IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6873 of 2017 (O&M)
Date of decision: 10.10.2017

Mohinder Singh

... Petitioner

Vs.

ICICI Bank and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. A.P. Kaushal, Advocate
for the petitioner.

****

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the order dated 18.07.2017 (Annexure P-9) passed by the learned trial Court, whereby application moved by the defendant-Bank under Order 7 Rule 11 of the Code of Civil Procedure ('CPC' for short) read with Sections 17 and 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), was allowed rejecting the plaint, plaintiff has approached this Court by way of present civil revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Heard learned counsel for the petitioner.

Loan transaction between the parties is not in dispute. In such a situation, applicability of Section 34 of SARFAESI Act would also not be in dispute. In this view of the matter, no fault can be found with the impugned order passed by the learned trial Court, whereby the application under Order 7

Rule 11 CPC read with Sections 17 and 34 of SARFAESI Act moved on behalf of the defendant-Bank was allowed by the learned trial Court and the impugned order deserves to be upheld.

Before proceeding further, observations made by the learned trial Court in para 4 of the impugned order, which deserves to be noticed here, read as under: -

> *"Present suit has been filed by the plaintiff for permanent injunction restraining the defendants from dispossessing plaintiff from the property in dispute and further for declaration that the transfer of secured debit/loan taken by the plaintiff from defendant No.1 if any in favour of defendant No.2 is null and void and not binding on the rights of the plaintiff. It is alleged in the application filed by defendant No.1 that plaintiff has not been making payment of the amount which is payable by him to defendant No.2 and defendant No.2 has issued various letters/notices and has made several requests whereby he was called upon to make the payment, but plaintiff has failed to pay the said amount. It is further stated in the application that defendant No.1 by exercising authorization which was binding upon the plaintiff has transferred and released the loan account in favour of defendant No.2 i.e. Arcil Retail Loan Portfolio 001-J-Trust with all its rights, title and interest in terms of Section 5 of SARFAESI Act 2002. It is further alleged in the application that notice under Section 13 (2) of the SARFAESI Act has been issued by defendant No.2 which has been concealed by the*

plaintiff in his pleadings. It is further alleged by defendant No.1 that plaintiff has made default in the account and as such his account has been classified as Non Performing Assets. It is further stated that defendant No.2 has already started the proceeding under the SARFAESI Act and defendant No.2 can take possession of the property under the provisions of the said Act. It is also stated that no reply has been given by the plaintiff to the notice issued by the defendants. It is further stated that as per Section 34 of SARFAESI Act, Civil Courts do not have jurisdiction and plaint is liable to be rejected. On the other hand, all the averments made by defendant No.1 have been denied by the plaintiff in his reply and it is stated by the plaintiff that he has availed loan from defendant No.1 for Rs.4,44,973/- and the plaintiff has already paid Rs.1,74,662/- to defendant No.1 and thereafter account was malafidely transferred to defendant No.2 and plaintiff has already filed an application for settlement of the dispute through mediation on 28.08.2012 and plaintiff is ready to pay the remaining amount. Defendant No.1 has placed on record documents pertaining to the proceedings initiated against the plaintiff under SARFAESI Act. Section 34 of SARFAESI Act reads as under: -

> *"Section-34 Civil Court not to have jurisdiction. – 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*

> *or by 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)"*

Keeping in view of above mentioned provision, jurisdiction of Civil Court is barred to try the present suit. One contention raised by ld. counsel for the plaintiff is that defendant No.1 malafidely transferred the account in favour of defendant No.2. I have gone through the loan agreement placed on record by plaintiff himself in which clause No.9.2 (B) has been mentioned which is as under: -

> *"ICICI Bank shall be entitled to sell assign, securities or transfer ICICI Bank's rights and obligations under this agreement and any security in favour of ICICI Bank/Security Trustee nominated by ICICI Bank (including all guarantees) to any person of ICICI Bank's choice in whole or in part and in such manner or on such terms and conditions as ICICI Bank may describe. Any such sale, assignments, securitization or transfer shall conclusively bind the borrower and all other persons."*

Hence as per the above mentioned clause, defendant No.1 bank has all rights to transfer the account to defendant No.2 and the plea raised by ld. counsel for the plaintiff is devoid of any *merit. One more contention raised by ld. counsel for the plaintiff is that defendant No.1 has already transferred account in favour of defendant No.2 and as such they have no locus standi to file the present application under Order 7 Rule 11 CPC. Ld. counsel for the plaintiff cannot blow hot and cold at the same time. In the one hand, he is stating that account of the plaintiff has been malafidely transferred in favour of defendant No.2 and on the other hand, he is stating that defendant No.1 has no locus standi to file the present application as the account has been transferred. It is admitted fact that account of the plaintiff has been transferred by defendant No.1 to defendant No.2 and thereafter, defendant No.2 has been made party in the present case. Although present application has been filed by defendant No.1 and it is admitted fact that the account has been transferred by them to defendant No.2, but still defendant No.1 is party to the present suit and they have every right to file the present application. Keeping in view all the facts and circumstances of the case and aforementioned provisions the plaint of the plaintiff is rejected under Order 7 Rule 11 CPC."*

When confronted with the abovesaid observations made by the learned trial Court supported by sound reasons and coupled with the fact that the learned Civil Court will have no jurisdiction under the SARFAESI Act to entertain the suit, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. Under these undisputed circumstances of the case, it can be safely concluded that the learned trial Court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. In fact, the impugned order passed by the learned trial Court has been found based on sound reasons and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality or perversity has been found in the impugned order, the same deserves to be upheld. The revision petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

10.10.2017
vishnu

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