

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 7997 of 2014 (O&M)

Date of decision: 23.05.2016

Harvinder Singh

... Petitioner

versus

M/s Sippy Trading Corp. and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. SK Mahajan, Advocate for the petitioner.

Mr. H.S. Gupta, Advocate for respondent No.2.

K.Kannan, J. (ORAL)

The suit to challenge proceedings under SARFAESI Act is incompetent by virtue of the Section 34 of the SARFAESI Act. The Civil Court will have no jurisdiction in respect of any matter for which a provision has been made before the Debt recovery Tribunal or the Appellate Tribunal. Section 17 provides for right of appeal for any person aggrieved by any of the measures taken under Section 13(4) of the SARFAESI Act to be brought on appeal before the Tribunal. The contention is that the respondent is taking action in exercise of fraud and the Civil Court will always have a competency to adjudge on the validity of the proceedings in the light of the law laid down by the Hon'ble Supreme Court in Mardia Chemicals Limited and others Vs. Union of India and others, JT 2004 (4) SC 308.

I am afraid the decision in Mardia Chemicals (Supra) cannot help the cause of the petitioner, since the decision merely upholds the constitutional vires of the SARFAESI Act and the only intervention which was made in the said judgment was the statutory

requirement of having to pay a portion of the amount which is the subject of recovery. The said provision was found to be not valid as an obstruction to access to justice. There has been no consideration on typical issue of what confronts us now, namely, whether the plaintiff can competently challenge the action of the recovery officer by means of civil Court by alleging fraud.

The interim relief sought for was incompetent and interim injunction cannot be granted in a suit which is prima facie incompetent suit. The Court will see the issue of maintainability of suit as a preliminary issue and I direct the consideration of same, if there is a need to frame an issue therefor. I make no intervention in the impugned order and the revision petition is dismissed.

Counsel for the respondent states that the petition had actually availed of opportunity before the Debt Recovery Tribunal also and it has been dismissed on 26.05.2011. This shall be the additional reason to reject the prayer for injunction in suit.

(K.KANNAN)
JUDGE

23.05.2016

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