IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 248

Civil Revision No.517 of 2016 (O & M)
Date of Decision: *March 09, 2017*

Asset Reconstruction Company (India)
..... PETITIONER

VERSUS

M/s Priya Clay Products (P) Ltd.
..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Vikas Bahl, Senior Advocate, with Mr. V.K. Sachdeva, Advocate, and Mr. Amandeep Singh, Advocate, for the petitioner.

Mr. Sushil Jain, Advocate, for the respondent.

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Jaspal Singh, J

CM Nos.4054-CII & 4055-CII of 2017

Applications are allowed.

Documents are taken on record.

CR No.517 of 2016

1. By virtue of the instant petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside of order dated December 02, 2015 (Annexure P-1) passed by the Civil Judge (Junior Division), Jhajjar, in Civil Suit No.152 of 2015, whereby while disposing of an application under Order XXXIX Rules 1 & 2 CPC read with Section 151 CPC, petitioner – Company has been restrained from auctioning the secured

assets of respondent – plaintiff under the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act, 2002').

2. Undisputably, State Bank of Patiala had granted financial assistance to the tune of ₹ 14.51 crore to the respondent – plaintiff. The said financial assistance was secured by the bank through execution of a deed of hypothecation of movable assets as well as creation of charge/equitable mortgage of immovable assets of the respondent – plaintiff. Since the respondent – plaintiff committed defaults in repayment of the loan, bank classified the loan accounts as non-performing assets (NPA) in its books of accounts in accordance with directives relating to the asset classification issued by the Reserve Bank of India from time to time. Accordingly, the bank issued a notice to the respondent – plaintiff in terms of Section 13(2) of the SARFAESI Act, 2002 on September 04, 2010 calling upon it to pay an aggregate amount of ₹ 14,40,47,525/- only as on May 31, 2010 plus interest at the respective documented rate thereon. The respondent – plaintiff, even after expiry of period of 60 days from the date of notice issued under Section 13(2) of the SARFAESI Act, 2002, failed to make payment to the bank which necessitated the filing of an application under Section 14 of the SARFAESI Act, 2002 with the District Magistrate, Jhajjar for taking physical possession of the secured assets. The District Magistrate, vide order dated January 01, 2013 ordered for taking physical possession of the secured assets, in pursuance of which, physical possession of the secured assets was obtained by the bank on January 04, 2013. It was also published in the newspaper. Thereafter, the respondent – plaintiff approached the Delhi High Court by filing Writ Petition (C) No.4468/2012 against order dated July 26, 2012 passed by the District Magistrate, Jhajjar, besides challenging the

auction proceedings initiated by the bank under the provisions of the SARFAESI Act, 2002. However, the said writ petition was dismissed on April 26, 2013 for non prosecution as well as non-compliance of the order of deposit of two trenches of 10% of the principal amount of ₹ 12 crore. Even the auction notice was also published in July 2013 but the same failed as no bid was received. Subsequently, State Bank of Patiala, vide registered Assignment Agreement dated March 26, 2014, unconditionally and irrevocably assigned, transferred in favour of petitioner – Company, all the financial assistance granted by it to the respondent – plaintiff together with all the underlying securities, right, interest and title thereto and a registered assignment deed was duly executed between the bank and petitioner – Company in terms of Section 5 of the SARFAESI Act, 2002. By virtue of Section 5 of the SARFAESI Act, 2002, petitioner – Company became the lender in respect of the loans of respondent – plaintiff on acquisition of the secured assets. Pursuance to the Assignment Agreement, petitioner – Company took over the physical possession of the secured assets from State bank of Patiala on September 04, 2014 after making a complete inventory of the assets. Further, in compliance of Rule 6(2) and Rule 8(2) of the Security Interest (Enforcement) Rules, 2002, petitioner – Company issued a notice of sale dated December 20, 2014 for the sale of immovable and movable properties of respondent – plaintiff. The petitioner – Company also published a public notice for sale dated December 26, 2014 for sale of secured assets.

3. Aggrieved against the aforesaid actions, respondent – plaintiff filed an application under Section 17 of the SARFAESI Act, 2002 before the Debts Recovery Tribunal – 1, Chandigarh (for short, 'DRT') for setting aside auction notice dated December 26, 2014. Alongwith its

securitization application, respondent – plaintiff also filed an application under Order 33 Rules 1 & 2 CPC for waiver for court fee and for seeking permission of DRT to file the securitization application as an indigent person. During the pendency of aforesaid securitization application before the DRT, respondent – plaintiff succeeded in lodging a false complaint with the police on March 09, 2015. Subsequent thereto, the respondent – plaintiff had already availed statutory remedies under Section 17 of the SARFAESI Act, 2002 and had sought various interim and final reliefs, yet filed a suit for permanent injunction before the civil court at Jhajjar to permanently restrain the petitioner – defendant, its agents, associates, representatives etc. from alienating/selling the suit property on the basis of public notice and to further restrain the petitioner – defendant from tampering with the evidence of stealing the property of plaintiff after taking possession of the premises, plant, machinery and buildings of plaintiff – company and from changing the nature of suit property in any manner. Alongwith the suit, an application under Order XXXIX Rules 1 & 2 CPC was also filed which has been allowed by the trial court vide impugned order dated December 02, 2015.

4. Aggrieved against order dated December 02, 2015, petitioner – Company has approached this Court by way of filing the instant revision petition.

5. During the course of arguments, learned counsel for the petitioner has just reiterated the various averments made in the grounds of revision, and has submitted that the trial court, while passing the impugned order, has travelled beyond its scope and jurisdiction and has given the relief in an indirect manner which cannot be granted directly, that too, without having any jurisdiction, being barred under the various provisions of the SARFAESI Act, 2002.

6. On the other hand, learned counsel for the respondent – plaintiff has supported the impugned order.

7. After bestowing due consideration to the rival submissions made by learned counsel for the parties as well as after scrutinization of the various documents available on file as well as of impugned order, this Court is of the considered view that the impugned order, being violative of various provisions of the Act and principles of natural justice, is not sustainable in the eyes of law and deserves to be set aside.

8. Undisputably, securitization application under Section 17 of the SARFAESI Act, 2002 filed by the respondent – plaintiff was pending before the DRT, in which the respondent – plaintiff has claimed various interim as well as final reliefs in respect of secured assets but when he could not get the same, the suit for permanent injunction was filed before the civil court alongwith an application under Order XXXIX Rules 1 & 2 CPC. While filing the suit, it was categorically stated by the respondent – plaintiff in Para 11 of the plaint, "that no other litigation is pending or decided between the parties to the suit qua the same cause of action". Meaning thereby that the respondent – plaintiff made a false statement/averment in this regard and it can be safely concluded that the respondent – plaintiff did not approach the court with clean hands and has suppressed material facts with regard to litigation pending or decided between the parties. The respondent – plaintiff is guilty of mis-representation and concealment of material facts and as such, it does not deserves even to be heard on merits on its claim.

9. In case ***A.V. Papayya Sastry & others vs. Government of A.P. & others, 2007(4) SCC 221***, the Hon'ble Apex Court has held that a litigant is bound to produce all relevant documents to the litigation. If he

withholds a vital document to gain advantage on other side, he would be guilty of playing fraud on the court and opposite party. Similarly, the Division Bench of this Court in ***Jaspal Singh vs. State of Haryana & others, 2003(2) RCR (Civil) 1***, has categorically observed that a person who does not come to the court with clean hands is not entitled to be heard on merits on his claim. Identical observation was made by this Court in another case ***Kulwant Kaur vs. State of Punjab & others, 2013(5) RCR (Civil) 141***. Since the respondent – plaintiff did not approach the civil court with clean hands and has made concealment with regard to previous litigation pending before the DRT, it does not deserve to be heard on merits even.

10. Here, it would also be pertinent to mention that the trial court has travelled beyond the scope and jurisdiction, and has even violated the settled principles fully knowing that it had no jurisdiction or the jurisdiction of the civil court is clearly barred under the provisions of the SARFAESI Act, 2002. Infact, the trial court has torn into pieces the various provisions contained in the SARFAESI Act, 2002 while disposing of the injunction application, particularly Sections 13(2), 17, 34 and 35. The civil suit of respondent – plaintiff is barred in view of Sections 34 and 35 of the SARFAESI Act, 2002. No relief for interim injunction could have been granted to it.

11. Sections 34 and 35 of the SARFAESI Act, 2002 are extracted here-in-below:-

> "**34. Civil Court not to have jurisdiction**
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> No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

35. The provisions of this Act to override other laws

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

12. Not only this, even the trial court has totally ignored the provisions contained under Sections 17 and 34 of the SARFAESI Act, 2002 which provides that the action taken by the DRT cannot be challenged in a suit before any civil court. Infact, the civil court does not have the jurisdiction to entertain any suit or proceeding in respect of the dispute raised by the respondent – plaintiff with regard to sale notice issued by the petitioner under the provisions of SARFAESI Act, 2002. The remedy if any lies in filing of an application before the DRT under Section 17 of the SARFAESI Act, 2002.

13. In case ***Mardia Chemicals Ltd. vs. Union of India, (2004) 4 SCC 311***, while deciding the validity of the SARFAESI Act, 2002, the Hon'ble Supreme Court of India has held that the full reading of Section 34 of the SARFAESI Act, 2002 shows that the jurisdiction of the civil court is barred in respect of matters which a Debt Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken or to be taken in pursuance of any power conferred under the SARFAESI Act, 2002. The Supreme Court held that the jurisdiction under Section 34 of the SARFAESI Act, 2002 covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under Section (4) of Section 13 of the said Act.

14. In another case ***Jagdish Singh vs. Heeralal & others, (2014) 1 SCC 479***, the Hon'ble Supreme Court has held that the expression "in

respect of any matter" referred to in Section 34 of the SARFAESI Act, 2002 would take in the "measures" provided under sub-section (4) of Section 13 of the Act and if any person has got any grievance against any "measures" taken by the borrower under the said provision, the remedy open to him is to approach the Debts Recovery Tribunal or the Appellate Tribunal and not the civil court. The Supreme Court held that Section 35 of the SARFAESI Act, 2002 expressly provides that the said Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 of the Code of Civil Procedure, 1908 as well.

15. The observations made in the aforesaid authorities as well as provisions contained in the SARFAESI Act, 2002, including Sections 13(2), 13(4), 17, 34 and 35, bar the jurisdiction of the civil court. Section 17 of the SARFAESI Act, 2002 confer complete jurisdiction with DRT to decide an application of any person aggrieved by any measure adopted by the secured creditors of sub-section (4) of Section 13 of the SARFAESI Act, 2002 and Section 34 completely bars the jurisdiction of the civil court whereas Section 35 provides that the provision of the said Act shall have the overriding effect on any provision of any Act which is in consistent with the provisions of the said Act.

16. It is also to be no out of place to mention that the trial court exceeded its jurisdiction and failed to appreciate that what cannot be done directly, the same cannot be done indirectly. It is settled principle of law and as also observed in case ***Jagir Singh vs. Ranbir Singh, AIR 1979 SC 381*** as well as ***State of Tamil Nadu & others vs. K. Shyam Sunder & others,*** Civil Appeal Nos.6015-6027/2011, decided on August 09, 2011 that what cannot be done directly, is not permissible to be done obliquely. Meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an

indirect and circuitous contrivance on the principle of "*quando aliquid prohibetur, prohibetur at omne per quod dvenitur ad illud*" which means that an authority cannot be permitted to evade a law by shift or contrivance.

17. Adverting to the facts of the case in hand, while disposing of ad-interim injunction application, even the aforesaid principle was ignored by the trial court. Since the trial court has travelled beyond its jurisdiction while passing the impugned order and has failed to appreciate various aspects which have been discussed in the fore-going paragraphs, this Court is of the considered view that the impugned order being violative of the principles of natural justice as well as beyond jurisdiction is not sustainable in the eyes of law and is liable to be set aside.

18. In the light of what has been discussed above, the instant revision petition is allowed. Impugned order dated December 02, 2015 is set aside. Consequently, application under Order XXXIX Rules 1 & 2 CPC moved alongwith the suit stands dismissed in toto.

(Jaspal Singh)
Judge

March 09, 2017
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No