IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4598 of 2016
Date of Decision:13.12.2017

Udaibir Singh

......Petitioner

Vs

Punjab National Bank and others

....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. I.P. Singh, Advocate
for the petitioner.

Mr. C.S. Pasricha, Advocate
for respondent No.1.

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RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner against the order dated 12.02.2016 passed by the Addl. Civil Judge (Sr. Divn.) Panipat whereby application filed by respondent No.1/Bank under Order 7 Rule 11 CPC was allowed.

[2]. Brief facts are that the petitioner filed a suit for declaration to the effect that the agreement of guarantee dated 16.03.2007 allegedly executed between plaintiff and defendant No.4/respondent Bank and further creation of mortgage of the property was result of fraud, misrepresentation and collusion

between Bank and other defendants.

[3]. Respondent No.1/Bank filed application under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint. The application was contested by the plaintiff/petitioner. The application filed by the respondent-Bank was allowed by the trial Court vide the impugned order dated 12.02.2016.

[4]. Learned counsel for the petitioner submitted that Debt Recovery Tribunal (hereinafter to be referred as 'the DRT') cannot be treated to be a civil Court and has limited jurisdiction. The DRT cannot pass a decree of declaratory relief. Only the civil Court has power to determine the issue of civil nature by means of full-fledged trial and to pass decree. the DRT cannot decide the plea of fraud as it can only comment upon the measures undertaken under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'). It cannot comment upon the plea of fraud, nor it can give findings on fraud as the same requires regular procedure. Section 17 of the SARFAESI Act is only in respect of measures to be taken under the said Act.

[5]. Learned counsel vehemently submitted that it is a case of fraud. The civil suit is on the basis of fraud regarding

obtaining signatures on blank papers and *pronote* papers supported by the opinion of Expert. Petitioner was not a borrower, he was alleged to be a guarantor of the mortgagee. The property of the borrower which was mortgaged as principal security has been released in connivance with the bank and the collateral security offered by the plaintiff has been subjected to auction. The property has already been sold and sale certificate has been issued. The petitioner if so, advised may or may not amend the suit, but the question for determination of the Court at this stage is whether the suit is barred under Section 34 of the SARFAESI Act?

[6]. Learned counsel by relying upon ***Nahar Industrial Enterprises Ltd., vs. Hong Kong & Shangai Banking Corporation, 2011(7) R.C.R. (Civil) 95*** submitted that jurisdiction of civil Court is plenary in nature and civil Court is entitled to decide the respective claims of the parties in a suit unless the same is ousted expressly by a statute or by necessary implications, civil Courts will have jurisdiction to try all types of suits. A *casus omissus* cannot be supplied by the court to oust jurisdiction of civil court. The DRT cannot be treated to be a civil Court as the same is constituted with specific purpose and has limited jurisdiction. The DRT cannot pass a decree, nor can debtor seek declaratory relief from the DRT. It can issue

only recovery certificates though it has jurisdiction to decide jurisdictional issues. It is a one-man tribunal and no independent proceedings can be initiated before it by a debtor. The application before the DRT would lie only at the instance of Bank or by the financial institution for recovery of debts. The debtor can only file counter claim. The provisions in terms of Section 22(3) of the SARFAESI Act would not lead to a conclusion that the DRT is a civil Court.

[7]. Learned counsel further by placing reliance upon ***Arasa Kumar and anr. vs. Nallammal and ors., 2004(4) CTC 261 (Madras)*** contended that rights of the parties could only be determined by the civil Court and the bar in terms of Section 34 of the SARFAESI Act would not apply.

[8]. On the other hand, learned counsel for respondent No.1/Bank vehemently submitted that the statutory interest has been granted in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-Section (4) of Section 13 of the SARFAESI Act envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the

'measures' referred to in sub-Section (4) of Section 13 of the said Act has got a statutory right of appeal to the DRT under Section 17 of the SARFAESI Act. Section 34 of the SARFAESI Act has created a bar *qua* maintainability of the suit in the aforesaid context. Learned counsel made a reference to the case ***Jagdish Singh vs. Heera Lal & others, 2014(1) SCC 479***.

[9]. Having considered the controversy In view of record, I find that the suit involves declaratory relief based on instinct of alleged fraud at the instance of Bank. Petitioner has claimed himself to be not a borrower, rather he stood as guarantor for the mortgagor. The property of the borrower which was mortgaged as principal security was allowed to be released in connivance with the concerned parties, whereas the property offered as collateral security has been subjected to auction. In my considered opinion, Section 17 of the SARFAESI Act deals with only the measures to be taken under the said Act and the DRT under the Act can only comment upon the measures taken by the Bank under the Act. If the controversy is beyond the scope of measures taken by the Bank in strict sense, Section 9 of the Civil Procedure Code would apply and the civil Court has got all the jurisdiction to try the suit. In my considered opinion, at the stage of Order 7 Rule 11 CPC the controversy of the like

nature cannot be allowed to be culminated.

[10]. In view of aforesaid observation, the order dated 12.02.2016 passed by the Addl. Civil Judge (Sr. Divn.) Panipat is set aside. This revision petition is accepted. The trial Court shall proceed with the suit in accordance with law.

December 13, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No