

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 4196 of 2017
Reserved on 3rd July, 2017
Pronounced on 25th July, 2017

Dr. Joseph K. Masih

.. Petitioner

versus

LIC Housing Finance Limited, Chandigarh

..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Petitioner in person.

RAMENDRA JAIN, J.

CM No.13066-CI of 2017

Allowed as prayed for.

Civil Revision No. 4196 of 2017

The instant revision petition under Article 227 of the Constitution of India has been filed for setting aside orders dated 20.3.2017 (Annexure P-1) passed by learned Additional District Judge, SAS Nagar, Mohali, and dated 17.4.2013 (Annexure P-2) passed by learned Civil Judge (Senior Division), SAS Nagar, Mohali, respectively.

Undisputed facts of the case are that the petitioner availed house loan from the respondent-company by creating equitable mortgage of his property, but when did not adhere to the financial discipline of respondent-company, the demand notice dated 10.3.2004 under section 13 (2) of the Securitisation and Reconstruction of Assets and Enforcement Interest Act, 2002 (for short "SARFAESI Act"), was issued to the petitioner

to deposit the due amount. The petitioner, instead of availing his right under section 17 of the (ibid) Act, filed a civil suit along with an application under order 39 Rule 1 and 2 of the Civil Procedure Code for restraining the defendant company from recovering any amount. However, the same was dismissed vide order dated 8.5.2004 by the then Additional Civil Judge (Senior Division), Kharar. Being aggrieved, the petitioner preferred a Misc. Appeal before the Additional District Judge, Rupnagar, praying for staying the operation of the said notice issued under section 13(2) of the SARFAESI Act.

Upon notice, initially, the respondent company was being represented through some Advocate, but finally, on account of non-appearance of any one on its behalf on the subsequent date, it was proceeded against ex parte. Finally, learned Additional District Judge, Rupnagar, after hearing learned counsel for the petitioner, restrained the respondent-company vide order dated 29.8.2006 from acting upon the notice dated 10.3.2004 issued by it under the SARFAESI Act during the pendency of the suit. On coming to know about the said ex parte order dated 29.8.2006, the respondent-company preferred a Civil Revision (CRM No.2644 of 2008) before this court, which was accepted and the matter was remitted for fresh decision. On remand, the learned Additional District Judge, Mohali, vide order dated 25.8.2010, dismissed the Miscellaneous Appeal filed by the petitioner with the observation that as the petitioner had mortgaged the property by depositing the title deeds with the respondent-company, therefore, the provisions of the SARFAESI Act were attracted. Subsequently, the suit filed by the petitioner was also dismissed under Order 7 Rule 11 (d) of the Code of Civil Procedure, vide order dated

15.12.2010 by the trial court. Thereafter, the petitioner filed Civil Writ Petition No.23383 of 2010 before this court, wherein the petitioner, vide order dated 24.12.2010, was directed to approach the DRT, Chandigarh, under section 17 of the SARFAESI Act. Pursuant thereto, the petitioner filed an appeal under section 17 of the SARFAESI Act before the DRT (1), Chandigarh, which resulted in dismissal on 19.12.2012. Being aggrieved, the petitioner further preferred an appeal before the Debt Recovery Appellate Tribunal, New Delhi, but remained unsuccessful. Finally, the petitioner, instead of clearing the loan amount, filed another Civil Writ Petition No.12645 of 2015. It is worth mentioning that after issuance of notice under section 13(2) of the SARFAESI Act, the respondent-company, simultaneously filed a suit for recovery of the due amount against the petitioner, which was decreed.

The petitioner in person submitted that the order dated 29.8.2006 (Annexure P-5) passed by the then learned Additional District Judge, Ropar, cannot be treated as an ex parte order, rather the same should be treated as has been passed in the presence of the respondent-company, inasmuch as at one point of time, Mr. Sidharth Sanwaria, advocate empanelled, by the respondent-company, had appeared before the appellate court and thus, the respondent had very much knowledge of the aforesaid order dated 29.8.2006. Despite having knowledge of the same, the respondent-company acted upon the demand notice dated 10.3.2004 by publishing the auction notice and thus, has committed contempt as contemplated under Order 39 Rule 2-A read with section 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act"). He has further contended that the observation made by the learned trial court, in its

order dated 17.4.2013 (Annexure P-2) regarding maintainability that it was not empowered to try and decide the petition filed under the Act, is erroneous and against the well settled principles of law. He next contended that both the courts below have committed a grave error in accepting the plea of the contemner that the order dated 29.8.2006 passed by learned Additional District Judge, Ropar, was never disobeyed. It was submitted that had the stay order been granted at the time of motion hearing, in that event, the respondent-company could raise a plea that it was not aware of order dated 29.8.2006, but since it had initially engaged Mr. Sidharth Sanwaria, advocate, by paying him legal fee, therefore, it does not lie in its mouth that it was not aware of the said order. Relying upon the judgments rendered by the Apex Court in Tayabbai M. Bagaswalla versus Hind Rubber Industries, 1997 AIR (SC) 1240 and Samee Khan versus Bindu Khan 1998 AIR (SC) 2765, the petitioner contended that though the order disobeyed has been later on set aside after committing the contempt, even then the contemner can be punished for the disobedience/violation of the order passed by the court and therefore, the findings recorded by both the courts below are illegal and contrary to the settled principles of law. The petitioner, further relying upon the decision rendered by the Apex Court in Hoshiar Singh and another versus Gurbachan Singh and others AIR 1962 (SC) 1089, contended that a prohibitory order passed by the court need not be served upon the parties against whom it has been granted. Even an ex parte order is as good as an order passed after affording due participation. Subsequent vacation of stay granted on 29.8.2006, does not absolve the respondent from contempt already committed. He also submitted that despite the fact that the respondent-company was restrained to act upon the

notice under section 13(2) of the SARFAESI Act, it issued auction notice and published the same in the newspaper and thus, committed contempt of order dated 29.8.2006. While relying upon the decisions rendered by the Apex Court in Patel Rajnikant Dhulabhai and another versus Patel Chanderkant Dhulabhai and others 2008 (3) RCR (Criminal) 808, the petitioner finally prayed that the respondent-company should be suitably punished for committing contempt of court for violating the order dated 29.8.2006

I have given my thoughtful consideration to the submissions raised by the petitioner and gone through the paper-book carefully.

To get punished a person under the Act or under Order 39 Rule 2-A, Civil Procedure Code, it is necessary to prove beyond doubt that the alleged contemner has disobeyed the injunction order passed by the court against him wilfully and deliberately. However, a perusal of the order dated 29.8.2006 passed by learned Additional District Judge, Ropar, shows that the same was passed ex parte in the absence of the respondent-company. The learned lower appellate court observed that no evidence or fact imputing wilful disobedience by the respondent-company could be brought on record by the petitioner, rather all the time, the respondent had been defending the lis being brought against it by the petitioner. In Anil Rattan Sarkar versus HIRAK GHOSH, AIR 2002 (SC) 1405, the Hon'ble Apex Court has held that the powers under the Act can be exercised with utmost care and caution, that too very sparingly and in the larger interest of the society and for proper administration of the justice delivery system. In other words, the powers under the Act should be exercised in rarest of the rare cases that too in the matter in which there exists no doubt with regard to initiation of

action being bona fide. It has been further held that mere disobedience of order of court may not be sufficient to constitute 'civil contempt' within the meaning of section 2(b) of the Act, as the element of willingness is indispensable requirement to bring home the charge. In the considered opinion of this court, the alleged violation of the order dated 29.8.2006 has not been established on the record from any corner of the wall and, therefore, the respondent-company cannot be held liable for the alleged violation of the order dated 29.8.2006. The plea of the petitioner that the injunction order dated 29.8.2006 passed by learned Additional District Judge, Ropar, was in the knowledge of the respondent-company cannot at all be countenanced, inasmuch the witnesses examined by the petitioner had specifically deposed before the trial court that they were not aware of the order dated 29.8.2006 passed by this court.

More so, the endeavour of the petitioner to get punished the respondent company for allegedly wilful and deliberate disobedience of the order dated 29.8.2006 is a futile exercise as, even if he succeeds in the instant petition, the only relief which can be availed of under the statute is either to get the property of the respondent-company attached or to get it sent to civil imprisonment. It is worth mentioning that the respondent, being a limited company, by itself, cannot be sent to civil imprisonment. At the most, some of its erring official, who had, allegedly disobeyed the order dated 29.8.2006, can be sent to civil imprisonment, which again would be a contentious issue, because the petitioner has not specified the name of any official of the respondent company as contemner. Hence, at this stage, after a long span, it would be very difficult for him to ascertain as to who, of the officials of the respondent-company, was, allegedly, liable for

disobeying the order dated 29.8.2006. Even if for the sake of arguments, it be presumed that the petitioner would be able to identify the person, who was guilty of contempt of court, in that eventuality, again there would arise a question as to whether the said employee is, presently, in the employment of the respondent company and if not, in that eventuality, to trace out his whereabouts and correct address.

It would be appropriate to mention here that the petitioner, in support of his case, examined Nandini Bansal as PW1, who specifically admitted that she does not know the name of the officer, who proceeded against the order dated 29.8.2006 passed by learned Additional District Judge, Ropar. This witness again appearing as PW3 and categorically deposed that she does not know the name of the officer, who had proceeded for publication regarding possession-cum-sale notice in the newspaper Ex.A2. The officer who had signed the possession-cum-sale notice dated 16.6.2007 was also not within her knowledge. PW4 Shri Sidharth Sanwaria, advocate, has also deposed that order dated 29.8.2006 passed by learned Additional District Judge, Ropar, was not within his knowledge. From the testimony of the witnesses, referred to above, it could not be established beyond doubt by the petitioner as to who, of the officials of the respondent-company, violated the injunction order dated 29.8.2006 passed by learned Additional District Judge, Ropar.

The facts and circumstances of Samee Khan's case (supra) are not identical to the facts of the instant case, inasmuch as the issue decided in the afore-referred case is, not at all, the point in issue in the instant case. The Hon'ble Apex court, while interpreting the words "and may also" in Rule 2-A of Order 39, Civil Procedure Code, has laid down that the court in

its power may either order detention of disobeying party or attach his property. Both steps can be resorted to or one of them alone need be chosen depending upon fact in each case.

In Tayabbai M. Bagasrwalla's case (supra), the Hon'ble Apex Court has held that a contemner can be punished for disobedience of interim order of injunction even if the civil court finally found to have no jurisdiction to entertain the suit. There is no dispute with the above proposition of law, but with due respect, it is worth mentioning that both the courts below have not non-suited the petitioner for the above reason. Rather, the petitioner has been non suited on the ground that he could not prove any wilful disobedience or flouting of order dated 29.8.2006 by the respondents.

The facts and circumstances of Hoshiair Singh's case (supra), are not identical to the facts of the case in hand. In that case, land allotted to one Budh Singh, a displaced person, was occupied forcibly by respondent Gurbachan Singh in an illegal manner. Appellant no.1, on May 9, 1958, in his official capacity, passed an order regarding handing over possession to Budh Singh and other allottees, like him, qua the land allotted to them and fixed the date of delivery of possession as May 20,1958. However, on May 16, 1958, respondent Gurbachan Singh and number of other persons, who were similarly situated, filed a Civil Writ Petition under Article 226 of the Constitution, challenging the validity of the action of appellant no.1, whereupon Hon'ble the then Chief Justice of this court on that very day, ordered staying delivery of possession till May 19,1958, which, on May 19,1958, by an order of a Division Bench, was further extended till May 23,1958. Though, the initial order of stay dated May 16,1958 passed by

Hon'ble the then Chief Justice was communicated officially to the appellants, but the subsequent order dated May 19, 1958 was not communicated to them officially. However, the appellants were informed by certain interested persons regarding extension of stay order upto May 23, 1958 by the High Court, but in spite of this information, they, dispossessed respondent Gurbachan Singh and handed over the possession to Budh Singh. In Contempt Petition, this court, while observing that the appellants were aware of the order of this court extending the operation of the stay order, disobeyed the same by dispossessing the respondent and handing over possession to Budh Singh and therefore, were guilty of contempt of court, but expressed opinion that the appellants had honestly believed that they were not bound to hold their hands in the absence of an official communication of the High Court orders, extending the operation of the stay order. In this view of the matter, the learned Single Judge of this court, instead of committing the appellants for contempt of court, merely administered warning to them and directed them to pay costs to the respondent. The said order of this Court was challenged before the Hon'ble Apex Court. The Hon'ble Apex Court allowed the appeal holding that since appellants were not officially communicated about the order dated 19 May, 1958 qua extension of stay and thus, communication, if any, through private source, if not believed by the appellants, they were not liable for any contempt for disobedience of order dated 19 May, 1958 for extension of stay order upto May 23, 1958.

The facts of Patel Rajnikant Dhulabhai's case (supra), are also not identical to the facts of the present case and as such, the petitioner cannot derive any benefit from the same.

In view of the above discussion, this court is of the view that the finding recorded by the learned trial court that the contempt petition filed by the petitioner under the Act was not maintainable as it had no jurisdiction under the said Act to try and decide the same, which finding has also been upheld by the learned appellate court. Resultantly, I do not find any illegality or impropriety in the impugned orders passed by both the courts below and as such, the revision petition, being without any merit, fails and is hereby dismissed.

25th July, 2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether reportable | Yes/No |