

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3246 of 2015

Date of Decision: 22.03.2016

State Bank of Patiala

... Petitioner(s)

Versus

M/s M.R.Monika Hosierey and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. G.S.Anand, Advocate
for the petitioner(s).

Mr. A.K.Kalsy, Advocate
for respondent No.1.

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution has been filed against the order dated 20.1.2015, passed by learned Civil Judge (Junior Division), Ludhiana, whereby application under Order 7 Rule 11 CPC read with Section 151 CPC for rejection of plaint, filed by defendants No.1 to 3, was dismissed with the observation that suit of plaintiff was not barred.

Relevant facts of the case that plaintiff had filed a suit for

permanent injunction for restraining the defendants and their employees or anybody working on their behalf from interference in any manner from dispossessing the plaintiff from the property/house in question. Plaintiff had availed various credit facilities by way of financial assistance from the defendant bank by deposit of original title deed. Thereafter, plaintiff failed to maintain the financial discipline arrived at between the parties. Defendant bank issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 (hereinafter referred to as "the Act") on 1.9.2014. Instead of making payment, plaintiff filed the main suit and the present application was filed by the petitioner for rejection of plaint, which was dismissed by the Court below.

Learned counsel for the petitioner submitted that the suit is not maintainable as per the provisions of "the Act" and on this point, reliance was placed upon the judgment rendered by the coordinate Bench of this Court in ***Bank of Baroda v. Vinod Kumar (Civil Revision No. 1777 of 2014, decided on 14.5.2015)***, wherein view was taken that jurisdiction of the Civil Court in such case is barred. On the same point, reliance was also placed upon the judgment rendered by the Hon'ble Apex Court in ***Jagdish Singh v. Heera Lal and Others (2014)1 Supreme Court Cases 479***.

Learned counsel for the respondent submitted that plaintiff in this case is a tenant and suit at his instance is maintainable and not barred as per the provisions of "the Act". On this point, reliance was placed upon the judgment rendered by the Hon'ble Apex Court in

Vishal N. Kalsaria v. Bank of India and Others (Criminal Appeal No. 52 of 2016, decided on 20.1.2016).

Having considered the submissions made by learned counsel for both the parties and perused the record of the case, this Court is of the considered view that Section 13(2) of "the Act" provides that where any borrower makes any default in re-payment of secured debt, then the secured creditor may require the borrower by notice in writing to discharge his liabilities within sixty days from the date of notice failing which action under section 13(4) may follow.

Section 13(4) of "the Act" provides that in case of failure to discharge the liabilities within the period specified in sub-section (2), the secured creditor may adopt any of the mode provided in the section which includes taking over possession of the secured assets of the borrower.

Section 17 of "the Act" provides that any person(s) (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor may make an application to the Debts Recovery Tribunal.

Any person aggrieved against the order passed by the Debts Recovery Tribunal under Section 17 of "the Act" has a remedy to file appeal before the Appellate Tribunal under Section 18 of "the Act".

Section 34 of "the Act" bars jurisdiction of the civil court to entertain any suit or proceedings in respect of any matter which can be entertained by the Debts Recovery Tribunal or the Appellate Tribunal. No injunction shall be granted by any court in respect of any action

taken in pursuance to the powers conferred under "the Act". Relevant provisions of Sections 13(1)(2), (4a), 17(1) and 34 of "the Act" are extracted below:-

"13. Enforcement of security interest.- (1)

Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.]

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

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(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse

to one or more of the following measures to recover his secured debt, namely:--

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;

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17. Right to appeal. *(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 authorized officer under this Chapter, may make 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 measures had been taken:*

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34. Civil Court not to have jurisdiction.- *No civil court shall have jurisdiction to entertain any suit or proceeding 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 (51 of 1993)."

The facts are not disputed that the plaintiff in this case was inducted as a tenant by defendant No.4 on the basis of rent deed dated 1.1.2006 and payment of rent has already been made up to 30.9.2014. The facts are not disputed that defendant No.4 had created equitable mortgage on her property measuring 87.33 square yards bearing No. 1335/1 by deposit of original title deed on 2.6.1980 and property measuring 43.55 square yards bearing No. 1335/1 by depositing original title deed on 19.1.2012 as a collateral security for repayment of amount of credit facilities granted to M/s M.R. Hosier. Rajnish Kumar and Chander Kali, defendant No.4, had executed various security documents in favour of the bank. The amount of loan was not repaid. The claim of respondent is that he, being in possession of the property as a tenant, cannot be dispossessed except in due course of law as he has tenancy rights.

The issue as to who shall fall within the definition of 'any person' was considered by Hon'ble the Supreme Court in Satyawati Tondon's case (supra), where the status of a guarantor of a loan was considered. It was opined that he would fall within the term 'any person' and can take recourse to the provisions of Section 17 of "the Act" for redressal of his grievance. Relevant para 17 of the judgment is extracted below:-

"17. There is another reason why the impugned order

should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective....." (emphasis supplied).

The issue was further considered in Jagdish Singh's case (supra). In the aforesaid case, the bank had advanced loan to a firm, which was secured by mortgage of land and houses. Suit was filed alleging that the property mortgaged was purchased from HUF funds. In that case the issue arose whether the aggrieved party would fall within the definition of 'any person' or not. The opinion expressed by the Court was that the expression, 'any person' would include not only the borrower but also the guarantor or any other person, who may be affected by the action under Section 13 of "the Act". It was opined that jurisdiction of the civil court is completely barred. Relevant paras thereof are extracted below:-

"19. The expression "any person" used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13(4) of the Securitization Act. Reference may be made to the Judgment of this Court in *Satyavati Tondon* case.

20. Therefore, the expression "any person" referred to in Section 17 would take in the plaintiffs in the suit as well. Therefore, irrespective of the question whether the civil suit is maintainable or not, under the Securitization Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the Securitization Act, in case the Bank (secured creditor) adopt any measure including the sale of the secured assets, on which the plaintiffs claim interest.

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22. The scope of Section 34 came up for consideration before this Court in *Mardia Chemicals Ltd., (2004) 4 SCC 311* and this court held as follows: (SCC P. 349, para 50)

"50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided

in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr Salve, one of the counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken 'or to be taken in pursuance of any power conferred under this Act'. That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction

is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13."

23. *Section 13, as already indicated, deals with the enforcement of the security interest without the intervention of the court or tribunal but in accordance with the provisions of the Securitization Act. 24. Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub- section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realizing the secured assets. Any person aggrieved by any of the "measures"*

referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have the jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitization Act to determine. The expression "in respect of any matter" referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitization Act. Consequently, if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitization Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitization Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.

25. *We are of the view that the civil court jurisdiction is completely barred, so far as the "measures" taken by a secured creditor under sub-section (4) of Section 13 of the Securitization Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal, to determine as to whether there has been any illegality in the "measures" taken. The Bank, in the instant case, has proceeded only against secured assets of the borrowers on which no rights of Respondent Nos.6 to 8 (sic Respondents 1 to 5) have been crystalised, before creating security interest in respect of the secured assets."*

The only exception carved out in Mardia Chemicals Limited's case (supra) was that jurisdiction of the civil court can be invoked where the action of the secured creditor is alleged to be fraudulent or his claim may be absorb or untenable.

The case in hand does not fall in that category. The respondent-plaintiff has not alleged any fraud on the part of the petitioner-bank, which is a secured creditor. The respondent-plaintiff is only seeking to protect his possession of the property as a tenant. The cause of action to file a suit is stated to be a letter dated 9.5.2013 received from the bank threatening to take possession of the property. The right of the petitioner to auction the property is not denied. Further it is claimed that possession can be taken only if there is an order of

eviction passed against the respondent-plaintiff. There is no plea of fraud against the secured creditor.

As per above discussion, this Court is of the considered view that the Court below has dismissed the application for rejection of plaint without any reason and the impugned order is liable to be set aside as the suit is barred under Section 34 of "the Act". However, as plaintiff claims protection in his capacity as tenant in the property, it is made clear that in case respondent approaches the Debts Recovery Tribunal for redressal of his grievances within a period of two weeks from the date of receipt of a copy of the order, appeal filed by the respondent shall be considered by the Tribunal on merit and shall not be dismissed only on the ground of delay, subject to fulfillment of other conditions.

With the observations made above, present petition stands disposed of.

(Shekher Dhawan)
Judge

March 22, 2016
"DK"