IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

CIVIL REVISION No. 972 of 2026

CNR No.: MPHC030240432026

AXIS FINANCE LIMITED

Versus

MS. MEETA GARG AND OTHERS

Appearance:

Shri Vivek Khedkar- learned senior counsel with Shri Vivek Sinha - learned counsel for the applicant.

Shri N.K. Gupta - learned senior counsel with Shri Saket Sharma and Anugrah Gupta - learned counsel for the respondents.

Reserved on : 13/10/2026

Delivered on : 23/10/2026

ORDER

1. The applicant has filed this civil revision under Section 115 of the Code of Civil Procedure challenging the order dated 10/07/2026 passed by 10th District Judge, Morena in Civil Suit No.200/2025, whereby its application under Order 7 Rule 11 CPC has been rejected by the trial Court.

2. The facts giving rise to filing of this revision are that the respondent no.1 has filed a suit for declaration and permanent injunction *inter-alia* alleging that the suit property belonged to one Smt. Sheela Devi who was the plaintiff's mother-in-law. It is averred that on 02/01/2021, Smt. Sheela

Devi executed a Will in plaintiff's favour, thereby bequeathing the suit property to her. On the strength of the Will, the plaintiff's name has been mutated in records pursuant to Tahsildar's order dated 07/12/2022. The plaintiff has sold part of the suit land and is remained with 0.084 hectares of land. Defendant no.2 is the plaintiff's father-in-law and the husband of Smt. Sheela Devi. He has executed a sale-deed dated 04/10/2019 in favour of defendant no.1 and defendant no.1, in turn, has obtained certain financial facilities from the applicant/defendant no.3 and towards security of the same has created mortgage of the suit property.

3. Alleging that the defendant no.2 was not competent to execute the sale-deed and the mortgage created by defendant no.1 in favour of defendant no.3 is unenforceable, the plaintiff has prayed for following reliefs:

> "(ए)- यह घोषित किया जावे कि वादपत्र के पद कंमाक 01 में वर्णित वादग्रस्त भूमि संलग्न मानचित्र वादपत्र अभिन्न अंग लालस्याही स्थित ग्राम जौराखुर्द भूमि सर्वे कंमाक 1020/मिन-1 (वर्तमान 1020/मिन-1/2) रकवा 0.366 (शून्य दशमलव तीन छः छः) हैक्टेयर जो कि वर्तमान में नगरपालिक निगम मुरैना की सीमाक्षेत्र के अधीन पुराना वार्ड कंमाक 35 (पैंतीस) नवीन वार्ड कंमाक 41 (इकतालीस) अटल वार्ड टी.आर.पुरम मुरैना म.प्र. की स्वामी आधिपत्यधारी होकर वादिया के द्वारा उक्त भूमि में से अंशभाग अपने विधिक अधिकारों के अधीन विकीत किये जाने के साथ साथ शेष भूमि भाग 0.0824 (शून्य दशमलव शून्य आठ दो चार) हैक्टेयर की एकमात्र रूप से स्वामी आधिपत्यधारी होकर काबिज चली आ रही है।
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> "ए-ए"- "यह भी घोषित किया जावे कि प्रतिवादी कंमाक 01 गिर्राज बंसल के द्वारा उक्त तथाकथित विकय पत्र ई-पंजीकरण संख्या एम.पी.25972019

1682005 दिनांकित 04.10.2019 नविस्ते रमेशचंद गर्ग बहक गिर्राज बंसल का अनुचित उपयोग करते हुये अपनी व्यवसायिक कर्म "बी.पी. फुड प्रोडक्टस प्रायवेट लिमिटेड" के ऋण पेटे बिना किसी स्वत्वाधिकार एवं आधिपत्य के प्रश्नाधीन सम्पत्ति को "दृष्टिबंधक" किए जाने संबंधी संपूर्ण संव्यवहार तत्समय से ही "शून्य एवं निष्प्रभावी" होने से वादिया के निहित विधिक स्वत्वाधिकारों के मुकाबले प्रभावहीन व निष्प्रभावी होकर संबंधित प्रतिवादी को प्रश्नाधीन संपत्ति में किसी भी प्रकार का कोई भी अधिकार अर्जित ना होने से वादिया पर बंधनकारी ना होने से पाबन्द नहीं है।

(बी)- यह घोषित किया जावें, कि प्रतिवादी कंमाक 02 के द्वारा वादग्रस्त भवन भूमि के संबंध में प्रतिवादी कंमाक 01 के पक्ष में संपादित तथाकथित विकय पत्र ई-पंजीयन संख्या एमपी 257920191682005 दिनांकित 04.10.2019 (शून्य चार/दस/दो हजार उन्नीस) नविस्ते रमेशचन्द्र गर्ग बहक गिर्राज बंसल तत्समय से ही स्वत्वविहिन, अधिकारविहीन, प्रतिफलविहीन होकर नादिया के स्वत्वों के मुकाबले निष्प्रभावी होकर प्रभावहीन एवं शून्य होने से वादिया पर किसी भी प्रकार से बंधककारी नहीं है और ना ही वादीया के स्वत्वों के मुकाबले प्रतिवादी कंमाक 01 को कोई स्वत्वाधिकार ही अर्जित होते है।

(सी) वादिया के पक्ष में प्रतिवादीगण के विरुद्ध स्थायी निषेधाज्ञा जारी की जाकर वादीया के एकांगी स्वत्व स्वामित्व एवं आधिपत्य के भवन भूखण्ड संलग्न मानचित्र वादपत्र अंकित लालस्थाही में वादीया के स्वामित्व एवं आधिपत्य में प्रतिवादीगण को किसी भी प्रकार से हस्तक्षेप करने बेदखल कर कब्जा करने, निर्माण करने अथवा किसी भी प्रकार से अन्यत्र अंतरित करने से निषेधित किया जावें।

(डी) वादिया को प्रस्तुत वाद का संपूर्ण व्यय प्रतिवादीगण से

दिलाये जाने के साथ साथ अन्य न्यायोचित सहायता जो वादीया के पक्ष में हो प्रतिवादीगण के विरूद्ध प्रदान की जावें ।"

4. For the aforesaid relief, the plaintiff has valued her suit for relief of declaration of her title and declaration of sale deed as null and void at Rs.2,67,08,500/- which is the sale consideration mentioned in the sale-deed. For the relief of declaration, she has paid fixed court fees of Rs.2,000/-. The relief of permanent injunction is valued at Rs.500/- and court fees of Rs.100/- is paid thereof.

5. The defendant no.3/applicant filed an application under Order 7 Rule 11 CPC. The rejection of the plaint was sought on the ground that the suit is barred under the provisions of Section 34 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in short "SRFAESI Act". It is its contention that the suit property is mortgaged with the applicant and the applicant has initiated proceedings under the SRFAESI Act for recovery of its dues. Therefore, the applicant is required to approach the Debt Recovery Tribunal for redressal of her grievance and the suit is not maintainable in view of provisions of Section 34 of the SRFAESI Act. The applicant has also sought rejection of plaint on the ground that even though the suit is valued at Rs.2,67,08,000/-, fixed court fees of Rs.2,000/- only is paid whereas the plaintiff is required to pay *ad-valorem* court fees on the aforesaid valuation of the suit.

6. The application was opposed by the respondent no.1/plaintiff.

7. The learned Trial Court by impugned order has rejected the application filed by the applicant on the ground that the relief prayed for in the civil suit cannot be granted by the DRT and can be adjudicated only

by the civil Court.

8. Challenging the order passed by the learned trial Court, learned senior counsel for the applicant submitted that the Debt Recovery Tribunal (DRT) is having exclusive jurisdiction to adjudicate the issue arising out of the SRFAESI proceedings initiated by the applicant. In support of his submission, he referred to Section 34 of SRFAESI Act. Further, he also points out that the respondent no.1 has already approached the Tribunal by filing securitization application under Section 17 of the Securitization Act which is subject matter of S.A. No.481/2026 and the same is pending consideration. Learned counsel further submitted that the plaintiff has disputed the validity of the mortgage created in favour of the applicant which could be decided only by DRT. In support of his submission, he placed reliance upon the Apex Court judgment in the case of ***Central Bank of India Vs. Prabha Jain*** reported in ***(2025)4 SCC 38 (Para 21 & 22.5)***. Learned senior counsel has argued that the suit is not maintainable in view of Section 34 of SRFAESI Act and the learned trial Court erred in rejecting the application filed by the applicant.

9. Learned senior counsel further referred to the paragraph 13 of the application filed by applicant wherein the objection with regard to inadequate valuation and payment of insufficient court fees was specifically raised. He submitted that learned trial Court failed to adjudicate upon the aforesaid objection raised by the applicant. He relied upon the Division Bench judgment of this Court in the case of ***Ashok Kumar Jain & others Vs. Punjab and Sindh Bank & others*** reported in ***2013(3) M.P.L.J. 22*** and the judgment in the case of ***Israt Jahan (Smt.) Vs. Rajia Begum & others*** reported in ***2010(1) M.P.H.T. 338***, and

submitted that the applicant is required to pay *ad-valorem* court fees on the valuation made by her in the plaint.

10. On the other hand, learned senior counsel appearing for respondent no.1/plaintiff supported the impugned order passed by the trial Court. As per his submission, the relief of declaration of title with a further relief for declaration of sale-deed as null and void can be granted only by the civil Court. It is his submission that the Tribunal exercising jurisdiction under Section 17 of the Securitization Act is competent to adjudicate the validity of the measures taken by the financial institution under Section 13 of the Act only. The relief which are prayed for in the plaint are beyond the jurisdiction of the Tribunal. Learned senior counsel also placed reliance upon the Apex Court judgment in the case of ***Prabha Jain (supra)*** and submitted that the provisions of Section 34 of the SRFAESI Act are not attracted.

11. Regarding objections of non-payment of *ad-valorem* court fees, senior counsel argued that even though the trial Court has not addressed the aforesaid issue, however, the same can be decided by this Court as the material to decide the same is available on record. He relied upon the Apex Court judgment in the case of ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors.*** reported in ***(2010)12 SCC 112*** and submitted that since the plaintiff is not party to the sale-deed as also to the mortgage created in favour of the applicant, she is not required to pay *ad-valorem* court fees. She has already made valuation of the suit at sale consideration mentioned in the sale.

12. Considered the submissions and perused the record.

13. The relief prayed for in the plaint are already reproduced herein

before. Perusal of the same shows that plaintiff has raised issues with regard to her title based upon the Will executed by Smt. Sheela Devi. She has also claimed cancellation of sale-deed executed by defendant no.2 in favour of defendant no.6. These reliefs can be adjudicated and granted by Civil Court only. Even though the relief with regard to mortgage created by defendant no.1 in favour of applicant is also sought for, however, the same is consequential to the relief of declaration mentioned above. Therefore, even though relief regarding mortgage relates to bank's action, however, the decision of the same depends upon plaintiff's entitlement to get relief of declaration of title and sale deed being null and void. Therefore, the plaint cannot be rejected only because one of the relief relates to applicant's action. It is settled in law that adjudication of title of a party and validity of a sale-deed can only be done by the civil court and the DRT has no jurisdiction to adjudicate such issues.

14. The plaint is stated to be barred under Section 34 of SRFAESI Act which reads as under:

> **"34. Civil Court not to have jurisdiction.**—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."

15. From the aforesaid, it is evident that the suit under this provision is barred only in relation to the issues, which are triable by the DRT. The provisions of Section 34 have been interpreted by Apex Court in the case

of ***Prabha Jain (supra)*****,** wherein the Court held as under:

> ***"18.*** *Further, the Sarfaesi Act is enacted essentially to provide a speedy mechanism for recovery of debts by banks and financial institutions. The Sarfaesi Act has not been enacted for providing a mechanism for adjudicating upon the validity of documents or to determine questions of title finally. The DRT does not have the jurisdiction to grant a declaration with respect to the mortgage deed or the sale deed as sought by the plaintiff. The jurisdiction to declare a sale deed or a mortgage deed being illegal is vested with the civil court under Section 9 of the Code of Civil Procedure. Therefore, the civil court has the jurisdiction to finally adjudicate upon the first two reliefs.*
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> *** *** ***
>
> ***22.2.*** *Now, the question that arises is this : Whether the plaintiff being not in possession could have sought for from the DRT under the unamended Section 17(3)? In our considered view for the following two reasons, the plaintiff could not have sought from DRT the relief of being given possession:*
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> ***22.2.1.*** *The plaintiff is neither a borrower nor a person claiming under/through the borrower. The plaintiff has a claim independent of and adverse to the borrower.*
>
> ***22.2.2.*** *The plaintiff was not in possession. Hence, the question of DRT "restoring" possession to the plaintiff did not arise.*
>
> ***22.3.*** *Hence, the plaintiff could not have sought from DRT, the relief of being handed over the possession. DRT would have no jurisdiction to grant such relief to her. Hence, the plaintiff's third relief in her suit is also not barred by Section 34 of the Sarfaesi Act.*
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> *** *** ***
>
> ***42.*** *The Debts Recovery Tribunal is a creature of the RDB Act of 1993 and is empowered to exercise powers under that Act and the Sarfaesi Act of 2002.*

The Tribunal is bound by the powers conferred to it by Parliament. Interestingly, when this Court in Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd. [Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd., (2014) 6 SCC 1 : (2014) 3 SCC (Civ) 1 : (2014) 184 Comp Cas 199] held that the tenant cannot approach the DRT because the re-possession can be only in favour of the borrower, Parliament stepped in and amended the Sarfaesi Act. Sub-sections (3) and (4) of Section 17, respectively, are instructive to the level of examination that the DRT can undertake, and the same is limited to the validity of the measures under sub- section (4) of Section 13. Hence, the DRT is not permitted to examine the validity of the earlier sale deed, whereafter the mortgage was executed in favour of the Bank."

As held by Apex Court, the DRT do not have jurisdiction to decide validity of documents or to determine questions of title finally. Further, the DRT does not have the jurisdiction to grant a declaration with respect to the mortgage deed or the sale deed as sought by the plaintiff. The jurisdiction to declare a sale deed or a mortgage deed being illegal is vested with the civil court. Thus, the jurisdiction of civil court in the present case is not barred by Section 34.

16. The Apex Court in the case of **Prabha Jain (supra)** also held that:

***"23.** Even if we would have been persuaded to take the view that the third relief is barred by Section 17(3) of the Sarfaesi Act, still the plaint must survive because there cannot be a partial rejection of the plaint under Order 7 Rule 11CPC. Hence, even if one relief survives, the plaint cannot be rejected under Order 7 Rule 11CPC. In the case on hand, the first and second reliefs as prayed for are clearly not barred by Section 34 of the Sarfaesi Act and are*

> *within the civil court's jurisdiction. Hence, the plaint cannot be rejected under Order 7 Rule 11 CPC.*
> ***24.*** *If the civil court is of the view that one relief (say relief A) is not barred by law but is of the view that relief B is barred by law, the civil court must not make any observations to the effect that relief B is barred by law and must leave that issue undecided in an Order 7 Rule 11 application. This is because if the civil court cannot reject a plaint partially, then by the same logic, it ought not to make any adverse observations against relief B."*
> *Thus, even if some of the relief overlaps with the jurisdiction of DRT, the plaint cannot be rejected as partial rejection of the plaint is not permissible."*

17. Learned senior counsel for the applicant also argued that the plaintiff has already approached the Tribunal for redressal of her grievance and by doing so, she has accepted that her remedy lies before the Tribunal and not before the civil Court. The argument is apparently not acceptable. A perusal of the relief prayed for in the securitization application goes to show that the plaintiff has approached the Tribunal only for protecting the suit property from being sold towards recovery of the loan dues. Her possession is also sought to be protected before the Tribunal. However, in view of the discussion made above, the main relief prayed for in the plaint can be granted by the civil Court only. The other relief is consequential to the main relief. Therefore, merely because the plaintiff has approached the Tribunal, would not render the plaint liable to be rejected.

18. Regarding objection of non-payment of *ad-valorem* court fees, it is sufficient to refer to the Apex Court judgment in the case of ***Suhrid Singh (supra)*** wherein the Court held in para 7 as under:-

> "*7. Where the executant of a deed wants it to be*

annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act. "

19. Admittedly, the plaintiff is not party to the sale deed nor she is claiming right in the property through defendant no.2. She claims exclusive ownership over the suit property and has challenged the sale-deed executed by defendant no.2 being without competence. Thus, in view of ***Suhrid Singh***, the plaintiff is not required to pay *ad-valorem* court fees though she is required to value the suit at the sale consideration

which she has done.

20. Considering the aforesaid, the plaint cannot be rejected at this stage under Order 7 Rule 11 CPC. The issues between the parties are required to be adjudicated based upon the evidence that may be led by the parties. Consequently, it is held that the application under Order 7 Rule 11 CPC is rightly rejected by the learned trial Court. The revision is found to be without any substance and is, therefore, **dismissed**.

(ASHISH SHROTI)
JUDGE

RAHUL SINGH PARIHAR

Digitally signed by RAHUL SINGH PARIHAR
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