

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.8380 of 2015
Date of decision: 09.12.2015**

Mohinder Pal Singh Sidhu

....Petitioner

Versus

Swaran Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajesh Bhatheja, Advocate
for the petitioner.

RITU BAHRI J. (Oral)

The petitioner has come up in revision for setting-aside the order dated 24.03.2009, passed by Civil Judge (Jr. Division), Moga, and for setting-aside the judgment dated 18.03.2013, passed by Additional District Judge, Moga, whereby the plaint of the petitioner has been rejected on the ground that the Court has no jurisdiction to try the suit.

The suit property was under mortgage with respondents No.4 and 5 i.e. Punjab National Bank, Lajpat Road, Jagroan. This property was in the ownership of Surya Agro Industries. The suit land was under mortgage with the Bank and had availed loan facilities to the extent of Rs.50 lac and Rs.18.35 lac. In order to secure these loan, the equitable mortgage of the

suit property was created by them by depositing the sale deeds bearing Vasika Nos.1100 and 1101 dated 17.05.2002. Subsequently, physical possession was taken by the bank under Section 13(4) Rule 8 of the Act on 31.07.2007. Thereafter, the defendants gave advertisement in the newspaper for tender/sale of the suit property to recover their dues. One Mukand Singh son of Ram Singh resident of village Kale Ke, was the highest bidder and he had deposited Rs.5,70,000/- as earnest money and thereafter, he did not deposit the remaining price and his money was forfeited. The bank has filed a suit for recovery of Rs.56,24,298/- before Debt Recovery Tribunal, Chandigarh under the SARFAESI Act, 2002.

Both the Courts below have consistently held that once the recovery proceedings have been initiated by the bank under the SARFAESI Act, 2002, then the Civil Court has no jurisdiction to entertain any suit or proceedings, if the matter was pending before the Debt Recovery Tribunal.

Section 17 of the SARFAESI Act, 2002, reads as under:-

“Any person including borrower aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorized officer under this Chapter, may move an application along with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on

which such measure had been taken.”

Section 34 of the Recovery of the Debts due to Banks and Financial Institutions Act, 1993, reads as under:-

“No Civil Court shall have jurisdiction to entertain any suit or proceedings 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.”

The case of the plaintiff was that vide mutation No.6957, the suit land was inherited by Swaran Singh i.e. defendant No.1 and the plaintiff-Mohinder Pal Singh in equal share and thereafter, mutation No.7086 was sanctioned regarding sale of land measuring 11 kanals 14 marlas by defendant No.1 in favour of M/s Surya Agro Industries through Ashok Kumar. The mutation No.7087 was also sanctioned showing sale of land measuring 8 kanals by Swaran Singh i.e. defendant No.1 in favour of M/s. Surya Agro Industries through Ashok Kumar and Satpal. In the present suit, the petitioner-plaintiff had sought declaration to the effect that he is owner of ½ share of the land measuring 11 kanals 14 marlas and land measuring 8 kanals which has been sold by defendant No.1 in favour of defendants No.2 and 3 vide sale

deed dated 17.05.2002.

The suit property which was mortgaged with the bank had further been sold during the pendency of the suit on 18.04.2008 and the Sale Certificate regarding the suit property in favour of Harpreet Singh Toor son of Sh. Gulzar Singh partner of M/s. Joga Agro Industries, Ajitwal, Tehsil and District Moga has been issued on 18.04.2008. Moreover, Ashok Kumar i.e. defendant No.2 has already filed a suit against the bank regarding the suit property which is pending in Jagroan.

Both the Courts below have considered the above facts and circumstances and have rightly held that once the recovery proceedings have been initiated by the bank under the SARFAESI Act, 2002, then the Civil Court has no jurisdiction to entertain any suit or proceedings, if the matter was pending before the Debt Recovery Tribunal. Further, if the person become aggrieved by the order passed under Section 17, then he can file an appeal under Section 18 before the Debt Recovery Tribunal within thirty days and the complete procedure has been laid down under the Recovery of the Debts due to Banks and Financial Institutions Act, 1993 and hence, the plaint has rightly been rejected.

No ground for interference is made out.

Dismissed.

(RITU BAHRI)
JUDGE

09.12.2015

yakub