108 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.8649 of 2015
Date of Decision: December 19, 2015

Nazar Singh **.... Petitioner**

vs.

Puneet Bansal and another **.... Respondents**

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Mukand Gupta, Advocate for the petitioner.

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

Impugned in the present revision petition is the order dated 24.11.2015 (Annexure P-5) passed by learned Civil Judge (Jr. Divn.), Bathinda, vide which it was held that the suit is barred under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act'). Consequently, the plaint was rejected under Order VII, Rule 11 CPC.

Plaintiff had filed a suit for permanent injunction for restraining the defendants i.e. Puneet Bansal and State Bank of Patiala from dispossessing the plaintiff from disputed property measuring 4 biswa, khasra No.2208/2 min, khata No.417/1372, situated at Baba Farid Nagar, Near Green City Colony, Bathinda, claiming that he is tenant over the same under defendant No.1 on the basis of rent note dated 22.12.2012. Defendant No.1 had taken a

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loan from defendant No.2-Bank and defaulted in the same. Now defendant No.2-Bank has filed application before the Debt Recovery Tribunal under the SARFAESI Act.

I have heard learned counsel for the petitioner and have also carefully gone through the case file.

The lower court is of the view that under Section 17 of the SARFAESI Act, an equally efficacious remedy is available to the plaintiff to move before the Debt Recovery Tribunal under the SARFAESI Act and that the civil suit is not competent. It was also noticed that the proceedings under the SARFAESI Act are pending before the Debt Recovery Tribunal. It was also noticed by the lower court that a notice under the SARFEASI Act has been issued and that defendant No.2-Bank has published a notice in the newspaper as per Rule 8(2) of the SARFAESI Act on 02.10.2015 i.e. prior to the filing of the suit.

Section 17(1) of the SARFAESI Act provides as under:

> "***17*** *(1) 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 authorised officer under this Chapter, may make an application alongwith 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:*
>
> *PROVIDED that different fees may be prescribed for making the application by the borrower and the person other than the borrower.*
>
> *Explanation : For the removal of doubts, it is hereby declared that the communication of the reasons to the*

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> *borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.*

The provision make it clear that 'any person' aggrieved by any of the measures referred to in sub Section (4) of Section 13 of the SARFAESI Act can file application before the Debt Recovery Tribunal or any person other than borrower. Therefore, the remedy lies before the Debt Recovery Tribunal. Thus, the civil suit is barred under the SARFAESI Act. As such, there is no illegality or infirmity in the impugned order in rejecting the plaint.

Learned counsel for the petitioner has relied upon the authority of other High Courts delivered in cases of ***"Hutchison Essar South Ltd. vs Union Bank of India, Banglore, rep. by its Authorised Officer and Anr.", 2007(6) Air Kar R 545, "M/s. Nitco Roadways Pvt. Ltd., Banglore and others vs Punjab National Bank, Banglore", 2010 (4) Air Kar R 973 and "Pushpangadan vs Federal Bank Ltd.", 2012 AIR(Kerala) 27.***

In none of the authority, it was held that a civil suit in such circumstances is competent. The orders were passed by the High Courts in civil writ petitions not in the civil suits. However, it shall always be open to the petitioner to approach the Debt Recovery Tribunal for seeking appropriate relief.

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In view of the matter, I do not find any merit in the present case. Accordingly, the present revision petition is dismissed.

(KULDIP SINGH)
December 19, 2015 **JUDGE**
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