borrower" or "debt" provided under the Act of 2002.

19. Likewise, the ground of bar upon entertaining civil suit u/s 34 is not taken into consideration by the learned trial Court. The finding given by the trial Court for dismissing the aforesaid application is totally without application of mind and without considering the relevant provisions of law. In para 9 of the order impugned, it has observed that as per contentions mentioned in the original suit and temporary injunction application the relief sought for is not covered under the Act of 2002, therefore, such finding is totally without considering the relevant provisions of law.

20. Further, as per Section 2(k), wherein the definition of financial assistance is provided, it is provided that financial assistance means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any Bank or financial institution. In the instant case, as per para 1 and 2 of the plaint, it is admitted position of the case that the company is getting financial facility from the petitioner Bank and, for the purpose of forward contract limit of eighty crore rupees, the company executed forward exchange purchase contracts; meaning thereby, financial assistance has been granted by the petitioner Bank to the respondent-plaintiff company. Therefore, the Act of 2002 is applicable.

21. Whether the debit entries made by the Bank while declaring the company's bank accounts as NPA can be defined debt or not, for the said purpose, the definition of debt provided u/s 2(ha) may be seen which provides that "debt"

shall have the meaning assigned to it in Clause (g) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 which is as follows:

2(g).-"Debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application.

22. Upon perusal of the above definition, it emerges that debt means liability which is claimed as due from any person by a bank or a financial institution during the course of any business activity undertaken by the Bank or financial institution. Here, in this case, for the purpose of getting financial assistance by way of forward contract limit, the forward exchange purchase contracts were signed as guarantee. Therefore, if any liability arises due to breach of said contracts it certainly falls within the definition of debt provided u/s 2(g) of the Act of 1993 and 2(ha) of the Act of 2002.

23. The legislature has specially enacted the Act of 2002 to regulate securitisation and re-construction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The Act enables the Bank to realise long-term assets, manage problem of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction. The Act of 2002 further provides for setting up of securitisation companies which are empowered to take possession of the secured assets of the borrowers by way of sale, lease or assignment and take over the management of the business. Validity of the provisions of the Act of 2002 is upheld by the Hon''ble Supreme Court in the case of Mardia Chemicals (supra).

24. Therefore, in view of the judgment of the Hon''ble Supreme Court and to discourage the borrowers to postpone the repayment of their dues and also for the speedy recovery of the debts, the Act was enacted and, in that Act, procedure has been provided u/s 13, so also, remedy is also provided u/s 17 of the Act of 2002 if any action is taken by the Bank. Further, proviso to Section 13(3A) was inserted vide notification dated 11.11.2004, by which, a right was given to the borrower to make representation and take objection to the Bank's action and secured creditor shall consider such representation or objection when such representation is filed and u/s 34 it is specifically provided that no civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which a Debt Recovery Tribunal or Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any civil Court.

25. In this case, the above discussion clearly shows that the company is availing financial facility, so also, as is admitted in para 2 of the plaint, for availing forward contract limit the company executed forward exchange purchase contracts which is a guarantee to the Bank for sanction of the limit, therefore, in my opinion, the respondent company very much falls within the definition of "borrower", so also, if any debit entries are made by the Bank arising out as a consequence of cancellation of forward exchange purchase contract, it falls within the definition of "debt" and the Act of 2002 and Act of 1993 are applicable in this case which is upheld by the apex Court in Merdia Chemicals" case (supra), therefore, Section 34 of the Act of 2002 is applicable and civil suit is barred.

26. Learned Counsel for the respondent company has invited my attention towards para 51 of the judgment in Merdia Chemicals" case, in which, following observations were made by the Hon"ble Supreme Court:

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 his 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 decision 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 AIR at pp. 141 and 144, a judgment of the learned Single Judge where it is observed as follows in para 22: (AIR p.143)

"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: Adam v. Scott<sup>11</sup>. 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 Ghose, Rashbehary: Law of Mortgages, Vol II, 4th Edn., p.784.)

27. For the said purpose, I have perused the plaint itself. In the plaint, while using the words ^cnfu;rh^^ and financial loss and arbitrariness and negligence of the officers of the Bank the suit has been filed. It does not fall under the said exception which is made by Hon"ble Supreme Court in para 51 of the judgment in Merdia Chemicals" case because, in the above discussion, it is abundantly clear that respondent- plaintiff company is pursuing business while availing the financial facilities from the petitioner Bank and forward exchange purchase

contract which is said to be executed for the purpose of availing forward contract limit, therefore, the respondent-plaintiff company certainly falls within the definition of "borrower" and, for the same, there is complete bar u/s 34 of the Act of 2002 and as per Order VII Rule 11(d), C.P.C. the Court is required to see the plaint and if it is found that suit is barred by law, then, it is the duty of the Court to reject the suit then and there.

28. Even in the judgments cited by the respondent company reported in Abdul Gafur and Another Vs. State of Uttarakhand and Others, and (2008) 12 SCC 661, the following adjudication has been made by the Hon"ble apex Court:

(2008) 10 SCC 97:

19. It is trite that the rule of pleadings postulates that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil court, it may be rejected in terms of Order 7 Rule 11 of the Code. Similarly, a plea of bar to jurisdiction of a civil court has to be considered having regard to the contentions raised in the plaint. For the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety and the court would not be justified in determining the question, one way or the other, only having regard to the reliefs claimed dehors the factual averments made in the plaint. (See Church of North India v. Lavajibhai Ratanjibhai (2008) 12 SCC 661)

24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained.

The crux of the adjudication made by the Hon"ble Supreme Court is that under Order VII Rule 11, C.P.C. for rejection of the plaint, Clause (d) specifically lays down that where the suit appears from the statement of the plaint to be barred by any law, the civil Court is required to dismiss the suit. Here, in the instant case, from the discussion made hereinabove and pleadings of the plaint, it is crystal clear that the Act of 2002 applies and financial facility is provided by way of granting forward contract limit, for which, forward exchange purchase contracts have been signed. Therefore, the company is borrower of the Bank and recovery proceedings, if any, is to be undertaken by the Bank against the company, it falls within the definition of debt arising out of cancellation of said contracts.

29. The judgment cited by learned Counsel for the respondent Company reported in Union of India (UOI) Vs. Raman Iron Foundry, is altogether different and is not applicable upon the present set of facts.

30. As a result, this revision petition is allowed. Order impugned dated 29.05.2009 passed by the District Judge, Bhilwara in Civil Original Suit No. 126/2009 upon the application filed by the petitioner Bank under order VII Rule 11(d) is hereby quashed and set aside. Application filed by the petitioner Bank under Order VII Rule 11, C.P.C. is allowed and the suit filed by the respondent Company is hereby ordered to be dismissed as barred by law.