IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.2475 of 2015
Date of Decision.09.04.2015

Central Bank of India ....Petitioner

Versus

Mr. Ram Rattan alias Rattan Lal and others ......Respondents

Present: Mr. Pavan Malik, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. In a suit filed by the plaintiff, the averment was that the suit property belonged to him and that yet another person who claimed himself to be owner and created a mortgage in respect of the said property had no right to create the mortgage. The cause of action for the suit was the action by the Bank in proceeding against its own borrower in relation to the property alleged to have been mortgaged in favour of the Bank which the plaintiff claimed to belong to him. In the application for rejection of the plaint, the Bank would contend that even a third party is entitled to have his redressal for any action taken under SARFAESI Act, 2002 only under Section 17 and since Section 34 of the SARFAESI Act bars any suit to be instituted in respect of which provisions are available under the SARFAESI Act itself, the suit itself cannot be maintained. The petition for rejection of plaint filed by the Bank was rejected and the Bank is the revision petitioner before this

Court.

2. Learned counsel appearing on behalf of the petitioner would rely on the judgment of the Supreme Court in ***United Bank of India Vs. Satyawati Tondon and others*** decided on 26.07.2010 that considered the relevant provisions of the SARFAESI Act and observed that the High Court will not make interference to any action taken by the Bank in its writ jurisdiction under Article 226 of the Constitution. The counsel was making a reference to the observations of the Supreme Court in paragraph 17 of the said judgment that any person referred to under Section 17 would include also a person who is not a party to the loan transaction. This observation according to the petitioner would mean that the plaintiff could have only resorted to remedy under Section 17 of the SARFAESI Act, if he had claimed that the property belonged to him and the borrower had no right to create a mortgage in respect of the property.

3. I would find that the observations of the Supreme Court must be confined to the situation of what it found wrong in the exercise of jurisdiction under Article 226 to stall proceedings which the Bank was initiating against its own borrower in purported exercise by enforcement of the security interest. When the Supreme Court was making reference to Section 17, again it was making reference to a prospect which was possible for a person who is aggrieved but who was not a borrower to resort to a remedy under Section 17. I would not take these observations under para 17 to mean that a person who is not a borrower and who claims that his property was wrongfully sought to be mortgaged by a person claiming the property to belong to him could have remedy only

under Section 17. A suit for a declaration or a claim by a person who is owner of an immovable property will have a right to seek for such a declaration as a statutory exercise of a right conferred under Section 34 of the Specific Relief Act and Section 9 CPC will also allow an action of civil nature to be entertained by the Civil court. Section 34 of the SARFAESI Act cannot constitute a bar for a person who is not borrower himself and would would lay a paramount claim to right to the property which is mortgaged. If the plaintiff's contention that the suit property is his own property and the borrower had no right to create a mortgage interest in respect of the same, the Bank will be entitled to join issues on the same and then establish in the Court that the plaintiff is not the owner and the property was rightfully mortagaged in its favour by a person who was the owner. While considering the issue of whether the plaintiff had a genuine case or whether he was being set up by the borrower or the plea made by him that there was any collusion between the borrower and the plaintiff as claimed by the defendant/petitioner are all matters, which will be decided in suit. I will not take these to be matters that can be thrown out at the threshold by an application filed under Order 7 Rule 11 CPC. I decline to make any intervention.

4. The order passed is sustained and the civil revision is dismissed.

(K. KANNAN)
JUDGE

April 09, 2015
Pankaj*