



2026:CGHC:20651

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MA No. 39 of 2025**

Amit Agrawal S/o Gourishankar Agarwal Aged About 48 Years R/o Main Road, Gupta Gali, Korba, Tahsil And District Korba, Chhattisgarh.

(Plaintiff)

... Appellant(s)**versus**

1. Punjab National Bank Through Manager, Punjab National Bank Branch T.P. Nagar, Korba, Chhattisgarh.
2. Municipal Corporation, Korba Through Estate Officer, Municipal Corporation, Korba, Tahsil And District Korba, Chhattisgarh.
3. Commissioner, Municipal Corporation, Korba, Tahsil And District Korba, Chhattisgarh.
4. Mayor-In-Council Municipal Corporation, Korba, Tahsil And District Korba, Chhattisgarh.
5. Surendra Kumar Agrawal S/o Shri Jailal Agrawal Aged About 56 Years R/o M.I.G.- 1/02, Tahsil And District Korba, Chhattisgarh.
6. Smt. Rekha Agrawal W/o Shri Surendra Agrawal Aged About 50 Years R/o M.I.G.- 1/02, Tahsil And District Korba, Chhattisgarh.

7. Sumit Agrawal S/o Surendra Agrawal Aged About 31 Years R/o
M.I.G.- 1/02, Tahsil And District Korba, Chhattisgarh.

... Respondent(s)

(Cause title is taken from CIS)

For Appellant(s)	:	Mr. Malay Shrivastava, Advocate
For Respondent No. 1	:	Mr. Sharad Mishra, Advocate
For Respondents No. 2, 3 & 4	:	Mr. H.B. Agrawal, Senior Advocate along with Ms. Preeti Yadav, Advocate

Hon'ble Shri Justice Bibhu Datta Guru

Judgment on Board

04/05/2026

1. The appellant/plaintiff has preferred the present appeal under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908, being aggrieved by the order dated 05.02.2025 passed by the learned 1st District Judge, Korba (C.G.) in Civil Suit No. 8-A/2024 (*Amit Agrawal Vs. Punjab National Bank & Ors.*), whereby the learned trial Court rejected the application filed by the appellant/plaintiff under Order 39 Rules 1 & 2 r/w Section 151 of CPC.
2. The plaintiff instituted the suit pleading *inter alia* that the suit property, i.e., Shop No. 1 constructed over Plot No. 462-A situated at Indira Residential-cum-Commercial Complex, T.P. Nagar, Korba, was originally owned and possessed by defendant Nos. 05 to 07. It is pleaded that, pursuant to permission and no-objection granted by defendant Nos. 02 to 04 (Municipal Corporation) on 03.07.2017, the plaintiff purchased the said property from defendant Nos. 05 to 07 by a registered sale deed dated

04.08.2017 for a valid consideration of Rs. 15,00,000/- and has since been in lawful possession thereof as a *bona fide* purchaser. It is further averred that at the time of purchase, no encumbrance or mortgage was reflected in any official record, and even the vendors as well as the Municipal Corporation certified that the property was free from all charges. The plaintiff submits that subsequently, respondent No. 1–Bank initiated proceedings under the SARFAESI Act, 2002 on the basis of an alleged prior loan of defendant Nos. 05 to 07 and sought to auction the suit property, which was also advertised in a newspaper. The plaintiff challenged the said auction proceedings before the Debt Recovery Tribunal; however, the Tribunal held that the dispute pertains to title and can be adjudicated only by the Civil Court. Since the plaintiff claiming himself to be the lawful owner and is in possession of the suit property he instituted the suit seeking declaration of title and permanent injunction, contending that the SARFAESI proceedings and proposed auction are illegal, void, and not binding upon him.

3. Along with the plaint, the plaintiff also filed an application under Order 39 Rule 1 and 2 CPC seeking temporary injunction. It is stated in the said application that the plaintiff purchased the suit shop from defendant Nos. 05 to 07 by a registered sale deed dated 04.08.2017, pursuant to permission granted by defendant Nos. 02 to 04, and is in possession thereof as a *bona fide* purchaser. On the basis of a No Objection Certificate dated

25.03.2019, the plaintiff also obtained a home loan from ICICI Bank by mortgaging the property. It is further contended that defendant No. 1 has initiated proceedings under the SARFAESI Act for auction of the suit property on the basis of an alleged prior mortgage, which, if allowed, would result in dispossession of the plaintiff and cause irreparable loss. It is thus prayed that during pendency of the suit, defendant No. 1 be restrained from auctioning the property or disturbing the plaintiff's possession.

4. *Per contra*, the defendant No. 1 (Bank) filed the written statement along with the reply to the application under Section 39 Rule 1 & 2 stating therein that the entire Plot No. 462-A admeasuring 1200 sq. ft., along with the building and shops constructed thereon, had already been equitably mortgaged in its favour and such mortgage is subsisting. It is alleged that defendant Nos. 05 to 07, in collusion with defendant Nos. 02 to 04 and the plaintiff, fraudulently executed the sale deed in favour of the plaintiff without informing the Bank. It is further contended that the permission for lease transfer obtained from defendant Nos. 02 to 04 was secured in an illegal manner and, therefore, the sale deed executed in favour of the plaintiff is also illegal. The Bank has also stated that the No Objection Certificate was issued by the Municipal Corporation without its prior permission, despite the property having been mortgaged in its favour on 21.12.2015. Accordingly, proceedings for auction sale of the property have been initiated under the SARFAESI Act, 2002. It is further

submitted by defendant No. 01 that since the property had been mortgaged on 21.12.2015 and the loan amount has not been repaid, action under the SARFAESI Act, 2002 has rightly been initiated. It is also contended that in view of the bar contained under Section 34 of the SARFAESI Act, the Civil Court has no jurisdiction to entertain the matter. Hence, dismissal of the application has been prayed for.

5. Defendant Nos. 05 to 07, in their reply, have stated that the suit property has been in the ownership and possession of the plaintiff since 04.08.2017, having been transferred with the permission of defendant Nos. 02 to 04. They have further submitted that they have no objection if the application under Order 39 Rule 1 & 2 CPC filed by the plaintiff for temporary injunction is allowed.
6. The learned Trial Court, upon considering the pleadings and material on record, held that no *prima facie* case is made out in favour of the plaintiff. It was observed that although the plaintiff had purchased Shop No. 1, the sale deed clearly indicates that only the superstructure was transferred and not the underlying land, which continued to remain with the original lessees. The Court further noted that the plot had already been mortgaged with defendant No. 01–Bank prior to the sale. Accordingly, the learned Trial Court held that the balance of convenience does not lie in favour of the plaintiff and no irreparable injury would be caused to him. Consequently, the application for temporary injunction under Order 39 Rules 1 and 2 CPC was rejected. Thus, this appeal.

7. Learned counsel for the appellant submits that the impugned order rejecting the application under Order 39 Rules 1 and 2 CPC is illegal, arbitrary and contrary to settled principles of law. It is contended that the learned Trial Court failed to appreciate that the appellant is a *bona fide* purchaser who acquired the suit shop after due diligence and is in lawful possession thereof. It is further submitted that the appellant was left remediless, as the Debts Recovery Tribunal had declined to entertain his claim, holding him to be a stranger to the proceedings, and thus the Civil Court ought to have granted protection. It is argued that the Trial Court erred in not considering the existence of a *prima facie* case, balance of convenience and irreparable loss, as the proposed auction/sale would result in multiplicity of proceedings and cause irreparable injury to the appellant, who has invested his entire savings in the property. Hence, it is prayed that the impugned order be set aside and temporary injunction be granted.
8. Having heard learned counsel for the parties and on perusal of the record with due circumspection, this Court is of the considered opinion that no ground is made out for interference with the discretionary order passed by the learned trial Court. It is well settled that while considering an appeal against an order granting temporary injunction, the Court would not substitute its own discretion unless the order impugned is shown to be arbitrary, capricious or contrary to settled principles governing grant of interim relief.

9. In the present case, it is not in dispute that the suit property forms part of Plot No. 462-A, which had been leased in favour of defendant Nos. 05 to 07 and that the said plot, along with the construction thereon, was equitably mortgaged with defendant No. 01–Bank on 21.12.2015, much prior to the alleged purchase by the plaintiff. The plaintiff claims to have purchased Shop No. 1 by a registered sale deed dated 04.08.2017, pursuant to permission granted on 03.07.2017. Thus, *prima facie*, the mortgage in favour of the Bank precedes the sale in favour of the plaintiff.
10. Further, a careful reading of the sale deed, as rightly appreciated by the learned Trial Court, reveals that only the superstructure (shop) was transferred to the plaintiff, specifically excluding the land and terrace beneath it, which continued to remain with the original lessees. The land in question was mortgaged with the respondent Bank by the defendant No. 5 to 7 on 21.12.2015. However, the super structure has been transferred to plaintiff on 04.08.2017, without intimating the bank. It further emerges from the record that the respondent–Bank, in exercise of its powers under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002, has already conducted the auction of the mortgaged property in favour of the auction purchaser, Mr. Ashok Kumar Mittal, and symbolic possession has also been delivered. Therefore, the plaintiff has not acquired any title over the land forming the subject matter of the mortgage and subsequent proceedings.
11. The material on record also indicates that due to default in repayment of the loan, defendant No. 01 initiated proceedings under

the SARFAESI Act and proceeded to issue auction notice, which was published on 09.01.2024. The challenge to such proceedings before the Debt Recovery Tribunal did not enure to the benefit of the plaintiff, as he was not treated as an aggrieved person.

12. In view of these facts, the finding of the learned Trial Court that no prima facie case exists in favour of the plaintiff cannot be faulted. The plaintiff, being aware from the recitals of the sale deed that the land was not being conveyed, cannot claim a better right than the mortgagee Bank whose interest is prior in time. Consequently, the balance of convenience also tilts in favour of the Bank, and the plea of irreparable injury raised by the plaintiff is not substantiated.
13. The learned Trial Court has thus rightly concluded that the essential ingredients for grant of temporary injunction are not satisfied. The impugned order does not suffer from any illegality, perversity, or material irregularity warranting interference by this Court in exercise of appellate jurisdiction.
14. Accordingly, the instant appeal being devoid of merit is hereby **dismissed** at the motion stage itself.

Sd/-
(Bibhu Datta Guru)
Judge