

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

**R.S.A No. 3904 of 2010 (O&M)
Date of decision : 11.04.2016**

Haryana Financial Corporation

..... Appellant

Versus

Deepak Singhal and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Rajesh Hooda, Advocate
for Mr. Kamal Sehgal, Advocate
for the appellant.

Mr. K.S.Dadwal, Advocate
for the respondent no.1

None for respondent no.2-General Public.

- 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.**

DARSHAN SINGH,J

The present appeal has been preferred by the appellant-defendant no.1 against the judgment and decree dated 06.03.2010 passed by the learned Additional District Judge, Yamuna Nagar at Jagadhri, vide which the appeal filed by respondent no.1-Deepak Singhal against the judgment dated 16.04.2008, passed by the learned Additional Civil Judge (Sr. Division), Yamuna Nagar at Jagadhri, has been allowed.

2. Respondent no.1-Deepak Singhal along with his partners of M/s Satguru Metals, Tejli Gate, Jagadhri raised the loan from appellant-Haryana Financial Corporation (for short 'HFC') for running the business. The plot measuring approximately 800 sq.yards (1 kanal 6 ½ Marlas) over which the factory was constructed was mortgaged with the appellant along with other properties. Appellant-HFC had taken over the possession of the land, building, machinery and electric transformer of the factory of respondent no.1 for the recovery of the loan. The auction of the said property was conducted by the appellant allegedly in a secret manner and factory was auctioned at a very throw away price of Rs. 5,20,000/- only. Appellant threatened respondent no.1 to recover the approximate amount of Rs. 45 lac as arrears of land revenue by way of his arrest and detention. It was pleaded that at present he was working as a lecturer in Janta Senior Secondary School, Mustafabad, on *ad hoc* basis and was getting salary of Rs.6000/- per month. He prayed that he be declared as insolvent.

3. The said petition was contested by the present appellant on the plea that there was no illegality in the auction of the factory. The same was purchased by the buyer as per the market value. Respondent no.1 or any other partner had not objected the last and final bid. They were given sufficient time and opportunity to make the payment of the outstanding loan amount and the prayer was made for dismissal of the petition by raising certain legal and preliminary objections.

4. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 28.05.2007:-

1. Whether petitioner is insolvent, on the grounds, as alleged in the plaint?OPP
2. Whether petition is not maintainable?OPR
3. Relief.

5. On appreciation of the evidence, the learned Additional Civil Judge (Sr. Division), Yamuna Nagar at Jagadhri dismissed the petition vide impugned judgment/order dated 16.04.2008.

6. Aggrieved with the aforesaid judgment/order, respondent no.1 preferred an appeal. The same was allowed by the learned Additional District Judge, Yamuna Nagar at Jagadhri, vide impugned judgment/order dated 06.03.2010. Respondent no.1 was declared insolvent. It was further ordered that effects of this order within the meaning of Section 28 of the Act shall follow. Hence this Regular Second Appeal by appellant-HFC (respondent no.1 before the learned First Appellate Court)

7. I have heard Mr.Rajesh Hooda, Advocate for Mr. Kamal Sehgal, Advocate, learned counsel for the appellant, Mr. K.S.Dadwal, Advocate, learned counsel for the respondent no.1 and have meticulously gone through the paper book.

8. Initiating the arguments, learned counsel for the appellant contended that the judgment passed by the learned First Appellate Court is against the statutory provisions. He contended that as per Section 8 of the Provincial Insolvency Act, 1920 (for short 'Act'), the petition for insolvency is not maintainable against the appellant being a Financial Corporation. The learned First Appellate Court while reversing the judgment of the learned trial Court has not taken into consideration this provision of law. Thus, he contended that the petition filed by respondent

no.1 was not maintainable.

9. On the other hand, learned counsel for respondent no.1 contended that this plea that petition was not maintainable under Section 8 of the Act has been raised for the first time before this Court. No such plea was raised by the appellant before the learned Courts below. Thus, the appellant cannot be allowed to raise this issue for the first time in the second appeal.

10. I have duly considered the aforesaid contentions.

11. From the pleas raised by learned counsel for the appellant, the following substantial question of law can be formulated:-

1. Whether the legal plea regarding maintainability of the petition can be raised in the second appeal?
2. Whether the petition under Section 10 of the Act is not maintainable against the appellant-HFC, a financial corporation in view of Section 8 of the Act?

12. It is not that the appellant has raised the issue regarding maintainability of the petition for the first time in this appeal as in the written statement, the objection regarding maintainability has been taken by the appellant and even issue no.2 was framed by the learned trial Court with respect to the maintainability of the petition. Section 8 of the Act reads as under:-

“8. Exemption of corporation, etc., from insolvency proceedings.—No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.”

The question regarding maintainability of the petition in view of Section 8 of the Act is purely a question of law based on statutory

provision. There is no dispute with the proposition of law that a pure question of law can be raised for the first time even in the second appeal. This Court in case **State of Haryana vs Dr. Prem Singh Mann 1996(3) PLR 799**, has laid down that the legal plea which goes to the root of the case can always be allowed to be raised even in the second appeal for which no new facts are needed to be brought on record. Hon'ble Allahabad High Court in case **Rama Pati Tiwari Vs. District Registrar, Allahabad 2010(7) R.C.R(Civil) 2602**, has reiterated the legal position and laid down that the pure question of law can be raised at any stage even in the second appeal for the first time. The Hon'ble Apex Court in case **Mohd. Laiquiddin & Anr. Vs. Smt. Kamala Devi Misra (Dead) By L.Rs & Ors. 2010(1) R.C.R (Civil) 687** has authoritatively laid down as under:-

“17. As to the issue raised by the Appellants that the High Court was not justified in permitting the Respondents to raise a new plea for the first time in the second appeal, we may at the outset note that we do not find any substance in this contention raised by the learned counsel for the appellants. They contended that the High Court committed an error of law in considering a new ground of challenge without any plea or factual background neither before the Trial Court nor the first appellate court. The new plea which was allegedly raised before the High Court for the first time was that all assets of the firm including the land and building shall be dealt with under Section 48 of the Act and the proceeds shall be disbursed to the two partners in accordance with the respective shares as per the partnership deed. The High Court as can be seen from the record had dismissed this plea. The Respondents have not appealed against the said finding of the High Court. **That apart, when a question of law is raised on the basis of the pleadings and evidence on record which might not have been raised before the courts below, it is difficult to hold that such question of law cannot be permitted for the first time before the High Court. Therefore, we**

do not see how the Appellants are aggrieved by this finding of the High Court even assuming the High Court had formulated a new question of law, which was not raised before the Courts below.”

In view of the consistent rule of law laid down in the cases referred above, the legal question regarding maintainability of the petition in view of Section 8 of the Act can be allowed to be raised in this Regular Second Appeal, as no new facts or evidence is required to determine this legal plea.

13. This fact is not disputed that the appellant-HFC is a financial corporation. Respondent no.1 has availed the loan facilities from the appellant-HFC. As per Section 8 of the Act, no insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force. This fact is not disputed that the appellant-HFC has been set up under the Act of Parliament known as State Financial Corporation's Act 1951. So, appellant-HFC will fall under Section 8 of the Act. As per Section 8 of the Act, no insolvency petition can be presented against the appellant-HFC. The Hon'ble Allahabad High Court in case **Nagendra Kumar Jain Vs. District Judge and others, Moradabad AIR 2001 Allahabad 289** has laid down that the Punjab National Bank being a registered Government Company under the Companies Act is exempted from insolvency proceedings. In case **G.Subba Rao Vs. The Food Corporation of India and others AIR 2004 Andhra Pradesh 16**, the execution of the money decree was opposed by the debtor by filing insolvency petition. The DH was the Food Corporation of India, a

government company. The Hon'ble Andhra Pradesh High Court laid down that as per Section 8 of the Act, the petition was not maintainable. In case **Indian Overseas Bank Vs. Popuri Veeraiah & Anr. AIR 2009 Andhra Pradesh 170**, it has been laid down as under:-

“Since the question of initiating any insolvency proceedings against a company/bank is not sustainable nor valid having regard to the exemption provided under S.8 of Provincial Insolvency Act, 1920. It would not come in the way of any proceedings initiated under the SARFAESI Act. Necessarily, it follows that any such proceedings initiated by the respondents debtor would be subject to the ultimate action that would be taken under the provisions of SARFAESI Act. Therefore, the entire proceedings since inception at the instance of respondent debtor under the Provincial Insolvency Act, 1920 are not maintainable, invalid and void and therefore any action taken thereunder would not affect action as contemplated under provisions of SARFAESI Act. Therefore, the question of petitioner bank or any financial institution which are exempted under S.8 of the Provincial insolvency Act, 1920 need not fall in queue to wait for the ultimate disposal or distribution of the assets as normally contemplated under the provisions of Provincial Insolvency Act, 1920.”

This Court in case **Tilak Raj Vs. Haryana Financial Corporation and others R.S.A No. 2205/2010(O&M)**, decided on **16.05.2012**, has laid down that the corporation or the association or the company registered under any enactment in force are exempted from being proceeded against under the Act. In view of the aforesaid consistent rule of law, the appellant-HFC is exempted under Section 8 of the Act. Thus, the insolvency petition filed by respondent no.1 under Section 8 of the Act was not maintainable against the appellant-HFC.

14. Thus, keeping in view the aforesaid discussion, both the questions of law formulated above are answered in favour of the

appellant.

15. Consequently, the present appeal is hereby allowed. The impugned judgment and decree dated 06.03.2010, passed by the learned First Appellate Court is hereby set aside and that of learned trial Court is restored. The petition filed by the respondent no.1- under Section 8 of the Act, declaring him as insolvent stands dismissed.

April 11, 2016

s.khan

(DARSHAN SINGH)
JUDGE