

**IN THE SUPREME COURT OF INDIA  
EXTRAORDINARY CIVIL JURISDICTION**

**SPECIAL LEAVE PETITION (C) NO. 11030 /2022  
(Arising out of SLP (C) Diary No. 18629/2022)**

**IN THE MATTER OF:-**

Charu Kishor Mehta	.....Petitioner(s)
	Versus
Prakash Patel & Ors.	.....Respondent(s)

**ORDER**

1. The present SLP challenges the order dated 13.06.2022 passed by the High Court of Judicature at Bombay in First Appeal No. 531/2022, dismissing the Appeal with a cost of Rs. 5 lakhs. The petitioner is the appellant before the Bombay High Court and filed a suit before the Trial Court in which the defendant had moved application under Order VII, Rule 11 of the Code of Civil Procedure, 1973 for rejection of the plaint. The application was allowed and the suit was dismissed by Order dated 25.05.2022 by the Trial Court. This was the order challenged in the first appeal, a reference of which has already been made above.

2. All the same, before we come down to the order passed in the first appeal, we must narrate the facts of the case which have a crucial bearing on the case. The petitioner had availed credit facility from the Oriental Bank of Commerce, Mumbai and had outstanding dues running approximately to the tune of Rs. 277,00,00,000/-. The Bank ultimately moved an application before Debts Recovery Tribunal ('DRT' for short) for recovery of its dues from the present petitioner and others. This original application was allowed by the

DRT, Mumbai on 24.07.2006 and consequently recovery certificate was issued and the borrowers and guarantors were directed to repay the outstanding dues. The order dated 24.07.2006 was challenged before the Debts Recovery Appellate Tribunal ('DRAT' for short) and so were several other orders and measures which were subsequently taken by the Bank for the recovery of the amount under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short). On 30.09.2013, the Bank had assigned the debts concerning the present dispute as well as the underlying securities in favour of M/s. Phoenix A.R.C. Pvt. Ltd., which we will now refer to as the secured creditor. Thereafter, a settlement took place between the present petitioner i.e., the plaintiff and the appellant before the court below and M/s. Phoenix A.R.C. Pvt. Ltd. and a settlement deed was signed between the parties on 01.10.2013. The present petitioner was a signatory to the said settlement wherein the petitioner undertook to repay M/s. Phoenix A.R.C. Pvt. Ltd. a sum of Rs. 27,31,04,000/- on or before 30.09.2014. The petitioner also agreed to handover the possession of the secured asset being Flat No. 37 on the 18<sup>th</sup> Floor of the building known as "Usha Kiran" along with the Garage no. 17 and open parking space which shall now be referred to as "the Suit Premises" to M/s. Phoenix A.R.C. Pvt. Ltd. The petitioner also gave an undertaking not to obstruct execution in case of the recovery certificate which may be issued in case of default of consent terms.

3. All the same, the petitioner failed to repay the amount or even handover the possession of the secured asset to M/s. Phoenix A.R.C. Pvt. Ltd. Not only this, in clear breach of the consent terms and the settlement

dated 01.10.2013, attempts were being made by the petitioner in obstructing the execution of the recovery certificate by filing numerous proceedings before the authorities under the SARFAESI Act as well as before the Bombay High Court and the Supreme Court of India.

4. It would then be a long list of cases filed by the petitioner before the DRT and the District Court as well as the Bombay High Court. We may refer to some of them. Petitioner initially filed a Writ Petition No. 1766 of 2017 and 1767 of 2017 challenging the Order passed by the DRT which were handing over the possession of the suit premises. These petitions were dismissed by a Division Bench of the Bombay High Court on 05.07.2017 with cost. On 06.07.2017, the petitioner sought extension of time to vacate the premises and was granted 8 weeks of extension by the Court. The petitioner once again filed a Notice of Motion before the Division Bench of Bombay High Court seeking modification of orders dated 05.07.2017 and 06.07.2017 (referred in the above paragraph). The Notice of Motion was rejected and it was ultimately challenged before the Supreme Court. The Supreme Court by an order dated 30.08.2017, dismissed the SLP but granted time to the petitioner to vacate the premises on or before 31.10.2017. This was subject to the undertaking given by the petitioner that he would vacate the premises before 31.10.2017. Consequently, the possession of the suit premises was taken over from the petitioner and handed over to the DRT receiver on 31.10.2017. The flat was thereafter put to auction following due process. But since initially bids were not received, subsequent notices followed.

5. The Petitioner then filed two separate Applications before DRT-I, Mumbai seeking discharge of liability alleging that the liability of the petitioner was only to the extent of Rs. 5 Crores with interest. These applications were dismissed by the DRT with costs. The order of the DRT was again put to challenge in Writ Petition (Writ Petition No. 9785 of 2021) before the Bombay High Court which was then withdrawn in order to file alternate remedy of filing appeal. The Plaintiff thereafter filed an appeal before the DRT, in which prayer for waiver was rejected and since the mandatory deposit under Section 30 (A) of SARFAESI Act was not deposited, the appeal was dismissed. The challenge to the said order of dismissal was also dismissed by Division Bench of Bombay High Court with a cost of Rs. 50,000/-. The said order was again put to challenge in SLP No. 8946 of 2021 which was dismissed by the Supreme Court on 16.07.2021. Another order dated 11.02.2022 of the Bombay High Court which was against the interest of the present petitioner was challenged by the petitioner in SLP (C) Nos. 2594-2595 of 2022. These SLPs were dismissed by this court on 23.02.2022. Meanwhile, pursuant to the sale notice issued on 24.02.2022, Acrynova Pvt. Ltd. i.e., Defendant no. 4 before the Bombay High Court submitted its bid on 28.03.2022 in an e-auction which was scheduled for 31.03.2022. It was at this stage that the present petitioner filed a suit before the Trial Court on 30.03.2022 against Defendant Nos. 1 and 2 effectively for a stay of the auction and against the participation of the Defendants in the auction who were the directors in the company of Defendant No. 4, as well as Defendant No. 3 which was the housing society. Following relief was sought in the suit:

- (i) Declaration that the Defendant Nos. 1 and 2 are not entitled to participate in the auction proceedings conducted by DRT in respect of the suit premises.

- (ii) To restrain Defendant Nos. 1 and 2 from participating in the auction proceedings.
- (iii) To restrain Defendant Nos. 1 and 2 from executing any documents from transfer of the suit premises in favour of their nominee or acquire any interest or right in the suit premises.
- (iv)

6. It was here that the Defendants filed a Notice of Motion under Order VII, Rule 11 of CPC seeking rejection of the plaint in view of the specific bar contained in Section 34 of the SARFAESI Act. For a ready reference, Section 34 of the said Act reads as under:

*“34. Civil court not to have jurisdiction- No civil court shall have jurisdiction to entertain any suit or proceedings 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)”*

7. The Petitioner i.e., Plaintiff in the suit contested this application under Order VII, Rule 11 on grounds that the secured creditor i.e., M/s. Phoenix A.R.C. Pvt. Ltd. (from hereinafter referred to as secured creditor) is not a party to the suit nor any order of the DRT or of auction sale are being put to challenge in the suit. The relief sought by the Plaintiff, it was argued, is only against Defendant Nos.1 and 2 who are not parties before the DRT and Defendant No.2 is the Secretary of the society i.e., Defendant No.3 who has misused his position in collusion and connivance with the secured creditor and other Defendants and has played fraud upon the Plaintiff and the bar under Section 34 would not be attracted in a case of fraud or collusion, in term of the decision in the case of **Marida Chemicals Ltd. & Ors. Vs Union of India & Ors. reported in (2004) 4 SCC 311.**

8. The Trial Court after hearing all the concerned parties allowed the application under Order VII, Rule 11, rejected the plaint on the ground that the plaintiff had approached the DRT as well as the Deputy Registrar, Co-operative Societies, raising objection to the auction proceedings as well as to the subsequent transfer of the suit premises in favour of Defendant No.4 i.e., the successful bidder and the suit being filed before the Court is now only to nullify the effect and operation of the auction proceedings conducted by the Recovery Officers, DRT under the provisions of the SARFAESI Act. It was also held by the Trial Court that there is a clear bar under Section 34 of the SARFAESI Act, and therefore, the Civil Court has no jurisdiction to try the suit against the order allowing the application under Order VII, Rule 11, thereby rejecting the Plaintiff's case. The Petitioner filed an appeal before the Bombay High Court which was dismissed by the High Court on 13.06.2022. This is the order which is challenged now before this Court.

9. We have already narrated the long list of dates and the number of cases which have been filed by the Petitioner. We have also been apprised by Mr. Kavin Gulati, learned senior counsel, appearing for Respondent Nos. 1 and 2 herein and Mr. Huzefa Ahmadi, learned senior counsel appearing for the Respondent No.4 herein that the total number of SLPs which have been filed before this Court by the Petitioner are as follows :

- (i) SLP (Civil) No. 19599/2017 which challenged the order for handing over of possession in terms of the Consent Term - **WITHDRAWN**;
- (ii) SLP (Civil) No. 22635/2017 which was preferred for grant of time till 31<sup>st</sup> October, 2017 with regard to vacation of the suit premises - **DISMISSED**;

- (iii) SLP (Civil) No. 27326/2017 which challenged the handing over of the possession of the suit premises on the ground that the debt qua the Petitioner is only to the extent of Rs. 5 Crores and amount already paid - **DISMISSED** ;
- (iv) SLP (Civil) No. 2594-2595/2022 which challenged order dated 11<sup>th</sup> February, 2022 of the Hon'ble Bombay High Court setting aside the stay on auction – **DISMISSED**;
- (v) SLP (Crl.) No. 4177/2022 which was preferred by the Petitioner against order dated 26<sup>th</sup> April, 2022 - **DISMISSED** ;
- (vii) SLP (Crl.) No. 4361/2022 which was preferred by the Petitioner challenging the refusal of Interim Reliefs in terms of the stay on possession in Interim Application seeking Impleadment – **WITHDRAWN** and
- (viii) SLP (Civil) No. 10753/2022 preferred by the Petitioner challenging the order 25<sup>th</sup> May, 2022 in W.P. No. 6252/2022 seeking stay of Recovery Proceedings – **WITHDRAWN**.

These petitions were either dismissed or withdrawn. In some of these petitions the plea of fraud and collusion at the hands of Respondent Nos. 1, 2 and 4 with the secured creditor was raised and then the petitions were consequently withdrawn. It was again an unconditional withdrawal. Therefore, the Petitioner cannot be permitted to raise the same plea again by filing the present petition. All the same, the same plea has been taken now in the present case as well. What is most regrettable is that the Petitioner has not mentioned the filing of most of the SLPs in the present SLP before this Court.

10. In fact, in SLP (C) No. 10753 of 2022 this was dismissed as withdrawn, following order were passed:

*“1. Learned counsel appearing on behalf of the petitioner seeks leave of this Court to withdraw the special leave petition with liberty to approach the appropriate Authority so as far as the household items are concerned.*

*2. The special leave petition is dismissed as withdrawn with liberty as sought for.”*

11. In other words, the only liberty which was granted to the Petitioner was to approach the authority so that they may collect their household items from the flat. Regretfully, as we have already observed, there is no reference made by the Petitioner of the earlier SLPs filed by the Petitioner, which as we have noted either stood dismissed or were withdrawn by the Petitioner. We, therefore, have no hesitation to say the petitioner has not approached this Court with clean hands. To the contrary there has been a consistent effort to abuse the process of law as well as the process of Court.

12. So much for the conduct of the Petitioner, but before, we come down to the other relevant aspects of the matter, let us examine the pure merits of the case as submitted before this Court by the learned Counsel.

13. The learned counsel would argue that the suit was maintainable before the Trial Court and was not liable to be dismissed on an application under Order VII, Rule 11 for the simple reason that there was no bar under Section 34 of the present case as the Plaintiff/Petitioner has alleged fraud at the hands of Respondent Nos. 1, 2 and 4 who were in connivance with the secured creditor. Indeed, though Section 34 removes the jurisdiction of Civil Court for entertaining the matter which is subject of the SARFAESI Act, an exception has been carved out in the case of fraud, by the Apex Court, in the case of Mardia Chemicals Ltd. (supra), wherein reference to Section 34 of the SARFAESI Act, Apex Court held in para 50 & 51, which is relevant for our purpose is being reproduced below:

*“50.....A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an 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 Debts 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 Debts 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 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.”*

14. A mere recital of fraud, however is not enough. Once fraud is alleged by a party, like the one that has been done by the Petitioner in reply to the objection under Order VII, Rule 11 of the Civil Procedure Code, then the allegation of fraud has to be tested in terms of Order VI, Rule 4 of the Civil Procedure Code, which reads as under:

***“4. Particulars to be given where necessary.***

*In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”*

15. Apart from making a bald statement of collusion between Defendant Nos. 1, 2 & 4 and the secured creditor, i.e., M/s. Phoenix A.R.C. Pvt. Ltd. there is nothing substantial as to how and as to what precise fraud has been committed.

The only case of the Petitioner for creating a case of fraud is that the Petitioner's name was not registered as a member of the society and the reason for not registering the name of the Petitioner as a member of the society was that the society, i.e., Defendant No.3 was in collusion with the secured creditor as well as with the Defendant Nos.1, 2 and 4. The fact of the matter is that even if the name of the Petitioner would have been registered as a member of the society, it would have hardly given any benefit to the Petitioner in the present case. Being registered as a member of the society would have only meant that the petitioner is a member of the society. It would not create ownership rights on a property. Moreover, and most importantly, not only is this just a bald allegation but the necessary party against whom fraud was alleged i.e., M/s. Phoenix A.R.C. Pvt. Ltd. was never made a party in the suit proceedings before the Civil Court.

16. At this stage, it was placed on record that the suit premises have been sold in favour of Defendant No.4 i.e., Acrynova Industries Pvt. Ltd. The challenge to the auction and sale, which was made at the hands of none other than the present petitioner before the Bombay High Court and as well as this Court has been dismissed and that as far as the sale auction in favour of the Defendant No.4 is concerned, that has attained a finality. Paragraph No.4 of the order dated 25.05.2022 of the Trial Court, reads as under:

*"4. In the light of above discussion, it is clear that the suit premises is sold to defendant no.4 in auction proceeding conducted on 31/03/2022. Now the plaintiff is seeking declaration that defendants no.1 and 2 are not entitled to participate in the auction proceeding and to restrain them from participating in the auction proceeding. Similarly, he has prayed to restrain defendants no.1, 2 and 4 or their representatives from making further payments towards auction sale of the suit premises. In short, the plaintiff is trying to nullify the effect and operation of the auction proceedings regarding the suit premises conducted in the proceeding before DRT through the medium of order of this Court. If prayers of the plaintiff are considered, it would result into wiping out all legal exercise made by DRT to recover the loan amount*

*from the defaulter and the guarantors. In order to prevent such counter productive things in the form of indulgence in the functioning of DRT and in order to achieve the object of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), Section 34 has been incorporated in the SARFAESI Act. Accordingly, civil courts are barred from entertaining the proceeding in respect of any matter which is DRT or the Appellate Tribunal is empowered to determine. It is specifically provided in Section 34 of the SARFAESI Act that 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 the SARFAESI Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993."*

17. The observations of the Bombay High Court on this aspect are as under:

*"33. It is true that the Plaintiff has not challenged the validity of the auction proceedings or the orders passed by the authorities under the SARFAESI Act. The Plaintiff has also not sought any substantive relief against Defendant No.4, who is the highest bidder. However, a plain reading of the averments and the prayers in the plaint would indicate that the Plaintiff, under the guise of raising a membership dispute with the Defendant No.3 - Society, has in fact once again attempted to stall the auction proceedings conducted by the Recovery Officer under the provisions of SARFAESI Act. Though the Plaintiff has alleged fraud, the pleadings in this regard are vague, ambiguous and do not meet the requirement of Order VI Rule 4 of CPC and/or do not satisfy the test of fraud. The allegations of fraud and collusion is nothing but clever and ingenious drafting to get over the bar of Section 34 of the SARFAESI Act and to prevent the auction and the auction having been concluded, to prevent the Defendant No.4-auction purchaser from taking possession of the suit premises. The learned Judge was therefore perfectly justified in rejecting the plaint under Order VII Rule 11 of CPC."*

18. We are totally in agreement with the above observations of the two courts and the order passed by the trial court allowing the application under Order VII, Rule 11 of the CPC the Bombay High Court dated 13.06.2022 and upholding that order and dismissing the appeal of the present Petitioner. Under the facts and circumstances of the case, the Bombay High Court was absolutely justified in imposing the cost of Rs. 5 lakh, on the Petitioner. It is not only the proceedings before the Civil Court initiated by the Petitioner in the year 2022 which was on

abuse of the law, but the entire conduct of the petitioner is a clear reflection of the fact that the petitioner has been doing so repeatedly, after being a signatory to the settlement as back as 01.10.2013.

19. The Supreme Court in Dalip Singh Vs. State of Uttar Pradesh and Others, reported in (2010) 2 SCC 114 has this to say for methods adopted at the hands of litigants under similar circumstances. Paragraph nos. 1 and 2 as produced below:

*“1. For many centuries, Indian society cherished two basic values of life i.e., `Satya' (truth) and `Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.*

*2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”*

20. We may record here that we were initially persuaded in this case, to initiate contempt proceedings against the Petitioner, considering that there has been a deliberate attempt on her part in the non-disclosure of absolutely relevant facts before this Court. We are not doing so purely due to the age of the Petitioner as

she is a lady of 78 years of age. The present petition is no doubt an abuse of the process of law and has caused harm to the other parties to the litigation, some of whom may have been needlessly drawn into the litigation. We may refer here an observation given in the case of Subrata Roy Sahara Vs Union of India (2014) 8 SCC 470:

“191. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part.”

21. The petition is accordingly dismissed.
22. Pending application(s), if any, shall stand disposed of.

.....J.  
[C.T. RAVIKUMAR]

.....J.  
[SUDHANSHU DHULIA]

**NEW DELHI;  
JUNE 22, 2022**

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No. 18629/2022  
(Arising out of impugned final judgment and order dated 13-06-2022  
in FA No. 531/2022 passed by the High Court of Judicature at  
Bombay)

CHARU KISHOR MEHTA

Petitioner(s)

VERSUS

PRAKASH PATEL &amp; ORS.

Respondent(s)

(IA No. 86942/2022 - EXEMPTION FROM FILING AFFIDAVIT AND IA No.  
86939/2022-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 22-06-2022 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE C.T. RAVIKUMAR  
HON'BLE MR. JUSTICE SUDHANSHU DHULIA  
(VACATION BENCH)

For Petitioner(s) Ms. Meenakshi Arora, Sr. Adv.  
Ms. Jaikriti S. Jadeja, Adv.  
Mr. A. Karthik, AOR  
Ms. Madhushree Maitra, Adv.  
Mr. Tushar Arora, Adv.  
Mr. Arsh Khan, Adv.

For Respondent(s) Mr. Kavin Gulati, Sr. Adv.  
Mr. Mayank Bagla, Adv.  
Mr. Simil Purohit, Adv.  
Ms. Tanima Kishore, AOR  
  
Ms. Swati Bhardwaj, Adv.  
Mr. Kishor Jain, Adv.  
Mr. Abhinav Agrawal, AOR  
  
Mr. Huzefa Ahmadi, Sr. Adv.  
Mr. Rohan Sharma, Adv.  
Ms. Rishika Jain, Adv.  
Mr. C. George Thomas, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The Special Leave Petition is dismissed.  
Pending application(s) shall also stand disposed of.

(RAJNI MUKHI)  
COURT MASTER (SH)

(VIRENDER SINGH)  
BRANCH OFFICER

(Signed order containing the reasons is placed on the file)

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No. 18629/2022  
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HON'BLE MR. JUSTICE SUDHANSHU DHULIA  
(VACATION BENCH)

For Petitioner(s) Ms. Meenakshi Arora, Sr. Adv.  
Ms. Jaikriti S. Jadeja, Adv.  
Mr. A. Karthik, AOR  
Ms. Madhushree Maitra, Adv.  
Mr. Tushar Arora, Adv.  
Mr. Arsh Khan, Adv.

For Respondent(s) Mr. Kavin Gulati, Sr. Adv.  
Mr. Mayank Bagla, Adv.  
Mr. Simil Purohit, Adv.  
Ms. Tanima Kishore, AOR  
  
Ms. Swati Bhardwaj, Adv.  
Mr. Kishor Jain, Adv.  
Mr. Abhinav Agrawal, AOR  
  
Mr. Huzefa Ahmadi, Sr. Adv.  
Mr. Rohan Sharma, Adv.  
Ms. Rishika Jain, Adv.  
Mr. C. George Thomas, AOR

UPON hearing the counsel the Court made the following

O R D E R

The Special Leave Petition is dismissed.

Pending application(s) shall also stand disposed of.

Reasons to follow.

(RAJNI MUKHI)  
COURT MASTER (SH)

(VIRENDER SINGH)  
BRANCH OFFICER