

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

RSA No.271 of 2015

DATE OF DECISION:22.01.2015

Raisa Begum

...Appellant

Vs.

State Bank of Patiala & anr.

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Inderjeet Singh, Advocate
for the appellant.

AMIT RAWAL, J.(ORAL)

This Regular Second Appeal at the instance of appellant-plaintiff is directed against the judgments and decrees of both the Courts below, whereby the suit of the appellant-plaintiff for declaration challenging the notices dated 24.09.2009 and 08.03.2010 issued under the Securitization and Reconstruction of Financial Assets and Enforcement of Interest Act 2002 (for short “Surfaci Act”) on the ground that the signatures of the appellant-plaintiff on the alleged mortgage deeds were obtained by respondent-defendant bank by fraud had been dismissed.

Learned counsel appearing on behalf of the appellant-plaintiff submits that an application to examine the thumb impression of the appellant was declined. However, the stage at which the application was moved has not been disclosed. It is a settled proposition of law that the person who asserts the fraud must prove the same by stepping into the witness box by

tendering an affidavit in examination-in-chief. The appellant-plaintiff did not step in the witness box but gave a Power of Attorney only in favor of daughter who also did not appear. Both the Courts below dismissed the suit on the ground of maintainability by invoking the provisions of Section 34 of the Act. In the suit, the notices under Sections 3(2) and 3(4) of the Act of 2002 were challenged. Learned counsel in support of contention relies upon the judgment of the Hon'ble Supreme Court rendered in **Mardia Chemicals Ltd. etc. versus Union of India and ors-etc. R.C.R.(Civil) 665 2004(4)** to contend that Hon'ble Supreme Court has held that the suit, where plaintiff alleges fraud and collusion, is permissible. There is no dispute to the aforementioned proposition laid down by the Hon'ble Supreme Court. However, the plaintiff has miserably failed to prove fraud and collusion of private defendant with the bank. In the absence of discharge of the burden the suit of the appellant-plaintiff was liable to be dismissed and has been rightly dismissed by the trial Court. The ingredients of provisions of Order 6 Rule 4 CPC have not been proved. The appeal filed by the plaintiff before lower appellate Court is also dismissed.

The judgments and decrees of both the Courts below do not suffer from any illegality and perversity.

No substantial question of law arises for adjudication of the present appeal.

The appeal is dismissed.

22.01.2015
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(AMIT RAWAL)
JUDGE