IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Revision No.3382 of 2016

Date of decision : 12.05.2016

Anit Mittal

......Petitioner

Versus

Ramesh Chand and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. A.K. Handa, Advocate for petitioner.

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<u>DARSHAN SINGH, J.</u>

The present revision petition has been preferred by the petitioner-plaintiff against the order dated 15.03.2016, passed by the learned Civil Judge (Junior Division), Amloh, vide which the application filed by respondent No.3 Union Bank of India, Branch Mandi Gobindgarh, under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short the 'CPC') for impleading it as a party to the suit has been allowed.

2. Learned counsel for the petitioner contended that the petitioner-plaintiff has filed the suit for permanent injunction against

respondents No.1 & 2 as he is a tenant in the house owned by respondents No.1 & 2. The said house was let out by respondents No.1 & 2 to the petitioner vide rent note dated 04.12.2014. He is regularly paying the rent against the receipts. Learned counsel for the petitioner contended that in the suit, the petitioner had claimed the relief of permanent injunction only against respondents No.1 & 2. Respondent No.3 is not directly related to the suit filed by the petitioner. If there is any dispute regarding loan or mortgage of the property, it is between the respondents. The presence of respondent No.3-Bank is not required for the adjudication of present suit for injunction filed by the petitioner. Thus, he contended that the impugned order is illegal.

3. I have duly considered the aforesaid contentions.

4. This fact is not disputed that respondent No.1-defendant Ramesh Chand is the sole proprietor of M/s Victory Impex, opposite Bank of Broada, Motia Khan, Mandi Gobindgarh and respondent No.2-defendant Asha Rani is his wife. It has been pleaded in the application moved by respondent No.3 under Order 1 Rule 10 read with Section 151 CPC that Ramesh Chand has availed the cash credit hypothecation limit from time to time. Respondents No.1 & 2 have also stood guarantor for the loan for M/s Jai Bharat Alloys Private Limited by execution of their personal guarantee dated 30.09.2013 in favour of respondent No.3-Bank. Respondents No.1 & 2 have also created an equitable mortgage of the suit property in favour of respondent No.3-Bank. Respondents No.1 & 2 have committed default in repayment of the loan and their loan account

has been classified as NPA. Respondent No.3 has adopted the process of law and had issued a notice dated 27.11.2014 under Section 13 (2) of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short the 'SARFAESI Act') in the loan account of M/s Victory Impex as well as Jai Bharat Alloys Private Limited. It is further pleaded that after the receipt of the aforesaid notice, the applicant-Bank took the symbolic possession of the suit property by adopting the due process of law on 10.03.2015. The respondent-Bank has filed an application under Section 14 of the SARFAESI Act before the District Magistrate, Fatehgarh Sahib for providing police assistance for taking the physical possession under the provisions of SARFAESI Act. In this background respondent No.3-Bank has moved the application under Order 1 Rule 10 read with Section 151 CPC for impleading it as a party to the suit.

5. The learned trial Court taking note of these facts, observed that the mortgage deed has been executed in favour of the bank on 18.10.1999, whereas the rent note has been got prepared on 04.12.2014 in favour of the plaintiff and the plaintiff in connivance with respondents No.1 & 2-defendants had got issued the injunction order without mentioning the aforesaid facts. Thereafter, respondents No.1 & 2-defendants have not intentionally appeared in the Court and were proceeded against ex parte. Huge amount of Rs.6,72,00,000/- and 13,50,000/- are due against the suit property. Thus, as the suit property is mortgaged with respondent No.3-Bank as a security of the loan,

respondent No.3-Bank has already initiated the legal actions under the provisions of SARFAESI Act. The collusion between the plaintiff and respondents No.1 & 2-defendants is prima facie apparent as instead of contesting the suit, respondents No.1 & 2-defendants have preferred to be absent from the proceedings of the case and have proceeded against ex parte. So, the findings recorded in the present case will directly affect the rights of respondent No.3-Bank.

6. As per the provisions of Order 1 Rule 10 (2) CPC, the Court may add a person as a party to a suit whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. A person may be added as a party defendant though no relief may be claimed against him, provided his presence is necessary for a complete and final decision on the question involved in the suit. It cannot be disputed that the suit property was mortgaged against the huge amount due in favour of respondent No.3-Bank. So, respondent No.3-Bank has a direct interest in the subject matter of the suit and the findings recorded in the suit will certainly affect the rights of respondent No.3-Bank. Thus, the presence of respondent No.3 before the Court is necessary to enable it to effectually and completely to adjudicate upon and settle all the questions involved in the suit.

7. Thus, I do not find any illegality in the impugned order passed by the learned trial Court impleading respondent No.3-Bank as a defendant in the suit.

8. Resultantly, the present revision petition being without any merits, is hereby dismissed.

12.05.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**