

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 16.4.2012*

+ **C.R.P. No. 178/2008**

PUNJAB NATIONAL BANK Petitioner
Through: Mr. Anshu Dhingra, Advocate.

versus

GURJEET KAUR Respondent
Through: Mr. Y.P. Bhasin, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The impugned order is dated 08.10.2008; the application filed by the defendant bank (Punjab National Bank) under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as the 'Code') had been dismissed; contention of the defendant was that the present suit filed by the plaintiff seeking an injunction against the notice dated 22.02.2008 issued by the Bank under the provisions of SARFAESI (Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act) is not maintainable before a civil Court; however this plea

did not find favour with the trial Court. The impugned order had declined to reject the plaint.

2. Record shows that the present suit has been filed by the plaintiff Gurjeet Kaur against the PNB. It is a suit for rendition of accounts and permanent injunction. The prayer is to the effect that the defendant should render accounts; a permanent injunction be granted in favour of the plaintiff and against the defendant from executing the notice dated 22.02.2008 which had been issued by the defendant bank and they should be restrained from taking possession of the property of the plaintiff.

3. Record shows that the plaintiff had availed of a loan of Rs.5 lacs from the defendant bank; an equitable mortgage of the property i.e. property bearing No. 29/117-118, third floor, West Patel Nagar, New Delhi had been created; contention of the petitioner was that this loan was taken by her husband Jagjit Singh Grover and this property had not been mortgaged with the bank. Further contention was to the effect that the notice dated 22.02.2008 issued by the bank be not acted upon.

4. The written statement was filed contending that the notice which was issued by the bank under Section 13 of the SARFAESI Act can be

dealt with only by the appropriate forum which would be the forum under the SARFAESI Act and no civil Court has jurisdiction to entertain any suit of such a nature. This objection was also taken in the application under Order 7 Rule 11 of the Code filed separately by the bank but this prayer was rejected.

5. Learned counsel for the petitioner has placed reliance upon a judgment in CR No. 242/2004 delivered on 16.04.2005 titled State Bank of India Vs. Mukesh Jain & Anr. wherein while dealing with an application under Section 13 (2) of the SARFAESI Act, the Court had noted that where the amount to be recovered is less than Rs.10 lacs, the bar of Section 34 of the said Act would not apply and in view of the definition of 'debt' as contained in Section 1 (h) of the DRT Act, the DRT would have the jurisdiction over the matters where the amount involved is Rs.10 lacs.

6. The Apex Court in the case of Mardia Chemicals Limited Vs. Union of India (2004) 4 SCC 311 while rejecting the prayer that the provisions of Sections 13 & 17 of the SARFAESI Act are unconstitutional had noted as under:-

“In the background we have indicated above, we may consider as to what

forums or remedies are available to the borrower to ventilate his grievance. The purpose of serving a notice upon the borrower under sub-section (2) of Section 13 of the Act is, that a reply may be submitted by the borrower explaining the reasons as to why measures may or may not be taken under sub-section (4) of Section 13 in case of non-compliance of notice within 60 days. The creditor must apply its mind to the objections raised in reply to such notice and an internal mechanism must be particularly evolved to consider such objections raised in the reply to the notice. There may be some meaningful consideration of the objections raised rather than to ritually reject them and proceed to take drastic measures under sub-section (4) of Section 13 of the Act. Once such a duty is envisaged on the part of the creditor it would only be conducive to the principles of fairness on the part of the banks and financial institutions in dealing with their borrowers to apprise them of the reason for not accepting the objections or points raised in reply to the notice served upon them before proceeding to take measures under sub-section (4) of Section 13. Such reasons, overruling the objections of the borrower, must also be communicated to the borrower by the secured creditor. It will only be in fulfillment of a requirement of reasonableness and fairness in the dealings of institutional financing which is so important from the point of view of the economy of the country and would serve the purpose in the growth of a healthy economy. It would certainly provide guidance to the secured debtors in general in conducting the affairs in a manner that they may not be found defaulting and being made liable for the unsavoury steps contained under sub-section (4) of Section 13. At the same time, more importantly we must make it clear unequivocally that communication of the reasons not accepting the objections taken by the secured borrower may not be taken to give an occasion to resort to such proceedings which are not permissible under the provisions of the Act. But communication of reasons not to accept the objections of the borrower, would certainly be for the purpose of his knowledge which would be a step forward towards his right to know as to why his objections have not been accepted by the secured creditor who intends to resort to harsh steps of taking over the

management/business of viz. secured assets without intervention of the court. Such a person in respect of whom steps under Section 13(4) of the Act are likely to be taken cannot be denied the right to know the reason of non- acceptance and of his objections. It is true, as per the provisions under the Act, he may not be entitled to challenge the reasons communicated or the likely action of the secured creditor at that point of time unless his right to approach the Debt Recovery Tribunal as provided under Section 17 of the Act matures on any measure having been taken under sub-section (4) of Section 13 of the Act.

7. It has noted that the Civil Court would have no jurisdiction to entertain such pleas/objections raised to measures taken under Section 13 of the Act.

8. Reliance by the learned counsel for the petitioner upon the judgment of State Bank of India (supra) is mis-placed; it is clear that in this judgment, attention of the Court had not been drawn to the ratio laid down by the Supreme Court in Mardia Chemicals (supra).

9. Even otherwise, in Section 31 (h) of the SARFAESI Act, a ‘debt’ has been described as an amount less than Rs.1 lac. Section 31 (h) of the SARFAESI Act reads as under:-

“Section 31 (h):- any security interest for securing repayment of any financial asset not exceeding one lakh rupees.”

10. There is not dispute that in this case, the amount involved is more than Rs.5 lacs; it is outside the definition of 'debt' as contained in Section 31 (h) of the SARFAESI Act. The ratio of Mardia Chemicals Ltd. (supra) is also clear; all objections relating to objections to be raised to a notice issued under Section 13 (2) of the SARFAESI Act can only be dealt with by the forum dealing with the said Act which would be the Debt Recovery Tribunal. Jurisdiction of the Civil Court is barred.

11. Impugned judgment holding otherwise suffers from an infirmity. Petition is allowed. The plaint is rejected.

INDERMEET KAUR, J

APRIL 16, 2012

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