

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4267 of 2016 (O&M)
Date of decision:03.08.2016

Canara Bank

... Petitioner

Vs.

Suresh Gulia and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Nitin Grover, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-Bank is aggrieved of the impugned order dated 02.05.2016 passed in application filed under Order 7 Rule 11 of Code of Civil Procedure (hereinafter referred to as "CPC") seeking rejection of the plaint on the premise that in view of the provisions of Section 34 of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (also known as the SARFAESI Act, 2002), the suit is not maintainable.

Mr. Nitin Grover, learned counsel appearing on behalf of the petitioner-Bank submits that tenancy has been created on 01.09.2015, whereas, symbolic possession was taken on 21.07.2015. In view of the embargo put under Section 34 of SARFAESI Act, 2002 as amended in 2004, Civil Court has no jurisdiction to try and entertain the suit. The trial Court ought to have accepted the application and thus, urges this Court for setting aside of the impugned order.

I have heard learned counsel for the petitioner-Bank and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Grover, for, prayer made in the suit reads thus:-

“It is therefore prayed that a decree for declaration to the effect that the plaintiff is lessee in possession of the suit property under defendant No.2 and the defendant No.1 has no concern with the same and the possession taken by defendant no.1 by sealing the suit property is illegal, null and void and further a decree for mandatory injunction thereby directing the defendant No.1 to open the seal and hand over the actual physical possession of suit property, paddy & rice stock lying there in, mentioned in para no.1 of the plaint, and further to pay the damages as assessed by this Hon'ble Court, be passed with cost in favour of the plaintiff and against the defendants, in the interest of justice.

Any other relief to which the plaintiff is entitled may also be granted to him.”

On perusal of the aforementioned prayer, it is revealed that there is no challenge to the action taken under SARFAESI Act, 2002, therefore, the provisions under Section 34 of SARFAESI Act, 2002 would not apply. It is admitted position on record that there is no ad interim order granted in the aforementioned suit. Bank is at liberty to proceed further in accordance with law.

Even otherwise for deciding the application under Order 7 Rule 11 CPC, the averments made in the plaint have to be seen but not the evidence.

In view of the aforementioned observations, the order under challenge is perfectly legal and justified, much less, the same cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

August 03, 2016
savita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No