IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.4964 of 2016
DATE OF DECISION: October 6,2016

PNB Housing Finance Ltd.

…Petitioner

versus

Shingara Singh and others

…Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Arun Jain, Senior Advocate with
Mr.C.S.Pasricha, Advocate for the petitioner.
Mr.Vikas Behl, Senior Advocate with
Ms.Japneet Kaur, Advocate for respondent No.1.
Mr.Ashish Aggarwal, Senior Advocate with
Mr.Bhupender Ghai, Advocate for respondent No.3.

AMIT RAWAL, J.

CM No.15236-CII of 2016

This is an application for impleading the legal heirs of respondent No.2-Onkar Anand, description given in para no.5, as party-respondents.

The application is allowed.

Office is directed to carry out necessary correction in the memo of parties.

Main case

The petitioner is aggrieved of the impugned orders dated 31.5.2016 and 14.7.2016 whereby the trial Court had granted the ad interim injunction and also rejected the application moved under Order 7 Rule 11 CPC by the petitioner seeking rejection of the plaint.

Mr.Arun Jain, learned senior counsel assisted by Mr.C.S.Pasricha, learned counsel appearing for the petitioner submits that the petitioner bank on 17.12.2003 had extended the loan facility to Onkar Anand and Renu Anand of Rs.13.15 crores. In lieu thereof, the borrowers had mortgaged the house No.1037, Sector 27-B, Chandigarh. The aforesaid loanees committed default in the repayment of instalments and on 15.12.2015, voluntarily surrendered the possession of the same to the petitioner bank. The bank initiated the proceedings under Section 13(2) of the SARFAESI Act (for short, `the Act 2004') The aforementioned notice was published in the newspaper on 9.4.2016. The petitioner bank was flabbergasted to receive the copy of the civil suit bearing No.1017 of 2016 filed at the instance of one Shingara Singh against Onkar Anand and Renu Anand impleaded as defendant No.3 seeking specific performance of one agreement to sell dated 26.5.2010. The aforementioned suit was accompanied by an application of ad interim injunction on the terms that the receipt attached to the agreement to sell envisaged of handing over the possession against the payment of Rs.3 crores alleged to have been paid in cash to the vendor, namely, Onkar Anand against the total sale consideration of Rs.4 crores. However, the trial Court vide order dated 31.5.2016 (Annexure P.12) granted the exparte injunction and on the basis of the said order, Shingara Singh attempted to take the possession forcibly and in this regard the complaint dated 3.6.2016 (Annexure P.14) was submitted to the police, but ultimately succeeded in taking the forcible possession in the intervening night of 8/9.6.2016. The police investigated the case and found Shingara Singh-plaintiff to be in illegal possession of the suit property which fact has been noticed by this Court in its order dated 12.8.2016 on the basis of the contents of the inquiry report dated 28.7.2016. He submits that under the orders of this Court, the possession of the mortgage property has been handed back to the bank. He submits that the agreement to sell accompanied by a receipt shows that there are no signatures on the first page, much less of the witnesses. The receipt also does not convey the receipt of payment by Onkar Anand. The property is owned by Onkar Anand and Renu Anand, whereby the agreement to sell was executed by Onkar Anand. The agreement to sell does not envisage any power given to Onkar Anand on the basis of GPA, though, the receipt mentions about it. He submits that such types of suits cannot be proceed with any further. In case Shingara Singh has any dispute, he should have availed of the remedy under Section 17 of the Act 2004 but not the civil suit. He further submits that prima facie the suit for specific performance cannot proceed as Shingara Singh cannot succeed in proving the alleged agreement to sell owing to the non compliance of Section 68 of the Indian Evidence Act is not attracted as there is no witnesses at the best, it can be tried as a suit of recovery. In support of his contention, reliance has been placed on the judgments rendered in Mardia Chemicals Ltd. and others v. Union of India and others (2004) 4 Supreme Court Cases 311, State Bank of India v. Hardeep Kaur and others 2013(1) Law Herald 383, Jagdish Singh v. Heeralal and others (2014) 1 SCC 479, Standard Chartered Bank v. Noble Kumar and others (2013) 9 SCC 620, ITC Limited v. Debts Recovery Appellate Tribunal and others (1998) 2 SCC 70, A.V.Papayya Sastry and others v. Government of A.P. and others 2007(2) RCR(Civil) 431, S.P.Chengalvaraya Naidu (dead) by LRs v. Jagannath (dead) by LRs (1994) 1 SCC 1, Bank of Baroda v. Vinod Kumar 2015 (3) PLR 283 and HDFC Bank v. M/s. Geekay International and ors. 2012(3) PLR 546.

On the contrary, Mr.Vikas Behl, learned senior counsel assisted by Ms.Japneet Kaur appearing for respondent

No.1-Shingara Singh submits that even if the property is mortgaged with the Bank, there is no bar for the vendee to approach the Civil Court. In support of his contention, he placed reliance on the judgments rendered in State Bank of Patiala, SAMB, Chandigarh v. Ravdeep Singh and another CR No.801 of 2016, decided on 4.2.2016, Canara Bank v. Suresh Gulia and others CR No.4267 of 2016 decided on 3.8.2016, Housing Development Finance Corporation and another v. Tirloki Nath Grover and another 2014(1) ICC 819, Central Bank of India v. Mr. Ram Rattan alias Rattan Lal and others CR No.2475 of 2015, decided on 9.4.2015 and M/s New India Construction Company and others v. Sh. Kabool Singh and others, CR No.624 of 2012, decided on 29.7.2013.

He further submits that for the purpose of adjudication of the application under Order 7 Rule 11 CPC, the contents/averments of the plaint has to be seen and not the evidence or defence.

Mr.Ashish Aggarwal, learned senior counsel assisted by Mr.Bhupender Ghai appearing for respondent No.3 submits that respondent No.3 was not aware of any General Power of Attorney. Her husband died on 21.3.2014. In fact, during his life time, respondent No.2 did not disclose the factum of entering into alleged agreement to sell. Respondent No.3 is a housewife and widow and does not know the intricacies of all the legal transactions, much less of agreement to sell as Onkar Anand, her husband (since deceased) had been acting on her behalf.

I have heard learned counsel for the parties and perused the record and am of the view that prima facie and legally suit for specific performance is not maintainable for the following reasons: (i) the first page of the agreement to sell does not bear the signatures of either of the parties, namely, vendors and vendee; (ii) the agreement to sell does not bear the signatures of the witnesses; (iii) the receipt does not show the exact parentage of Onkar Anand; (iv) the agreement to sell does not envisage that Onkar Anand had any authority to act on behalf of Renu Anand, co-owner but the receipt is executed by Onkar Anand. In any case, the plaintiff-respondent No.1 would not be able to succeed in the civil suit, including the relief under provisions of Section 20 of the Specific Relief Act, 1963 as the suit was filed only in 2016 i.e. beyond the period of limitation. Apparently, Renu Anand has denied the execution of agreement to sell, it is for the plaintiff-respondent No.1 to prove the agreement to sell. In the absence of any evidence, I am of the view that at the best suit can be tried as original civil suit for recovery. Accordingly, the plaint, vis-a-vis, the specific performance is ordered to be rejected and shall be considered as a simplicitor suit for recovery. The plaintiff-respondent No.1

is directed to file the amended plaint. However, the plaintiff is precluded to seek any attachment by invoking provisions under Order 38 Rule 5 of CPC but shall not be prevented to seek attachment of other property in case necessity arises. In this process, the petitioner-bank shall be free to notify in the notices regarding the order passed by this Court.

Since the possession of the bank has been restored, the grievance of the bank qua the possession prima facie stands vindicated. In view of the aforesaid position, the name of the petitioner-bank is also ordered to be deleted from the array of the parties.

However, the parties shall be at liberty to arrive at a compromise seeking quashing of the criminal proceedings.

In view of the aforesaid discussion, the impugned order under challenge is modified. The revision petition stands allowed in part.

Nothing observed herein above shall be construed as an expression of opinion on the merits of the case.

October 06, 2016 (AMIT RAWAL)
KD JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No