IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) Civil Revision No.2365 of 2015 (O&M)
Date of Order: 02.11.2017

State Bank of Patiala and others ..Petitioners

Versus

M/s Satya Jyoti Rice Mills and others ..Respondents

(2) Civil Revision No.87 of 2014 (O&M)

Punjab and Sind Bank ..Petitioner

Versus

Surinder Verma and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. D.K.Singal, Advocate,
for the petitioner (in CR No.2365 of 2015)

Ms. Adarshpal Kaur, Advocate,
for the petitioner (in CR No.87 of 2014)

Mr. Alok Mittal, Advocate,
for respondent nos.1 to 3 (in CR No.2365 of 2015)

Mr. Varun Jain, Advocate,
for respondent no.4 (in CR No.2365 of 2015)

Mr. Atul Jain, Advocate,
for respondent no.1 (in CR No.87 of 2014)

ANIL KSHETARPAL, J (Oral)

By this common order, I shall be disposing of two Civil Revision Nos.2365 of 2015 and 87 of 2014 as common issue is involved. The facts are being taken from Civil Revision No.2365 of 2015.

The nationalized bank is in revision petition against the order dated 05.01.2015, dismissing the application filed by the bank for rejection of the plaint.

It is not in dispute that the bank started proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"). It was pleaded by the defendant-nationalized bank that jurisdiction of the Civil Court is barred under Section 34 of the SARFAESI Act.

Learned trial Court while relying upon the judgment passed by the Hon'ble Supreme Court in ***Mardia Chemicals Ltd.*** ***v.*** ***Union of India, AIR 2004 SC 2371***, held that in case of allegations of fraud, civil Court has a jurisdiction i.e., how the bank is in revision before this Court. It will be useful to extract relevant paragraphs of the plaint:-

> "2. *That the defendant no.4 managed to obtain a loan from the defendants no.1 to 3 by playing fraud upon the plaintiffs firm and with the connivance of the officials of defendants no.1 to 3 as the plaintiffss no.2 and 3 never executed any documents regarding loan and sanctioned the loan to the defendant no.4 for the reasons best known to them. The defendant Bank in connivance with defendant no.4 allegedly mortgaged the suit land with the bank, which is illegal on the face of it as in the revenue record the name of the plaintiffs is clearly mentioned and without the consent of the plaintiffs their land could not be mortgaged.*
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> *6. That the plaintiffs no.2 and 3 never stood guarantor for the said firm M/s Balaji Rice Mills, Patiala nor the property of plaintiffs was ever mortgaged with the Bank*

nor it could be mortgaged without their consent.

9. That the officials of bank started alleging that some lease deed was produced before the Bank at the time of advancing alleged loan by M/s Satya Jyoti Rice Mills in favour of M/s Balaji Rice Mills, but no such lease deed was ever executed by the plaintiffs no.2 and 3 and if there is any lease deed, than the same is illegal, null and void, without any right, authority and is liable to be ignored as it was never executed by the plaintiffs who are also equal partners of the firm. It also stands proved from the fact that no lease amount was ever paid nor any mention is there in the revenue record that M/s Balaji Rice Mill has taken the unit on lease or is in possession of the land at any point of time.

10. That as per the version of the Bank if firm M.s Satya Jyoti Rice Mills, Devigarh Road, Patiala, stood guarantor for M/s Balaji Rice Mills, then letter of consent was required from every partner of the guarantor firm, but no such letter of consent or mortgage deed was ever got executed from the plaintiffs nor they were every joined or any enquiry was ever made nor any field inspection was ever got done and now it seems that all illegal acts have been committed in connivance with the officials of the Bank because without their connivance sanction of such huge loan, if any, is not possible."

A bare look at the pleadings aforesaid would establish that merely because the plaintiffs has used the word fraud, that itself would not oust the jurisdiction of the Civil Court. Fraud has to be pleaded and proved in accordance with law. Detailed pleadings are required as in what manner the fraud has been committed. Bar to the jurisdiction of Civil Court cannot be avoided merely by writing a one word that the action of the bank is result of fraud. Language of Section 34 of the SARFAESI Act clearly provides that no Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered.

A careful reading of the pleadings would establish that the word fraud has been used just for the purpose of ousting the jurisdiction of the Debt Recovery Tribunal.

A reference in this regard can be made to the judgment passed by this Court in ***State Bank of Thanesar v. Santosh, 2010(43) R.C.R., (Civil) 223***.

A Division Bench of Madras High Court in the judgment reported as ***Thulasi v. Indian Overseas Bank, 2011 (20) R.C.R.(Civil), 436*** has discussed this issue in detail and held that wherever the Court finds that the word fraud has been used or pleaded just as a device of clever drafting to bring the suit within the jurisdiction of the Civil Court, the Courts would repel all such efforts at the outset.

It is well settled that under Section 17 of the SARFAESI Act, borrower, guarantor or any other person effected is entitled to file an application before the Debt Recovery Tribunal. The Debt Recovery Tribunal is enabled by the provisions of the SARFAESI Act to look into the matter and see whether the plaintiffs had stood guarantee to the loan received by the borrowers. The main allegations are that the plaintiffs have not signed the documents of guarantee. That fact can very well be seen by the Debt Recovery Tribunal.

Civil Revision No.87 of 2014

In this case, the plaintiff claims to be a subsequent bonafide purchaser. The plaintiff would be covered by the word “any person” as mentioned in Section 17 of the SARFAESI Act.

Taking into consideration the aforesaid facts, the orders dated 05.01.2015 and 29.11.2013 are set aside and both the revision petitions are allowed. The plaintiffs would be at liberty to seek return of the plaint if so advised for presentation before the appropriate Court.

Needless to mention that the plaintiffs would be entitled to take all defences before the Debt Recovery Tribunal.

November 02, 2017 **(ANIL KSHETARPAL)**
nt **JUDGE**

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