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2025 SCC OnLine Del 8354

In the High Court of Delhi at New Delhi

(BEFORE ANIL KSHETARPAL AND HARISH VAIDYANATHAN SHANKAR, JJ.)

Rajiv Sareen ... Appellant;

Versus

Divyanshu Enterprises and Others ... Respondents.

RFA(OS) 7/2022, CM Appl. 7480/2023, CM Appl. 7481/2023, CM Appl. 7482/2023, CM Appl. 7483/2023, CM Appl. 57284/2023 and CM Appl. 15708/2025[§]

Decided on November 13, 2025, [Judgment reserved on: 03.11.2025]

Advocates who appeared in this case :

Mr. Manish Makhija and Ms. Simran Makhija, Advs.

Mr. O. P. Pahuja, Adv. for PNB.

The Judgment of the Court was delivered by

ANIL KSHETARPAL, J.:— Through the present Appeal, the Appellant [Plaintiff before the learned Single Judge] assails the correctness of judgment dated 02.02.2022 [hereinafter referred to as 'Impugned Judgment'] passed by the learned Single Judge in CS(OS) 83/2021, whereby the learned Single Judge allowed I.A. No. 14422/2021 filed by Respondent No. 3 [Defendant No. 3 before the learned Single Judge] under Order VII Rule 11 of the Civil Procedure Code, 1908 [hereinafter referred to as 'CPC'] and, in exercise of the powers conferred thereunder, rejected the plaint.

2. The issue which arises for consideration in the present Appeal is whether a civil suit seeking cancellation of a registered Sale Deed is maintainable before a Civil Court, despite the express bar to the jurisdiction of Civil Courts created under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as 'SARFAESI Act'].

FACTUAL MATRIX

3. In order to comprehend the issues involved in the present Appeal, the relevant facts in brief are required to be noticed.

4. The Appellant and his father purchased property bearing No. 43, First Floor, Sainik Vihar, Pitampura, New Delhi [hereinafter referred to as the 'suit property'] on 06.02.2006. Subsequently, the Appellant applied for a loan from the United Bank of India [hereinafter referred to as 'UBI'], however, there was a delay in the disbursal of the sanctioned

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amount. The Appellant and Respondent No. 2/Mr. Pankaj Sharma [Defendant No. 2 before the learned Single Judge] were on friendly terms. Being aware of the Appellant's proposed business venture, Respondent No. 2 agreed, upon request, to extend a friendly loan of Rs. 65,00,000/- (Rupees Sixty-Five Lakhs only) repayable with interest @ 2.25% per month. On 31.07.2017, a Memorandum of Understanding [hereinafter referred to as 'MoU'] was executed between the Appellant and Respondent No. 2, recording that the Appellant would hand over the original title documents of the suit property upon receipt of the loan amount. The Appellant's father was also shown as a party to the MoU, although he did not sign the same.

5. Pursuant to the execution of the MoU, a sum of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs only) was transferred by Respondent No. 2 to the Appellant on 01.08.2017, whereupon the original title documents of the suit property were handed over to Respondent No. 2. Subsequently, on 12.01.2018, the Appellant's father passed away. Thereafter, the Appellant's mother and sisters executed a Relinquishment Deed dated 18.03.2018, relinquishing their respective shares in the suit property in favour of the Appellant. Consequently, the Appellant became the absolute owner of the suit property.

6. On 02.03.2018, Respondent No. 2 transferred another sum of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs only) in favour of the Appellant. However, the Appellant was allegedly coerced by Respondent No. 2 to transfer Rs. 10,00,000/- (Rupees Ten Lakhs only) into the account of M/s Ravi Enterprises, a firm owned by the Respondent No. 2. Thereafter, on 23.03.2018, the Appellant again transferred Rs. 12,00,000/- (Rupees Twelve Lakhs only) to the said firm. According to the Appellant, despite the understanding under the MoU, Respondent No. 2 withheld the balance loan amount, and by creating pressure and threats through his associates, ensured that the Appellant effectively received only Rs. 28,00,000/- (Rupees Twenty-Eight Lakhs only). It is also the Appellant's case that Respondent No. 2 and his associates threatened to kidnap the Appellant's son and daughter if he failed to execute the Sale Deed in their favour.

7. On 03.04.2018, the Appellant was allegedly forcibly taken by one Mr. Abhishek Mishra, an associate of Respondent No. 2, to the office of the Sub-Registrar, VI-A, Pitampura, Delhi, where a Sale Deed was executed reciting a total sale consideration of Rs. 2.50 crores. In November 2019, the Appellant received an e-auction notice from Oriental Bank of Commerce (now Punjab National Bank/Respondent No. 3). Upon contacting Respondent Nos. 1 and 2, he was assured that the loan default with the Bank would be regularised. Subsequently, the Appellant learnt that Respondent Nos. 1 and 2, after depositing the original title documents of the suit property, had availed a loan facility

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from Respondent No. 3, which was later declared as a Non-Performing Asset ('NPA'), leading to initiation of proceedings under the SARFAESI Act. Meanwhile, the Appellant's loan from UBI was sanctioned, but Respondent No. 2 had become untraceable.

8. On 05.11.2020, Respondent No. 3 issued a fresh e-auction sale notice in respect of the suit property. Shocked by these developments, the Appellant suffered a heart attack on 22.11.2020, resulting in his hospitalisation. Consequently, the Appellant instituted the civil suit seeking the following reliefs:

"(a) A decree for declaration in favour of the Plaintiff and against the Defendant no. 1 & 2, thereby cancelling the sale deed and declaring the alleged Sale Deed dated 3/04/2018 document registered as REGISTERED AS DOCUMENT NO. 461.9 IN BOOK N0.1, VOLUME NO. 7461 AT PAGES 193 - 198 DATED 3/04/2018, REGISTERED WITH SUB REGISTRAR(SR-VI/A), AMBEDKAR BHAWAN, SECTOR-16, ROHINI, DELHI with respect to the property bearing no. No. 43, Measuring 250.84 sq. yards as per lay out plan of the Delhi Sainik Vihar Cooperative House Building Society Limited, known as Sainik Vihar, Pitam Pura New Delhi-1100034 to be Null & Void, invalid, ab initio [sic: ab-initio], illegal and unenforceable under the law and that the same does not confirm any right to the Defendant No. 1 & 2 qua the suit property;

(b) A decree of Permanent and Mandatory Injunction be passed in favour of Plaintiff and against the defendant no. 3, thereby directing the defendant no. 3, its agents, executers etc. to stop/restrain the auction proceedings being initiated against the sale of property bearing no. 43, Measuring 250.84 sq. yards as per lay out plan of the Delhi Sainik Vihar Cooperative House Building Society Limited, known as Sainik Vihar, Pitam Pura New Delhi-1100034.

(c) Costs of the suit may also be awarded in favour of the Plaintiff and against the Defendants."

9. The Appellant also filed a Securitization Application before Debts Recovery Tribunal-III, Delhi [hereinafter referred to as 'DRTIII'] wherein no interim relief was granted. A Writ Petition was thereafter filed before this Court, which was subsequently withdrawn.

10. Respondent No. 3 thereafter filed an application under Order VII Rule 11 of the CPC seeking rejection of the plaint, which was opposed by the Appellant. Upon consideration of the pleadings and submissions, the learned Single Judge allowed the said application and rejected the plaint, recording the following reasons:

i. No complaint was lodged by the Appellant against Respondent Nos. 1 and 2 despite allegations of threat, coercion and undue

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influence.

ii. The particulars of fraud were not specifically pleaded by the Appellant and mere clever drafting cannot be permitted to circumvent the statutory bar under Section 34 of the SARFAESI Act.

iii. Although the Appellant's father was shown as a party to the MoU, he did not sign the same, rendering the document suspect and apparently created subsequently.

iv. The Appellant's plea of non-payment of sale consideration is barred by Sections 91 and 92 of the Indian Evidence Act, 1872 [hereinafter referred to as 'IEA'], since no oral evidence can be led contrary to the recitals of the Sale Deed.

v. Non-payment of the entire sale consideration does not constitute a valid ground for cancellation of a registered sale deed.

vi. Under the recitals of the Sale Deed, the title in the suit property stood transferred immediately to Respondent No. 1.

CONTENTIONS OF THE PARTIES

11. On behalf of the Appellant, learned counsel submits that the learned Single Judge erred in holding the suit to be barred under Section 34 of the SARFAESI Act. Placing reliance on the judgment of the Supreme Court in *Central Bank of India* v. *Smt. Prabha Jain*[1], it is urged that the DRT-III has no jurisdiction to entertain or adjudicate upon a claim for cancellation of a registered Sale Deed. Accordingly, it is contended that since such a relief falls outside the scope of the SARFAESI Act, the civil suit instituted by the Appellant was maintainable before the Civil Court.

12. *Per contra*, learned counsel for the Respondent No. 3 supports the Impugned Judgment and submits that the jurisdiction of the Civil Court stands expressly barred under Section 34 of the SARFAESI Act. It is submitted that the reliefs sought by the Appellant are directly connected with the measures taken by the secured creditor in exercise of powers conferred under the said enactment. Accordingly, it is contended that the learned Single Judge has rightly rejected the plaint as being barred by law.

ANALYSIS & FINDINGS

13. This Court has heard learned counsel for the parties at considerable length and, with their able assistance, carefully perused the record of the case, including the paperbook and documents placed on file.

14. Upon a comprehensive consideration of the rival submissions and the entire material on record, this Court deems it appropriate, at the outset, to examine the reasons assigned by the learned Single Judge while rejecting the plaint under Order VII Rule 11 of the CPC.

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15. Order VII Rule 11 of the CPC exhaustively sets out the circumstances in which a plaint can be rejected. The provision reads as under:

> *"11. Rejection of plaint.— The plaint shall be rejected in the following cases:—*
>
> *(a) where it does not disclose a cause of action;*
>
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
>
> *(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
>
> *(d) where the suit appears from the statement in the plaint to be barred by any law;*
>
> *[(e) where it is not filed in duplicate;]*
>
> *[(f) where the plaintiff fails to comply with the provisions of rule 9:]*
>
> *[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp -paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"*

16. It is trite law that while deciding an application under Order VII Rule 11 of the CPC, the Court must confine itself to the averments made in the plaint, which are to be read as a whole, without reference to the defence of the opposite party. The veracity or correctness of the allegations is not to be adjudicated at this preliminary stage.

17. Failure to lodge a First Information Report ('FIR') or file a criminal complaint cannot be treated as a ground to reject the plaint. The Appellant has approached the Court asserting that the execution of the sale deed in favour of the Respondent No. 1 was not voluntary but was induced by coercion, threats, and misrepresentation. It is alleged that the Respondent No. 2 had represented to the Appellant that the document would serve only as a temporary security for a friendly loan, and had assured that it would either be cancelled or re-executed in the Appellant's favour upon repayment of the said loan.

18. The Appellant has further pleaded that he was subjected to threats, including threats to kidnap his minor children, in order to compel execution of the sale deed. Such assertions, if true, would strike

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at the very root of “free consent,” which is a sine qua non for a valid contract under Section 10 read with Section 14 of the Indian Contract Act, 1872. It is therefore wholly erroneous to presume that the absence of an FIR or criminal proceedings negates the plea of coercion or misrepresentation. These are questions of fact which can only be examined on the basis of evidence at trial, not at the threshold stage of rejecting the plaint.

19. The next ground taken by the learned Single Judge pertains to alleged absence of specific particulars of fraud as required under Order VI Rule 4 of the CPC. A reading of the plaint, however, reveals that the word “fraud” has been used in conjunction with “coercion” and “misrepresentation,” particularly in paragraph 40. The Appellant's case, therefore, is not one of fraud *simpliciter*, but of coercion and undue influence coupled with misrepresentation. The failure to set out elaborate particulars of fraud, even if assumed, does not justify rejection of the plaint under Order VII Rule 11 of the CPC, as such a deficiency can always be cured by amendment or clarified during evidence.

20. Furthermore, the learned Single Judge appears to have been influenced by the observation that the Appellant's father, though described as a party to the MoU, had not signed the same. In the considered view of this Court, such a factual discrepancy, even if true, is not a ground for rejection of the plaint. Whether or not the MoU binds the parties is a matter to be determined on the basis of evidence during trial; it cannot be made the basis to non-suit the plaintiff at the inception.

21. Sections 91 and 92 of the IEA, relied upon by the learned Single Judge, also do not furnish any basis for rejection of the plaint. These provisions merely limit the admissibility of oral evidence to contradict the terms of a written document, but the applicability of such provisions arises only when evidence is led. At the stage of considering an application under Order VII Rule 11 of the CPC, the Court is not concerned with questions of admissibility or evidentiary bar; it must only ascertain whether the plaint discloses a cause of action and whether it is barred by law on its face.

22. It is true that non-payment of the entire sale consideration, by itself, may not ordinarily constitute a ground for cancellation of a sale deed. However, the Appellant's case is that the very execution of the sale deed was vitiated by coercion, misrepresentation, and undue influence. The learned Single Judge, while rejecting the plaint, failed to consider this fundamental plea. Even though execution of a sale deed may ordinarily transfer title to the purchaser, if it is established that the execution was not the result of free consent, the document can be declared void, leading to its cancellation.

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23. It is also settled law that even if the Court is of the opinion that the likelihood of success in the suit is remote or minimal, such a view cannot justify rejection of the plaint under Order VII Rule 11 of the CPC. The plaint can be rejected only if it does not disclose a cause of action or is clearly barred by any law on its face, not merely because the claim may ultimately fail.

24. Insofar as the question of jurisdiction is concerned, the learned Single Judge's conclusion that the civil suit is barred under Section 34 of the SARFAESI Act cannot be sustained. The relief sought in the suit is for cancellation of a registered sale deed. The jurisdiction to cancel or set aside a registered conveyance is not vested in the DRT, which is a statutory forum of limited jurisdiction.

25. This position is no longer *res integra* in view of the judgment of the Supreme Court in *Prabha Jain* (supra) wherein it was held that the DRT has no jurisdiction to entertain or adjudicate upon claims relating to cancellation of registered sale deeds. The proper forum for such relief continues to be the civil court. Consequently, the learned Single Judge fell in error in holding that the suit was barred under Section 34 of the SARFAESI Act.

26. In view of the foregoing discussion, this Court is of the considered opinion that the reasons recorded in the Impugned Judgment are unsustainable in law.

27. Accordingly, the present Appeal is allowed. The Impugned Judgment is set aside. The suit filed by the Appellant is restored to its original number and shall proceed in accordance with law.

28. The parties, along with their respective counsel, are directed to appear before the learned Single Judge (Roster Bench) on 19.11.2025.

29. Needless to observe that the learned Single Judge shall adjudicate the suit uninfluenced by any observations made in this judgment.

30. The present Appeal, along with all pending applications, stands disposed of.

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[1] (2025) 4 SCC 38

[§] 2025:DHC:9916-DB

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