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

C.R. No.2396 of 2016 (O&M)
Date of Decision.17.11.2016

State Bank of India ....Petitioner

Vs

M/s Hans Food Products ....Respondent

Present: Ms. Madhu Dayal, Advocate
for the petitioner.

Mr. Rohit Suri, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner-defendant is aggrieved of the impugned order whereby the application moved under Order 7 Rule 11 CPC for rejection of the plaint, has been dismissed.

Ms. Madhu Dayal, learned counsel appearing for the petitioner submits that the respondent-plaintiff had obtained loan facility for a term loan of ₹90 lacs and cash credit limit of ₹50 lacs was also granted. He defaulted and ultimately the account was declared NPA but before it could be declared NPA, the respondent-plaintiff had issued two cheques of ₹25 lacs and ₹12 lacs, totalling ₹37 lacs, which was credit in the account of M/s Hans Rice Mills, sister concern, whose account was declared NPA on 31.03.2006. The proceedings under the SARFAESI Act were initiated and the matter is stated to have been settled but before that, the suit aforementioned was filed on 11.04.2006, in essence, recovery certificate has been issued. The aforementioned transaction of the cheque should not have been credited in the account of M/s Hans Rice Mills rather it should have been credited in the account of M/s Hans Food Products and therefore, the suit is not maintainable. It is in this background of the matter, the application was moved.

Per contra, Mr. Rohit Suri, learned counsel appearing for the respondent-plaintiff submits that no doubt the application can be moved at any time but the Court cannot remain oblivious of the fact that the suit was almost at the final stage. All these pleas were not only taken but also brought on record. He even denies the alleged statement and urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that since the parties are at variance with regard to certain facts, I would not delve upon the aspect of settlement of accounts in the proceedings initiated under the SARFAESI Act. Be that as it may. The fact remains that since the pleas raised in the application can be adjudicated by the trial Court, certain pleadings and documents in this regard have been placed on record.

At this stage, Ms. Madhu Dayal submits that copy of the recovery certificate along with sale certificates has been placed on record but the same was not attached with the application under Order 7 Rule 11 CPC and seeks liberty to place on record the same in accordance with law for effective adjudication of the lis.

I am of the view that order of the Debt Recovery Tribunal issuing recovery certificate is *per se* admissible in evidence and therefore, the same is ordered to be taken on record of the civil suit stated to be pending. The merits and demerits of the application need not be discussed when the suit at the final stage. Both the parties shall be at liberty to take their respective pleas in accordance with law for adjudication of the lis. It is needless to state that the trial Court shall take into consideration all the aforementioned facts and decide the suit accordingly. The respondent-plaintiff is also permitted to bring on record the orders of the Court, if not placed on record.

The revision petition is disposed of with the above observations.

(AMIT RAWAL)
JUDGE

November 17, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No