

Commercial Appeal No. 5 of 2025  
(Omnarayansri Agrifarmer Pvt. Ltd.  
vs.  
Punjab National Bank and 2 others

Neutral Citation No. - 2025:AHC:65878-DB

**AFR**

**Chief Justice's Court**

**Case :-** COMMERCIAL APPEAL No. - 5 of 2025

**Appellant :-** Omnarayansri Agrifarmer Pvt. Ltd.

**Respondent :-** Punjab National Bank and 2 others

**Counsel for Appellant :-** Arun Mishra, Vijay Pratap Singh

**Counsel for Respondent :-** Jainendra Kumar Mishra

**Hon'ble Arun Bhansali, Chief Justice**

**Hon'ble Kshitij Shailendra, J.**

1. Heard Shri Arun Mishra, learned counsel for the appellant, Shri Jainendra Kumar Mishra, learned counsel for respondents No. 1 and 2 and perused the record.

**THE CHALLENGE**

2. The present appeal under Section 13 (1-A) of Commercial Courts Act, 2015 (in short 'the Act, 2015') has been filed challenging an order dated 04.03.2025 whereby the Commercial Court, Allahabad has rejected an application filed by the appellant under Order XXXIX Rules 1 and 2 read with Section 151, Code of Civil Procedure (in short C.P.C.) in the Commercial Suit No. 1 of 2025 as well as the plaint thereof under Order VII Rule 11(d) C.P.C.

### BRIEF FACTS

3. The plaintiff obtained a cash credit limit and term loan facility from the respondent-Bank for running its business and executed certain documents in relation thereto. After exchange of certain communications between the appellant and the Bank, the bank account of the appellant was declared as Non-Performing Assets (N.P.A.) on 29/30.07.2024. The appellant filed the Commercial Suit No. 1 of 2025 in question with a prayer to declare notice dated 30.07.2024 classifying the appellant's account as N.P.A., as void for want of requirements prescribed by the Reserve Bank of India and without rescheduling the term loan account. Another prayer made in the plaint was to direct the defendants to pay damages to the tune of Rs.10,00,000/- (rupees ten lac) towards mental agony and loss of business to the plaintiff.

4. By an order dated 06.08.2024, the Commercial Court rejected the application filed by the appellant seeking exemption from complying with the mandatory provisions of Section 12-A of the Act, 2015. The appellant approached this Court by filing First Appeal From Order (Defective) No. 857 of 2024, which was dismissed by Co-ordinate Bench of this Court by order dated 21.10.2024 mainly on the ground that the appeal against the order rejecting application seeking exemption from pre-institution mediation and settlement is not maintainable under the Act. The matter, thereafter, proceeded before the Commercial Court, where the Bank filed an application under Order VII Rule 11 C.P.C. praying for rejection of plaint on the ground that the suit is barred

by provisions of **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002** (in short 'Act, 2002'). The appellant also filed an application under Order XXXIX Rules 1 and 2 read with Section 151 C.P.C. seeking temporary injunction pending suit and, based upon certain further proceedings undertaken by the Bank under Act, 2002, the appellant also sought amendment in the plaint.

5. By the order impugned dated 04.03.2025, the Commercial Court has found the suit as barred by Section 34 of Act, 2002 and, consequently, not only rejected the injunction application but also the plaint itself by allowing the application under Order VII Rule 11(d) C.P.C.

#### SUBMISSIONS ON BEHALF OF THE APPELLANT

6. Assailing the order impugned, learned counsel for the appellant has vehemently argued that bar under Section 34 of the Act, 2002 would not be attracted at all, inasmuch as the said bar attracts against entertainment of any suit or proceedings in respect of any matter which the Debt Recovery Tribunal or Appellate Tribunal is empowered by or under the Act to determine. Submission is that the Tribunal is competent to entertain proceedings only under Section 17 of Act, 2002, which may be instituted by any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 of Act, undertaken by the secured creditor. It is urged that declaration of bank account as N.P.A. is not one of the measures taken under Section 13(4) of the Act, 2002 and, hence, once the Tribunal is not

competent to entertain a challenge to an order/notice declaring bank account as N.P.A., the Commercial Court has erred in rejecting the plaint. It is also urged that the suit was filed on 06.08.2024 and the bank, maliciously issued notice under Section 13 (2) of the Act, 2002 on the same day, i.e. 06.08.2024, and whatever proceedings were thereafter undertaken by the Bank, the same may be a measure under Section 13(4) of the Act, 2002, but the suit on the date of its institution, would be maintainable under the law. Learned counsel further submits that cause of action in relation to a suit has to be seen on the date when the suit is instituted and the plaint cannot be rejected based upon subsequent developments or proceedings, particularly when the same were brought before the Court by the bank way of its defence, whereas, while considering the application under Order VII Rule 11 C.P.C., it is only the statement contained in the plaint that has to be seen and, for this reason also, the Commercial Court has erred in rejecting the plaint.

7. In support of the submissions, reliance has been placed on the following judgments:-

(i) **Bank of India and another vs. M/s Maruti Civil Works,** 2024 (1) ICC 396

(ii) **Mrs. Leelamma Mathew vs. M/s Indian Overseas Bank and others,** 2023 All SCR 1.

SUBMISSIONS ON BEHALF OF THE RESPONDENT BANK

8. Per contra, learned counsel for the Bank, with reference to its counter affidavit, submits that by issuing various notices, the

appellant was asked to clear the dues, however, when the notices remained uncomplied with, the Bank was well within its right to declare the bank account of the appellant as N.P.A. As regards proceedings under the Act, 2002, submission is that the Bank exercised its statutory power under Section 13 of the Act, 2002 by first issuing a notice under sub-section (2) thereof on 06.08.2024 calling upon the appellant to repay the loan amount within 60 days. The appellant filed objections under Section 13(3-A) of the Act, which were disposed of on 26.09.2024 justifying the action undertaken against the appellant. Thereafter, a possession notice was issued on 21.10.2024, which was followed by a sale notice dated 06.01.2025 fixing 11.02.2025 as the date for e-auction. The appellant, after receiving the sale notice, filed an application under Order XXXIX Rule 1 read with Section 151 C.P.C. on 16.01.2025 seeking restraint order against the proposed sale. When the Bank objected to the injunction application, the appellant filed an application under Order VI Rule 17 read with Section 151 C.P.C. praying for amendment of pleadings originally contained in the plaint and raised a challenge to the demand notice under Section 13(2) and possession notice under Section 13(4) of the Act, 2002. The Bank proceeded to issue a subsequent sale notice dated 28.02.2025 fixing 19.03.2025 as the date for e-auction and, in the aforesaid background facts, the Commercial Court was justified in rejecting the plaint as well as injunction application, as the suit was barred under Section 34 of the Act, 2002.

9. It is also urged that examining the validity of declaration of bank account as N.P.A. also comes within the jurisdiction of Debt

Recovery Tribunal and, hence, the suit, as initially framed, itself was not maintainable and, even otherwise, it did not remain maintainable when the proceedings under Section 13(4) etc. were put in motion. In support of his submissions, learned counsel for respondent-Bank has placed reliance upon the following judgments:-

(i) **Mardia Chemicals Ltd. vs. Union of India and others**, 2004 (4) SCC 311.

(ii) **IFCI Venture Capital Funds Limited vs. SRGP Corporation Limited**, 2024 SCC Online Del 1148.

(iii) **Gaurav Lubricants Pvt. Ltd. vs. Tamilnadu Mercantile Bank Ltd.** 2022 (6) ALT 529.

(iv) **Jagdish Singh vs. Heeralal and others**, 2014 (1) SCC 479.

### ANALYSIS

10. Having heard the learned counsel for the parties, the Court, first of all, deems it appropriate to refer Section 13 of the Act, 2002 and its relevant sub-sections. The provision reads as under:-

**“13. Enforcement of security interest.—** (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, **and his account in respect of such debt is classified by the secured creditor as non-performing asset,**

then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

.....

**(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—**

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

.....

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.”

(emphasis by us)

11. A bare perusal of Section 13 would reflect that whenever any security interest is created in favour of any secured creditor, the same may be enforced, without intervention of the court or tribunal, by such creditor in accordance with the provisions of the

Act. Declaration of an account as N.P.A., is recognized by sub-section (2) in the event when the borrower makes a default in repayment of secured debt or any instalment thereof. The same sub-section further proceeds with issuance of notice by the secured creditor requiring the borrower to discharge in full his liabilities within 60 days failing which the secured creditor shall be entitled to exercise all or any of the measures under sub-section (4) to recover the secured debt.

12. The afore-quoted provision reflects that action under Section 13 (4) of the Act, 2002 is dependent upon and is in furtherance of the event(s) mentioned in sub-section (2) and cannot be read in isolation. Therefore, one or the other measure under sub-section (4) follows declaration of the bank account as N.P.A. and failure on the part of borrower to discharge liability despite notice.

13. There is no dispute about the fact that after the appellant's account was declared as N.P.A. on 29/30.07.2024, the Bank issued statutory notice under Section 13(2) of the Act, 2002 on 06.08.2024, which was followed by further proceedings upto the stage of e-auction of the secured assets. Therefore, various measures were undertaken by the Bank under Section 13(4) of the Act, 2002. It is for this reason that the appellant proceeded not only to seek amendment in the plaint by raising a challenge to the measures under Section 13(4), but also seeking a restraint order against taking of possession etc. by filing an application for injunction under Order XXXIX Rule 1 read with Section 151



C.P.C. The Commercial Court, under the said facts and circumstances, relied upon the judgement of Hon'ble Supreme Court in the case of **Mardia Chemicals Ltd. (supra)** and found the suit as barred by Section 34 of the Act, 2002 holding that the civil court or any authority has no power or jurisdiction to entertain any suit or injunction application.

14. In the case of **Mrs. Leelamma Mathew (supra)**, Hon'ble Supreme Court was seized of a matter where the Bank had secured an immovable property admeasuring 54 cents in exercise of powers under the Act, 2002 and secured its possession and, thereafter, the said property was put to auction. The plaintiff therein, after inspection of the property, submitted quotation for sale of 54 cents and offered requisite sum. Tenders were invited on 'as is where is' and 'as is what is' basis. Ultimately, it was found through a report submitted by the Tehsildar that the actual measurement of the land was 39.60 cents and that the debtor had already transferred 14.40 cents out of the land admeasuring 54 cents prior to creation of mortgage with the Bank. The dispute of the aforesaid nature, ultimately, gave rise to institution of a suit for recovery of damages/compensation with respect to 14.40 cents. The matter reached to the High Court, who found the suit as barred by Section 34 of the Act, 2002. The Hon'ble Supreme Court observed that the suit was filed only for damages/compensation with respect of balance land, which aspect could not be decided by the Debt Recovery Tribunal or Appellate Tribunal and, therefore, Section 34 would have no application. It was also observed that the plaintiff had not challenged the

sale/sale certificate and, therefore, the High Court had erred in holding the suit as barred by Section 34.

15. Facts of the present case are entirely different where, on account of default in discharge of financial liability, the Bank declared the account of the appellant as N.P.A. and commercial suit was filed seeking a declaration of holding such order of the Bank as null and void. Although, damages for mental agony etc. were also claimed in the suit, when the matter went up to the stage of auction sale, the appellant itself sought to assail all proceedings under the Act, 2002, the challenge whereto could be laid before the Debt Recovery Tribunal and not by way of the suit. Therefore, the cited judgment in the case of **Mrs. Leelamma Mathew** (supra) has no application to the facts of the present case.

16. Reliance placed by the appellant on the judgment of Bombay High Court in the case of **M/s Maruti Civil Works** (supra) is thoroughly misplaced, inasmuch as, the issue before the Bombay High Court was as to, when an application under Order VII Rules 10 and 11 (d) of C.P.C., filed by the Bank is rejected, whether an appeal under Section 13(1-A) of the Act, 2015 would lie. The Bombay High Court held the appeal as not maintainable. Here, the situation is reverse that is to say that the application filed by the Bank under Order VII Rule 11(d) C.P.C. has been allowed by the Commercial Court and, consequently, the plaint has been rejected. We have not raised any doubt regarding maintainability of this appeal and, therefore, the judgement has no application.

17. In the case of **Mardia Chemicals Ltd.** (supra), bar of jurisdiction of the civil court under Section 34 of the Act, 2002 was specifically dealt with in the light of the language used in the provision. When it was argued before the Hon'ble Supreme Court that before any action or measure is taken under sub-section (4) of Section 13, there would be no bar to approach the civil court, the Apex Court turned down the said submission in paragraph 50 of the report and held as under:-

“50. It has also been submitted that an appeal is entertainable before the Debt Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debt Recovery Tribunal or the appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr. Salve one of the counsel for respondents that there would be no bar to approach the civil court. Therefore, it cannot be said no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debt Recovery Tribunal or 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 Debt 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 Debt Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.”**

(emphasis by us)

18. The judgements in the case of **Gaurav Lubricants Pvt. Ltd.** (supra) and **Jagdish Singh** (supra) follow the ratio in the case of **Mardia Chemicals Ltd.** (supra).

19. In view of the above law laid down by Hon’ble Supreme Court, the suit filed by the appellant was barred by Section 34 of Act, 2002 as declaration of account of the appellant as N.P.A. could not be seen in isolation qua the measures taken or to be taken or may be taken in pursuance of the power conferred under the Act, 2002.

20. As far as the last submission made by learned counsel for the appellant that while deciding an application under Order VII Rule 11 (d) C.P.C., only statement contained in the plaint and not defence raised by the defendants has to be seen, there is no quarrel with the said proposition which is apparent from the language of the provision. However, the appellant is not correct in raising this argument in the facts of the present case where, even if we ignore the defence of the Bank with respect to measures taken under Section 13(2) or 13(4) read with applicable Rules, the fact remains that the appellant itself described these proceedings in its application under Order XXXIX Rule 1 C.P.C. and also in the application under Order VI Rule 17 C.P.C. Such assertions will certainly be read in connection with the plaint and would be

deemed to be statement contained in the plaint, which was not only sought to be amended, but allied prayers were also made through injunction application. Therefore, the Commercial Court did not err in considering the admissions made by the plaintiff itself and, hence, the submission advanced that the Commercial Court has rejected the plaint by taking into consideration the defence raised by the Bank, has no substance.

21. In view of above discussion, the order passed by the Commercial Court rejecting the injunction application as well as plaint under Order VII Rule 11 C.P.C. does not suffer from any error of fact and/or law. Consequently, the appeal fails and is **dismissed**.

**Order Date :- 28.4.2025**  
Sazia

(Kshitij Shailendra, J)      (Arun Bhansali, C.J.)