

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

CR No.1923 of 2016

Date of decision : 15.03.2016

Bank of Baroda

...Petitioner

Versus

Ramji Dass and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. C.S. Pasricha, Advocate for the petitioner.

AMIT RAWAL, J. (Oral)

The petitioner-bank is aggrieved of the impugned order dated 30.01.2016, whereby application filed under Section 34 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, has been dismissed.

Mr. Pasricha, learned counsel appearing on behalf of petitioner-bank submits that suit ex facie is not maintainable in view of the provision under Section 34 of the Act. Claim in the suit is qua declaration and the ownership and joint possession, whereas bank had already taken symbolic possession. The plaintiff had invoked the provision of Section 17 of the Act, 2002 by filing SA No.434 of 2014, but the same was disposed of with

observation that he shall be at liberty to move an appropriate application in pending litigation and instead of availing remedy under Section 18 of the Act, chosen to file the suit, which is not maintainable. The bank has already taken symbolic possession and thereafter the plaintiff had forcibly taken the possession. Even otherwise, mortgage is prior to the date of sale and, therefore, Civil Court do not have any jurisdiction to try and entertain the suit and prays for setting aside of the impugned order, much less, dismissal of the plaint.

I have heard learned counsel for the petitioner and appraised the paper book and of the view that there is no merit in the petition. It is conceded position on record that respondent-plaintiff had approached Debt Recovery Tribunal by invoking provision of Section 17 vide SA No.434 of 2014, but same was disposed of vide order dated 09.04.2015 (Annexure P-4). Relevant para of the order reads thus:-

“This is an application for recalling the order dated 03.11.2014. Facts and circumstances does not warrant to recall the order as mortgage is prior to the date of sale. Application in any case is a third party who had purchased a plot from original mortgagor, as such IA No.955 of 2014 is dismissed.

The counsel for applicant prays that publication be done for respondent No.2.

Perusal of the SA shows that respondent No.2 is under litigation with her family members as has been detailed in para No.5 of SA. As such it would be a waste of good money to allow the prayer for publication. The applicant may file an application in that litigation if so advised.

*With these observations, SA is disposed of.
File be consigned to record room.”*

In view of the aforementioned findings, respondent-plaintiff cannot remained remediless and instead of moving an application in pending litigation, chose to file suit. Prayer in the suit, reads thus:-

“It is, therefore, prayed that suit of the plaintiff for declaration to the effect that the plaintiff is owner and in possession of the property mentioned at letter X in the heading of the plaint on the basis of registered sale deed bearing Vasika No.3093 dated 20.10.2009 registered on 30.10.2009 executed by the defendant No.1 in favour of the plaintiff and the mutation No.5052 sanctioned in the name of the plaintiff is legal, genuine and valid and the defendant No.1 never mortgaged the property mentioned at letter X below in favour of defendant No.2 and the equitable mortgage dt. 22.3.2007, if any, by defendant No.1 in favour of the defendant No.2 regarding the property mentioned at X in the heading of the plaint is illegal, null and void and the same is not binding on the legal rights of the plaintiff and the same has no value in the eyes of law and is liable to be set aside and suit for permanent injunction restraining the defendant Nos.1 and 2, their agents and servants from interfering into the peaceful possession of the plaintiff over the property fully described at letter X in the heading of the plaint and further restraining the defendants No.1 and 2, their agents and servants from auctioning/selling the property of the plaintiff fully described at letter X in the heading of the plaint, forcibly, illegally, with the help of the police or in any other manner, may kindly be decreed in favour of the plaintiff and against the defendants with costs.”

The judgment relied upon by Mr. Pasricha rendered in *Jagdish Singh Vs. Heeralal and others*, 2014(2) PLR 649 deals with the situation, much less, it has been held that Civil Court would not have jurisdiction where suit is with regard to challenging the measures taken under Sub Section 4 of Section 13 of the Act. On going through the prayer clause, it is evident that there is no challenge to the measures taken in Sub Section 4 of Section 13 of the Act and thus Section 34 would not come into play. Bank is not precluded to contest interim application by stating aforementioned facts, but not in the manner and mode as has been adopted.

No interference is made out.

Dismissed.

15.03.2016

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**(AMIT RAWAL)
JUDGE**