IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 29.09.2017

RSA No.5597 of 2016 (O&M)

Vijay Laxmi ...Appellant

Vs.

Oriental Bank of Commerce & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. H.P.S.Ishar, Advocate, for the appellant.

RAJIV NARAIN RAINA, J. (ORAL)

1. Mardia Chemicals Ltd. Vs. Union of India & others, (2004) 4 SCC 311 is cited to contend that where action of the secured creditor for recovery of loan is alleged to be fraudulent and the claim is launched against the guarantor, like the present appellant, but not the principal borrower, action is unsustainable, then the Civil Court is not without but possesses very limited extent of jurisdiction to interfere under Section 9 of the CPC, the trial Court can always invoke its power to issue mandatory and permanent injunction to repel the secured creditor. Can the appellant rest its case firmly on the ruling (supra)? The extent of debt in this case is within the pecuniary jurisdiction of the Special Act which takes subject matter to the Debt Recovery Tribunal.

2. In the present case, the suit was filed by the appellant for declaration and mandatory injunction that the demand to liquidate loan by notice served by the respondent Bank under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ‘the SARFAESI Act’), then remedy

lies exclusively before the Debts Recovery Tribunal and not before the Civil Court by virtue of Section 34 of the SARFAESI Act. Mardia Chemicals case is of no avail to avoid liability of a guarantor which is co-existent with the borrower. The choice to proceed against either lies with respondent OBC.

3. In response to the suit, the Bank filed an application under Order 7 Rule 11 CPC for rejection of plaint, the suit being barred by law. The contention was accepted and the plaint was rejected. In appeal carried to the Court of the learned Additional District Judge, Sirsa no success could be achieved by the guarantor of debt with the appeal rejected. Hence, the present second appeal.

4. Mr. Ishar argues that many subsequent and supervening events have taken place after filing the suit for which cognizance ought to be taken and the suit restored for a decision on merits. However, no such supervening event/s was brought to the notice either of the Appellate Court or to this Court in the instant second appeal by filing an appropriate application. If, there are other supervening events, which are even of more recent origin and having occurred after the dismissal of the appeal, even then those would not make a ground for this Court to set aside the order under Order 7 Rule 11 CPC because all such events, if have any connection with the relief claimed in suit can be agitated before the Debts Recovery Tribunal exercising territorial jurisdiction over the corpus.

5. The question of fraud etc. can be raised as a plea before the Debts Recovery Tribunal in case it is approached. Since the appellant has been advised to pursue this remedy through the Civil Court with the suit instituted on 14.03.2016 and the plaint itself being rejected at the threshold

by the Civil Court and the remedy always lying before the Debts Recovery Tribunal, then the collateral property furnished by the guarantor on behalf of the principal borrower who was sanction loan for business purposes by the secured creditor, then the property shall not be auctioned till one month from receipt of this order or uploaded on the official website in PDF form to enable the appellant to move an appropriate original application before the Debts Recovery Tribunal, where he would be at liberty to take all pleas against the action under SARFAESI Act as against the guarantor and not the principal borrower. Nevertheless, on merits no opinion is expressed since the suit was barred by law in Section 34 of the SARFAESI Act and appeal is decided only on point of jurisdiction. If limitation to approach the Tribunal has run out it will be in the discretion of the Tribunal to deal with the issue in accordance with law by keeping in mind the provisions of Section 14 of the Limitation Act, 1963.

6. With these observations, the instant appeal is disposed of.

7. The decree will stand modified according to this order.

29.09.2017 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *No*