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FAO No.26 of 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

WEDNESDAY, THE 8TH DAY OF JULY 2026 / 17TH ASHADHA, 1948

FAO NO. 26 OF 2026

AGAINST THE ORDER DATED 25.02.2026 IN IA 3/2025 IN
OS NO.45 OF 2025 OF III ADDITIONAL SUB COURT, ERNAKULAM

APPELLANT/PETITIONER/PLAINTIFF:

DEEPA GEORGE
AGED 56 YEARS
W/O LATE DR.GEORGE C. JOSEPH, RESIDING AT 402B,
HILITE METROMAX FLATS, NEAR THONDAYAD BYPASS,
KOZHIKODE., PIN - 673016

BY ADVS.
SRI.C.S.MANU
SHRI.S.K.PREMRAJ
SMT.V.SARITHA
SRI.C.A.ANUPAMAN
SHRI.T.B.SIVAPRASAD
SMT.NEETHU.K.SHAJI
SRI.C.Y.VIJAY KUMAR
SMT.MANJU E.R.
SHRI.ALINT JOSEPH
SHRI.PAUL JOSE
SMT.ARUNIMA G.
SMT.DAINY DAVIS
SHRI.MAHESH KUMAR K.
SHRI.SHAMMY S.
SMT.PUNNIYA VIJAYABABU
SMT.ROANNA FLORA KURIAN



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RESPONDENTS/RESPONDENTS/DEFENDANTS :

- 1 S. VALSA
AGED 81 YEARS
W/O LATE P.T. JOSEPH, RESIDING AT DEEPTHI, B.T.S.
ROAD, EDAPPALLY P.O, KOCHI., PIN - 682024
- 2 DILU JOSEPH
AGED 53 YEARS
S/O LATE P.T. JOSEPH, RESIDING AT DEEPTHI, B.T.S.
ROAD, EDAPPALLY P.O, KOCHI., PIN - 682024
- 3 THE FEDERAL BANK LTD
BRANCH ERNAKULAM SOUTH, GRACE, NEAR SRV SCHOOL,
CHITTOOR ROAD, ERNAKULAM, REPRESENTED BY ITS
BRANCH MANAGER., PIN - 682011
- 4 THE AUTHORISED OFFICER & VICE PRESIDENT
FEDERAL BANK LTD., ERNAKULAM, STATIONED AT LCRD,
FEDERAL TOWER, MARINE DRIVE, ERNAKULAM,
PIN - 682031
- 5 SUBITHA K.K.
ADVOCATE COMMISSIONER, APPOINTED BY THE COURT OF
THE A.C.J.M (MP/MLA), ERNAKULAM, IN M.C NO.
1248/2024, RESIDING AT VELIKKATHARA HOUSE,
PANAMBUKAD, VALLARPADAM, ERNAKULAM., PIN - 682504

BY ADVS.
SRI.BOBY MATHEW
SHRI.SUNIL SHANKER
SRI.K.N.SIVASANKARAN
SMT.VIDYA GANGADHARAN
SHRI.THOMAS GLAISON
SHRI.ASHLIN SAJU
SMT.MEERA KAZHIPURATH

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR
ADMISSION ON 17.06.2026, THE COURT ON 08.07.2026 DELIVERED
THE FOLLOWING:



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[CR]

S.MANU, J.

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Dated this the 08th day of July, 2026

JUDGMENT

Appellant is the plaintiff in O.S.No.45 of 2025 on the files of the third Additional Sub Court, Ernakulam. She has approached this Court in this appeal, aggrieved by the dismissal of I.A.No.3 of 2025. The application was filed for interim injunction against the 3rd respondent from entering into or trespassing into the plaint schedule property and taking possession of the same in any manner whatsoever. Suit is for declaration, partition and injunction.

2. Brief facts essential for disposal of this appeal are as under:-

Respondents 1 and 2 are respectively the mother and brother of the appellant. The appellant's father owned and



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possessed 15 cents of land and a residential building situated therein comprised in Survey No.63 of Block 159 of Edappally North Village. According to the appellant, her father purchased the property, utilising his own funds. However, the sale deed was registered in his name as well as in the name of the 1st respondent. The document was registered in 1969. After his retirement, appellant's father got involved in business activities and suffered enormous losses. When he was facing legal proceedings initiated by the creditors and Income Tax Department, he instituted an insolvency petition before the Sub Court, Ernakulam as I.P.No.1 of 1993. With the intention to save the property from legal proceedings, he executed a release deed in favour of 1st respondent as Document No.1487 of 1993 of SRO, Edappally. Appellant asserts that no consideration was paid by the 1st respondent either at the time of initial procurement of the property or when the release deed was executed in 1993. She further contends that the 1st defendant had no exclusive right over the plaint schedule property and she



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was holding it only as a benamidar. However, she created a mortgage in favour of 3rd respondent bank in the year 2008, to facilitate a loan transaction for the benefit of the 2nd respondent. The mortgage was unauthorised, incompetent, null and void as also illegal. According to the appellant, the 3rd respondent bank has not derived any right or interest in the plaint schedule property by way of the alleged mortgage created by the 1st respondent. Appellant asserts that the said property is partible and she is entitled for her due share.

3. As per the version of the appellant, she came to know about the mortgage created by the 1st respondent in favour of the 3rd respondent only when she noticed a registered notice issued by the 5th respondent Advocate Commissioner to the 2nd respondent during a visit to the plaint schedule property. Thereafter, she filed the suit and also the application for interim injunction.

4. In the suit, appellant has sought the following reliefs:-



“(i) Pass a decree in favour of the plaintiff for partition of the plaint schedule property and for separate possession of the ½ share of the 2/3rd's share of the plaint schedule property due to the plaintiff by metes and bounds.

(ii) Pass a decree of declaration, declaring that the mortgage if any created by the 1st defendant in favour of the 3rd defendant bank is unauthorised, null and void and illegal and did not bind the plaintiff's father and the plaint schedule property and also not binding on the plaintiff.

(iii) Pass a decree of permanent injunction restraining the 3rd defendant from entering into or trespassing into the plaint schedule property and to take possession of the same in any manner whatsoever.

(iv) Allow the cost of the suit to the plaintiff.

(v) Award such other reliefs that are deemed fit and proper in the facts and circumstances of the case.”

5. The respondents 3 and 4 filed counter affidavit in the I.A. besides written statement in the suit. They keenly disputed every contention of the appellant. They pointed out that the jurisdiction of the Court is barred under Section 34 of the SARFAESI Act, 2002. They stated that the plaint schedule



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property is a secured asset. They relied on the judgment of the Hon'ble Supreme Court in **Jagdish Singh v. Heeralal and others** [AIR 2014 SC 371]. The respondents 3 and 4 narrated how the property came to the ownership, possession and enjoyment of the 1st respondent. They further stated that the title deed of the property was deposited by the 1st respondent with the respondent bank at its branch in M.G. Road, Ernakulam on 26.06.2008 to create equitable mortgage to secure the amounts due under the credit limits availed by her for her proprietorship business. Subsequently, the mortgage was extended to the credit limits availed by a partnership firm of which the 2nd respondent was also a partner. Later, the mortgage was extended to enhance cash credit limits of some other business establishments also. As the borrowers failed to service the loan accounts, the same were classified as non-performing assets on 28.03.2022 and 30.04.2022. Demand notice was issued on 22.11.2022 and possession notice was issued on 08.11.2023. Thereafter, M.C.No.1248 of 2024 was



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filed before the Additional Chief Judicial Magistrate's Court, Ernakulam, for taking physical possession of the secured asset. The learned ACJM appointed an Advocate Commissioner. The Commissioner issued notice to take actual possession of the secured assets. It was at this point of time the appellant filed the suit along with the application for interim injunction to prevent the respondent bank from taking possession of the property. According to the respondents 3 and 4, the suit is collusive and filed without any bonafides, only to defeat the proceedings initiated under the SARFAESI Act. The respondents 3 and 4 have disputed and denied every averment of the appellant in her plaint as also in the affidavit filed in support of the application for interim injunction.

6. The learned Sub Judge heard the respective counsel for the parties and rejected the application for interim injunction by the impugned order. The learned Judge accepted the contention of the respondents 3 and 4 that in view of Section 34 of the SARFAESI Act, Civil Court has no jurisdiction to entertain



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a suit in respect of matters the Debt Recovery Tribunal or Appellate Tribunal is empowered to decide and no injunction can be granted by the Civil Court. The learned Sub Judge relied on the judgment in **Jagdish Singh** (supra). The learned Sub Judge noted that according to the admitted case of the appellant, father of the appellant executed a release deed in favour of the 1st respondent in 1993 to defeat legal proceedings at the instance of the creditors. The learned Judge held that such a transfer was improper and the appellant has hence approached the Court with unclean hands. The learned Judge also noted that till the Advocate Commissioner issued notice to take actual possession of the secured assets, no claim was raised by the appellant at any point of time, for partition. The learned Sub Judge concluded that prima facie case is in favour of respondents 3 and 4. Likewise, the learned Judge found that the balance of convenience is also in their favour. Further, the learned Judge held that if the petition is allowed, irreparable injury and hardships will be caused to respondents 3 and 4. The



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learned Judge, in a solitary sentence, noted that the decisions relied on by the learned counsel for the appellant were not applicable in the case. The application for interim injunction was thus dismissed.

7. Before this Court, the learned counsel for the appellant Sri.C.S.Manu vehemently submitted that the learned Sub Judge has committed grave error by rejecting the application for injunction. He submitted that the appreciation of the contentions of the parties by the learned Sub Judge was totally flawed. He argued that the learned Sub Judge has rendered the order without ascertaining the extant position of law with respect to Section 34 of the SARFAESI Act as explained by the Hon'ble Supreme Court. He also submitted that the learned Sub Judge has dealt with the application in a highly prejudiced manner by holding that the appellant had not approached the Court with clean hands for the reason that her father had executed a release deed in order to defeat the claims of his creditors long ago. The learned counsel raised a grievance



that though several authoritative pronouncements of the Hon'ble Supreme Court as also of various High Courts were relied on by him during the course of arguments before the learned Sub Judge, all those judgments were overlooked and the learned Judge, in a single sentence, concluded that none of the judgments cited by the learned counsel is applicable to the facts of the instant case.

8. He submitted that the 1st respondent had no right to create a mortgage with respect to the plaint schedule property. Narrating the sequence of events from the point of time when the property was purchased by the father of the appellant, he argued that the 1st respondent was actually holding the property only as a benamidar of the father of the appellant. No contribution was made from her side for paying the sale consideration when the property was bought in the name of the father of the appellant as also of the 1st respondent. Again, when the release deed was executed, no consideration was paid by her. The funds for acquiring the property were spent entirely



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by the father of the appellant. He submitted that on the demise of the father, the appellant, the 1st respondent as also the 2nd respondent gained rights in the plaint schedule property. The learned counsel submitted that the property is unquestionably partible and therefore the appellant has rightly instituted the suit for partition.

9. He submitted that the bar under Section 34 of the SARFAESI Act would not be attracted in the instant case for the reason that a plea regarding partition cannot be decided by the Debt Recovery Tribunal or the Appellate Tribunal. He submitted that the legal position is now very clear and there is no absolute bar under Section 34 to entertain any civil suit, on account of pendency of proceedings under the SARFAESI Act. The bar applies only to those suits wherein the dispute raised and the reliefs sought are matters with respect to which the Debt Recovery Tribunal has jurisdiction to entertain and decide. He submitted that if the suit is for a relief which is not within the scope of adjudication by the Debt Recovery Tribunal, it will be



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perfectly maintainable and the bar under Section 34 of the SARFAESI Act can have no application. He pointed out the reliefs sought in the suit by the appellant and submitted that the foremost relief sought is for partition.

10. Sri.C.S.Manu further contended that the learned Sub Judge has authority to issue an interim injunction also. He argued that, if the suit is maintainable before the Civil Court, the Civil Court inherently has authority to pass appropriate interim orders to preserve the subject matter. Since the subject matter of the suit instituted by the appellant is the plaint schedule property over which the respondents 3 and 4 are claiming rights, the Civil Court ought to have granted injunction restraining the respondents 3 and 4 from taking possession of the property. He submitted that the learned Sub Judge has wrongly rejected the application for interim injunction without appreciating the facts and circumstances and the law involved. He therefore submitted that the appeal may be allowed and interim injunction may be granted as prayed for.



11. The learned counsel for the appellant relied on the following judgments:-

- 1) **Income Tax Officer,Cannanore v. M.K Mohammed Kunhi**[1968 SCC OnLine SC 71].
- 2) **Dhulabhai v. State of Madhya Pradesh and Another**[1968 SCC OnLine SC 40].
- 3) **Balkrishna Rama Tarle (dead through legal representatives) and Another v. Phoenix ARC Private Limited and Others** [(2023) 1 SCC 273].
- 4) **R.D. Jain and Company. v. Capital First Limited and Anothers**[(2023) 1 SCC 675].
- 5) **Central Bank of India and Another v. Prabha Jain and Others** [(2025) 4 SCC 38].
- 6) **KHDFC Bank Limited and Others v. Prestige Educational Trust** [2015 SCC OnLine Ker 22758].
- 7) **Federal Bank Ltd. v. Chief Judicial Magistrate**[2025 (3) KLT 146].
- 8) **Abdu v. Authorised Officer, Federal Bank Ltd**[2016 (3) KLT 342]
- 9) **Moosa V.K. v. The Authorised Officer/Deputy General Manager** [2025 Supreme (Online) (Ker) 24023].
- 10) **South Indian Bank Ltd. v. Jahfer M** [2025 SCC OnLine Ker 1787].



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- 11) **Sankaranarayanan v. Major Mathew** [2025 Supreme(Online)(Ker)44887].
- 12) **Rajiv Sareen v. Divyanshu Enterprises and Others** [2025 SCC OnLine Del 8354].
- 13) **Bank of Baroda v. Gopal Shriram Panda and Another**[2021 SCC OnLine Bom 466].
- 14) **P.Sathyanarayana v. V. Anjana Devi and Others** [2025 Supreme (Telangana) 809].
- 15) **Bank of Baroda v. Sri Ranjan Chetia and Others**[2014 SCC OnLine Gau 154].
- 16) **UCO Bank and Another v. Manjana Verma Sahni and Another**[2025 Supreme(Online)(HP) 8175].
- 17) **ICICI Bank Ltd. v. Pramod Kumar Garg and Another**[2017 Supreme (Raj) 2413].

12. Conversely, the learned counsel for the respondents 3 and 4, Sri.Sunil Shankar, submitted that no interference is warranted at the hands of this Court in this appeal. He submitted that the order passed by the learned Sub Judge is correct and liable to be upheld. The learned counsel submitted that the suit was instituted by the appellant after the Advocate Commissioner appointed by the learned Additional Chief Judicial



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Magistrate issued notice to take possession of the property. Until then the appellant had not raised any claim for partition. He pointed out that the demise of the father of the appellant happened long ago. Thereafter, several years passed and the appellant never ever raised any claim for partition. He submitted that it is quite obvious that the appellant is permanently settled at Kozhikode and she has no genuine rights in the plaint schedule property. He submitted that the 1st respondent is the absolute owner in enjoyment and possession of the property and she had every right to create a mortgage in favour of the bank. The bank has proceeded only in accordance with law. He submitted that the very purpose of incorporating Section 34 in the SARFAESI Act is to prevent unscrupulous litigants from making attempts to defeat the proceedings under the SARFAESI Act by instituting frivolous suits. He contended that the suit has been filed for partition only for the purpose to contend that it is maintainable. The learned counsel submitted that the appellant has filed the suit as an indirect method to defeat the



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proceedings under the SARFAESI Act in collusion with the respondents 1 and 2. He relied on the following judgments:-

- 1) **Asha Agarwal and Others v. Williamson Magor & Company Limited and Others** [2022 SCC OnLine Cal 1389].
- 2) **Jagdish Singh v. Heeralal and others** [(2014) 1 SCC 479].

13. I have elaborately heard the learned counsel for the appellant and the learned Standing Counsel for respondents 3 and 4 who canvassed their respective contentions fervently.

14. The learned counsel for the appellant placed heavy reliance on the judgment of the Hon'ble Supreme Court in **Central Bank of India** (supra). He pointed out that in the said case, a suit was filed for declaration of a sale deed as well as subsequent mortgage to be a nullity and also for possession of the suit property. The property was treated as a secured asset by the bank and proceedings under the SARFAESI Act were initiated. The trial court rejected the plaint in view of the bar under Section 34 of the SARFAESI Act. Original plaintiff



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approached the High Court against rejection of the suit. High Court held that the question relating to the validity of the sale deed and consequent mortgage are matters which the Debt Recovery Tribunal is not empowered to decide. Therefore, the High Court held that jurisdiction of the Civil Court to decide those matters cannot be held to be ousted under Section 34 of the SARFAESI Act. The bank approached the Supreme Court aggrieved by the judgment of the High Court. The Hon'ble Supreme Court, after an elaborate survey of the provisions of the SARFAESI Act, as also various previous judgments, rejected the challenge against the view adopted by the High Court. It is pertinent to note that the judgment in **Jagadish Singh** (supra) was distinguished by the Hon'ble Supreme Court in **Central Bank of India**(supra). The Hon'ble Supreme Court held that the judgment in **Jagadish Singh** (supra) was rendered without noticing that under Section 17 of the SARFAESI Act, DRT has no power to partition properties and hence the Civil Court's jurisdiction to grant a decree of partition cannot be said to be



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ousted. It is plainly held in **Central Bank of India** (supra) that the judgment in **Jagadish Singh** (supra) cannot be said to be a precedent on the point. Therefore, the Hon'ble Supreme Court has concluded in **Central Bank of India** (supra) that the law laid down in **Jagadish Singh** (supra) is not applicable in the case of suits filed for reliefs which cannot be adjudicated and granted by the Debt Recovery Tribunal. Learned counsel for the appellant has relied on various other judgments of different High Courts also to canvass the proposition that Section 34 of the SARFAESI Act does not act as a bar in the case of suits filed for adjudication of issues which are not within the realm of the jurisdiction of the Debt Recovery Tribunal.

15. I am not elaborately dealing with all those judgments since in the course of hearing, the arguments were afterward concentrated on a purely legal aspect as it was suggested to the learned counsel on both sides to focus on the impact of the second limb of Section 34, since clarity on the said facet was found essential to decide the instant appeal.



16. In that regard, learned Standing Counsel for the respondents 3 and 4 submitted that he would also agree with the contention that a genuine suit for partition of a secured asset may not be hit by the embargo under Section 34 of the SARFAESI Act. He submitted so without conceding that the suit is filed by the appellant genuinely for a decree of partition and without prejudice to the contentions of the bank. He submitted that even if the suit is found not barred by Section 34 of the SARFAESI Act, still the bar under the second part of the provision will stand in the way of granting injunctions against any proceedings under the SARFAESI Act. In other words, the contention advanced is that the embargo under the latter part of Section 34, pertaining to granting of interim injunctions, would apply even if it is found that the suit is not hit by Section 34 of the Act. I shall first deal with this contention.

17. Section 34 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



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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)."

18. As noted above, an intricate analysis of the impact of the second limb of Section 34 is essential in the instant case. Keeping in mind the law laid down by the Hon'ble Supreme Court in **Central Bank of India** (supra) and also by various High Courts, as rightly pointed out by the learned counsel for the appellant, I am of the view that Section 34 does not place a total embargo in the matter of entertaining civil suits even if proceedings under the SARFAESI Act are pending with respect to the subject matter of the suit. It is now trite that the restriction would apply only with respect to matters which can be adjudicated and decided by the Debt Recovery Tribunal or by the Appellate Tribunal as the case may be. The question arising for consideration is therefore pertaining to the impact of the



latter part of Section 34.

19. The second limb of S.34 forbids granting injunctions 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 the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. It is pertinent to note that the provisions of the SARFAESI Act have overriding effect over other laws by virtue of Section 35 of the Act. In Section 34, the legislature has employed the coordinating conjunction '*and*' between the two limbs of the provision. '*And*' is usually employed conjunctively. If '*and*' employed in Section 34 is construed conjunctively as canvassed by the learned counsel for the appellant, the second limb would only mean that in suits barred by the first limb, no order of injunction shall be issued by a court or authority. If it is so construed, what would be the result? If a suit is lodged in a civil court for adjudication of matters that would fall within the ambit of the jurisdiction of DRT, it will be hit by the first part of Section 34 and such a suit



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will not be maintainable. In the said situation, the latter part of S.34 will have no meaning as the question of granting injunction does not arise in a suit that is not maintainable. To put it differently, if the embargo on granting of injunction against the proceedings under the SARFAESI Act or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is reckoned only as an extension of the first limb, the latter part would become superfluous if the suit is hit by the first limb of the Section. However, if the coordinating conjunction "and" is read disjunctively and latter part of Section 34 regarding granting of injunctions is reckoned to have an independent existence, the entire provision can be interpreted meaningfully. In other words, if it is held that the second part regarding granting of injunctions would still apply even if the suit is not hit by the first part of Section 34, the provision becomes entirely meaningful and every word employed has force and effect. It is a rudimentary principle of interpretation of statutes that every word employed by the legislature should be given effect to. The



Court shall not favour an interpretation that would render the provisions or their limbs redundant. "And" is typically employed as a coordinating conjunction; however, it is sometimes interpreted disjunctively when it is necessary to carry out the obvious legislative intent, while interpreting statutory provisions.

20. In **Ishwar Singh Bindra and Others v. State of U.P.** [1968 SCC OnLine SC 98] the Apex Court held as under:

"11. Now if the expression "substances" is to be taken to mean something other than "medicine" as has been held in our previous decision it becomes difficult to understand how the word "and" as used in the definition of drug in Section 3(b)(i) between "medicines" and "substances" could have been intended to have been used conjunctively. It would be much more appropriate in the context to read it disconjunctively. In Stroud's Judicial Dictionary, 3rd Edn. it is stated at p. 135 that "and" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of "or". Sometimes, however, even in such a connection, it is, by force of a contexts, read as "or".



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Similarly in Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that "to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other".

21. In **Municipal Corporation of Delhi v. Tek Chand Bhatia** [(1980) 1 SCC 158], the Hon'ble Supreme Court made the following observations;

"11. In the definition clause, the collection of words "filthy, putrid, rotten, decomposed and insect-infested" which are adjectives qualifying the term "an article of food", show that it is not of the nature, substance and quality fit for human consumption. It will be noticed that there is a comma after each of the first three words. It should also be noted that these qualifying adjectives cannot be read into the last portion of the definition i.e. the word "or is otherwise unfit for human consumption", which is quite separate and distinct from others. The word "otherwise" signifies unfitness for human consumption due to other causes. If the last portion is meant to mean something different, it becomes difficult to understand how the word "or" as used in the definition of "adulterated" in Section 2(i) (f) between "filthy, putrid, rotten etc." and "otherwise unfit for human consumption" could have been intended to be used conjunctively. It would be more appropriate in the context to read it disjunctively. In Stroud's Judicial Dictionary, 3rd Edn., Vol. 1, it is stated at p. 135:



"And' has generally a cumulative sense requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of 'or'. Sometimes, however, even in such a connection, it is, by force of a context, read as 'or'.

"While dealing with the topic 'OR is read as AND, and vice versa', Stroud says in Vol. 3, at p. 2009:

"You will find it said in some cases that 'or' means 'and'; but 'or' never does mean 'and'."

Similarly, in Maxwell on Interpretation of Statutes, 11th Edn., pp. 229-30, it has been accepted that "to carry out the intention of the legislature, it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other". The word "or" is normally disjunctive and "and" is normally conjunctive, but at times they are read as vice versa. As Scrutton, L.J. said in *Green v. Premier Glynrhonwy State Co.*: "You do sometimes read "or" as "and" in a statute But you do not do it unless you are obliged, because "or" does not generally mean "and" and "and" does not generally mean "or". As Lord Halsbury L.C. observed in *Mersey Docks & Harbour Board v. Henderson* the reading of "or" as "and" is not to be resorted to "unless some other part of the same statute or the clear intention of it requires that to be done". The substitution of conjunctions, however, has been sometimes made without sufficient reasons, and it has been doubted whether some of the cases of turning "or" into "and" and vice versa have not gone to the extreme limit of interpretation."

22. Intention of the legislature in incorporating an embargo specifically with respect to granting of injunctions



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against proceedings under the SARFAESI Act is perceptibly to prevent the civil courts and other authorities from interdicting the proceedings under the SARFAESI Act or the Recovery of Debts Due to Banks and Financial Institutions Act, as the case may be. On an analysis of the provision as a whole, keeping in mind the settled principles regarding interpretation of statutes, I am of the opinion that the latter part of the Section has been resolutely incorporated to prevent the courts and other authorities from passing orders of injunction, putting proceedings under the SARFAESI Act or under the Recovery of Debts Due to Banks and Financial Institutions Act on hold, even in suits that are not hit by the first part of the provision. If any other view is taken, the same would be against the established principles regarding interpretation of statutes.

23. The learned counsel for the respondent had referred to a judgment of a Division Bench of the Calcutta High Court in **Asha Agarwal and others v. Williamson Magor & Company Limited and others** [2022 SCC OnLine Cal 1389]. It was held



as under by the court:-

“40. Section 34, as pointed out in Delta International Limited (supra), clearly has two limbs - as regards the bar to entertain any suit or proceeding is concerned, the same was held to be restricted to the inception of the suit. It was held that once the suit was entertained and taken on board, there was no scope for dismissing the same on the first limb of Section 34.

41. However, insofar as the bar to grant of injunction is concerned, the same is covered by the second limb of Section 34, which prevents Civil Courts from “granting” injunction, which can be at any stage of the litigation.

42. Hence, the Trial Court did not commit any jurisdictional error in observing that, although the suit may be maintainable, the injunction as sought by the plaintiffs cannot be granted.

.....

45. In view of the disjunctive conjunction “and”, as used in Section 34 of the SARFAESI Act to segregate its two limbs, there is clear distinction between the entertainability of a suit at the inception and the grant of injunction at any stage of the proceeding, both of which are debarred in respect of a civil court.

46. Hence, in the present case, even if we assume that the suit was maintainable at the juncture when it was first instituted, as on the date of passing of the impugned order of injunction, measures under Section 13 of the SARFAESI Act had already been initiated, thereby precluding the civil court from granting any injunction. The injunction sought was a pre-emptive measure intended to restrain the DRT from exercising its powers conferred under the SARFAESI Act and in



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particular Sections 13 and 17 of the said Act.

47. In view of the overriding effect of Section 35 of the SARFAESI Act, the said provisions of the DRT Act would prevail over any other law, including Section 9 of the Code of Civil Procedure.”

[Emphasis added]

24. It is also noticed that another Division Bench of the Calcutta High Court in **Delta International Limited & others v. Smt.Nupur Mitra & others** [2017 SCC OnLine Cal 13094] held as under:-

“32. But even in a civil suit which is instituted at a time when no measures have been taken by a notified secured creditor or its authorised officer under Section 13(4) of the Act, no injunction can issue - even quia timet - in respect of any action taken or to be taken in pursuance of any power conferred by or under the said Act of 2002 or the Act of 1993. The two limbs of Section 34 of the said Act are complementary, operate in tandem and are designed to serve the same objective. At the stage when the provision first appeared in the Ordinance that preceded the Act of 2002, it could not have had retrospective operation. Thus, any suit filed prior to Section 34 of the said Act, or the corresponding provision in the preceding Ordinance, coming into operation could not be regarded as bad even if the matters covered thereby were capable of being determined by a DRT or DRAT under the said Act or its preceding Ordinance. But



from the date that the provision became effective, no injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under the said Act (or its preceding Ordinance) or under the Act of 1993 could be issued by any civil court. In suits filed after such provision has come into effect, it is possible that the entirety of the reliefs claimed may not be capable of being granted by a DRT or DRAT. It is here that the second limb of the provision acts as a fall-back safety-net to arrest the mischief that it seeks to do. Even if a civil suit is entertained which contains some matter that a DRT or DRAT is empowered to determine by or under the Act of 2002, but the plaint thereof cannot be rejected since the entirety of the subject-matter of such suit may not be capable of determination by a DRT or DRAT; the second limb of Section 34 prohibits any injunction to be issued by the civil court in respect of any action taken or to be taken in pursuance of any power conferred by or under the said Act or under the Act of 1993.

33. As comprehensive as the bar is under the first limb of Section 34 of the Act, the only construction thereof is that the word "is" in the expression "is empowered by or under this act to determine" operates only in presenti. A DRT or DRAT has to have authority to determine the entire-subject-matter of a suit at the time of its institution, for the bar under the first limb of such provision to be attracted. If the authority to determine the subject-matter of the suit vests in a DRT or DRAT after the institution of the suit, the suit cannot be regarded as bad. It is here that the second limb of the provision takes over as it prohibits the interdiction of any action taken or to be taken in pursuance of any power conferred by or under the Act or under the Act of 1993. Thus, a plaint cannot be rejected - and, similarly, refused to be received - if no DRT or DRAT is empowered to determine the subject-



matter thereof at the time of its institution. That is not to say, however, that even if the bar operates and a suit is accidentally received, the plaint relating to such suit cannot be rejected later. It must only emphasised that the bar operates at the threshold and not if a DRT or DRAT becomes vested with the authority to determine the subject-matter of the suit at any time after the institution of the suit”

[Emphasis added]

25. It is also relevant to refer to a judgment of a learned Single Judge of the Madras High Court in **Sumathi v. Sengottaiyan** [2010 SCC OnLine Mad 1172] wherein it was held as under:-

“11. True that the plaintiff may institute a Suit for partition before the competent Civil Court but she cannot lawfully challenge the proceedings initiated by the secured creditor under the SARFAESI Act, before the Civil Court as there is a clear bar under Section 34 of the SARFAESI Act. Section 34 of the SARFAESI Act imposes a bar on the Civil Court to grant any relief of injunction with respect to any action taken in pursuance of the power conferred under the SARFAESI Act. Therefore, the Trial Court has no authority to entertain the prayer for injunction sought for by the plaintiff as against the secured creditors who had already initiated proceedings under the SARFAESI Act.”

[Emphasis added]



26. I find support for the conclusions arrived at in the previous paragraphs of this judgment regarding the impact of the second limb of Section 34 of the SARFAESI Act in these judgments of the Calcutta and Madras High Courts.

27. Nevertheless, the learned counsel for the appellant referred to the judgment of a learned Single Judge of this Court in **KHDFC Bank Limited** (supra) and relied on the following paragraph:-

“22. With respect, I differ with the argument of the learned Counsel for the petitioners that section 34 creates a blanket ban against the jurisdiction of the Civil Court to grant an injunction. As per section 34, no injunction shall be granted by any Court in respect of “any action taken or to be taken in pursuance of any power conferred by or under this Act.....” Therefore, the bar is there only when an order of injunction is attempted to be granted in respect of any action taken or to be taken in pursuance of any power conferred by or under that Act. It cannot be said that a secured creditor or his authorised officer can initiate proceedings under section 13(2) or 13(4) of the Act as against any asset other than the secured asset’. If a creditor is initiating action against an asset, which is not a ‘secured asset’, he cannot be termed as a ‘secured creditor’. Over and above it, such an attempt will not be an exercise of any power conferred by or under the said Act. In such case, it cannot be said that the Civil Court has no power to grant an injunction.”



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28. He submitted that in **Abdu** (supra) also the learned Single Judge followed the judgment in **KHDFC Bank Limited** (supra). He hence submitted that this Court has already adopted the view that it is competent for the civil court to entertain applications for interim injunctions in suits which are not hit by Section 34 of the SARFAESI Act. Nevertheless, a careful reading of the judgment in **KHDFC Bank Limited** (supra) shows that this Court considered a substantially different situation in the said case. In the opening paragraph of the judgment the questions considered are delineated. The said paragraph is extracted hereunder: -

“(i) Whether, in a case wherein proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the ‘SARFAESI Act’) are initiated by a secured creditor against any property, which is not a secured asset, the only remedy available to such a person is to have recourse to Section 17 of the said Act?



(ii) In such a case, whether the jurisdiction of the civil court to grant an injunction is barred under Section 34 of the SARFAESI Act?”

[Emphasis supplied]

29. Therefore, the primary question that was answered by the learned Single Judge in **KHDFC Bank Limited** (supra) was as to whether the only remedy available to a person aggrieved by proceedings initiated by a secured creditor under the SARFAESI Act against a property which is not a secured asset is to have recourse to Section 17 of the Act. As a corollary of the said issue the Court considered whether in such a case jurisdiction of the civil court to grant injunction is barred under Section 34 of the Act. The observations and conclusions in **KHDFC Bank Limited**(supra) are to be understood in the context of the questions framed for consideration in paragraph 1 of the judgment. In **Abdu** (supra), the judgment in **KHDFC Bank Limited**(supra) was followed as the factual matrix was similar. In the instant case, the suit property is indisputably a



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secured asset. Hence, the principles laid down in **KHDFC Bank Limited**(supra) and followed in **Abdu** (supra) are not of any help in the case on hand. A suit filed with respect a property, that is not a secured asset stands on a totally different footing regarding the applicability of Section 34.

30. It is essential to analyse the facts related to the case while applying precedents, as the law is laid down based on the factual matrix of the case. A miniscule distinction in the factual contexts of two cases can have a profound impact on the legal provisions and principles that are applicable. In this context it is apposite to refer to the observations of the Hon'ble Supreme Court in **Union of India and another v. Arulmozhi Iniarasu and others** [(2011) 7 SCC 397]:-

"14. Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well-settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. The observations of the courts are neither to be read as Euclid's theorems nor as provisions of statute and



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that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases. [Ref. Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani [(2004) 8 SCC 579] ; Sarva Shramik Sanghatana (KV) v. State of Maharashtra [(2008) 1 SCC 494 : (2008) 1 SCC (L&S) 215] and Bhuwalka Steel Industries Ltd. v. Bombay Iron & Steel Labour Board [(2010) 2 SCC 273 : (2010) 1 SCC (L&S) 608].

[Emphasis Applied]

31. Hence the law laid down in a judgment should not be mechanically applied in another case, neglecting the variances in the factual matrices involved in both cases. I am therefore unable to agree with the submission of the learned counsel for the appellant that the principles laid down in **KHDFC Bank Limited** (supra) and followed in **Abdu** (supra) can be applied to decide the instant case.

32. It was vehemently submitted by the learned counsel for the appellant that the power to preserve the subject matter of a suit by issuing interim injunctions is available to every civil court, if the suit is maintainable. He therefore contended that if



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the suit is not hit by the first limb of Section 34 of the SARFAESI Act, it must be assumed that the civil court is competent to pass appropriate interim orders including injunctions. The said contention of the learned counsel for the appellant is also liable to be rejected since Section 35 of the SARFAESI Act gives overriding effect to the provisions of the Act. The intention of the legislature in this regard cannot be overlooked. When Section 34 of the Act is read in conjunction with Section 35, it is obvious that the intention is to shield the proceedings under the SARFAESI Act from being interdicted by any orders of injunction issued by the courts or other authorities. The object and purpose of SARFAESI Act was taken note of and explained by the Hon'ble Supreme Court in **Mardia Chemicals v. Union of India** [(2004) 4 SCC 311]. If the contention of the learned counsel for the appellant is accepted, it will be against the intention of the legislature manifested in Section 35 of the Act. Hence the said contention is rejected.

33. Having considered the arguments advanced by both



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sides in the light of principles laid down by the Hon'ble Supreme Court as also various High Courts, I am of the view that the two limbs of Section 34 must be read distinctively. Otherwise, as noted above, the latter part of Section 34 will become meaningless in situations where suits are hit by the first part of Section 34. Moreover, the apparent legislative intention to give overriding effect to the provisions of the SARFAESI Act and to ensure immunity to the proceedings under the SARFAESI Act from interference by civil courts and other authorities cannot be disregarded. Therefore, the resultant conclusion is that even if a suit is not hit by the first limb of Section 34 of the SARFAESI Act, no interim injunction can be granted by the civil court against the proceedings under the SARFAESI Act or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

34. The impugned order, undoubtedly, is not supported by valid reasoning. The learned Sub Judge relied on the judgment in **Jagdish Singh(supra)** without noticing that the



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said judgment has been distinguished in **Central Bank of India** (supra) and the Hon'ble Supreme Court has held that the former judgment was rendered without noticing the scope of the provisions of Section 17 of the Act. Learned Sub Judge apparently did not make any reference to various judgments cited by the learned counsel for the appellant. Though there are serious flaws in the order passed by the learned Sub Judge, the ultimate conclusion that no injunction can be granted is not liable to be disturbed in view of the findings of this Court with respect to the scope of the latter limb of Section 34 of the SARFAESI Act. Therefore, the I.A. filed by the appellant for interim injunction is not liable to be entertained as it is hit by the second limb of Section 34 of the SARFAESI Act.

In the result, the appeal fails. It is accordingly dismissed.

No costs.

Sd/-
S.MANU
JUDGE

skj