224.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.5765 of 2014
Date of decision:19.01.2016

Punjab National Bank, Branch Office Jawahar Nagar, Defence Colony (S.A.R.C.) (N.P.A. Cell), Hisar, and another.
... Petitioners

versus

Narender Singh and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Arvind Rajotia, Advocate,
for the petitioners.

Mr. Vijay S. Kajla, Advocate,
for respondent No.1.

Mr. Tara Chand Dhanwal, Advocate,
for respondents 2 to 4.

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1. Whether reporters of 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.**

K.Kannan, J. *(Oral)*

1. The revision petition is against an order granting injunction in favour of the plaintiff at the appellate court. The civil suit has been filed by the plaintiff for a declaration that a mortgage admittedly executed by the plaintiff in respect of property for availing of a loan has been repaid and a rapat rojnamcha has been

entered in proof of discharge of the mortgage. The present suit is after a proceeding was initiated by the bank before a prescribed authority by invoking the provisions of the Haryana Agricultural Credit Operations and Miscellaneous Provision (Banks) Act of 1973 (for short, 1973 Act). The said Act allows for enforcement of debt granted to an agriculturist for agricultural purpose. It constitutes a prescribed authority and vests the authority with power to order recovery of dues to a bank. Section 18(2) of the 1973 Act states that every order passed by the prescribed authority shall be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court.

2. Admittedly, proceedings have been initiated by the bank prior to the institution of the suit by the respondents. Along with suit, the plaintiff had asked for injunction restraining the bank from the proceeding with recoveries by putting the property for sale. The trial court dismissed the application and reasoned that injunction is a discretionary relief and if there is efficacious remedy available before the authority, it should be possible for the authority to decide on whether the loan had been discharged or not and found that it shall not allow for an injunction to be granted against the statutory authority from functioning. The appellate court reversed the decision and directed the further proceedings before the prescribed authority under the 1973 Act to be stayed. It is against this order of

the appellate court that the revision petition has been filed.

3. The prima facie case of the plaintiff in order to merit a prayer for injunction shall be such as to prove that the mortgage which was created for securing the loan was discharged and the original records relating to the properties over which security was created are very much with the plaintiffs themselves. All that the plaintiff has is a letter of No Due Certificate said to have been issued by a functionary of the bank. Since there is a denial of any letter as having been issued discharging the mortgage, I will reckon that there is no prima facie case for the plaintiff to obtain a judicial proceeding from being prosecuted. Section 41 of the Specific Relief Act details the situations when the injunction shall not be granted. The said Section makes a prohibition against any court from granting a restraint of judicial proceeding. The proceeding before the authority under the 1973 Act is a quasi judicial proceeding that determines the indebtedness or otherwise of an agriculturist and allows of procedure for sale after entering into an adjudication after hearing the objections. Staying of proceeding before the authority can prevent two divergent views, no doubt, but before the court could exercise the discretion to grant the relief, it must be satisfied that the plaintiff has a strong prima facie case. I have already observed that it is difficult to make such an inference possible at this stage. The grant of stay by a civil court will operate to scuttle the

proceeding initiated by a statutory authority who has been invested with powers of adjudication.

4. The order of stay granted shall stand vacated and the injunction application is dismissed. It will be also open for the bank to plead that the civil suit itself is not competent and the civil court itself will rule on its jurisdiction and the maintainability of such suit when the bank had already resorted to an action under the 1973 Act.

5. The revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

19.01.2016
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