IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.2996 of 2018
Date of decision: May 07, 2018

Manoj Kumar

...Petitioner

Versus

State Bank of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.S.Brar, Advocate
for the petitioner.

****

INDERJIT SINGH, J.

Petitioner Manoj Kumar has filed this revision petition against respondents State Bank of India and Kharait Lal under Article 227 of the Constitution of India challenging the impugned order dated 15.02.2018 passed by Learned Civil Judge (Junior Division) Jalalabad (w), vide which the application filed by respondent No.1 under Order 7 Rule 11 CPC has been allowed.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that a civil suit has been filed by Manoj Kumar plaintiff-petitioner against defendants State Bank of India and Kharait Lal (present respondents) for a decree of declaration to the effect that defendant No.1 has got no right to dispossess the plaintiff from shop as mentioned in the head note and for declaration to the effect that any

Vineet Gulati
2018.05.14 14:51
I attest to the accuracy and authenticity of this document
Chandigarh

proceedings initiated under SARFAESI Act for obtaining possession of the suit shop, are illegal, unlawful, null and void and further for relief of permanent injunction restraining the defendants from making any sort of illegal and unlawful interference into the lawful possession of the plaintiff over the suit shop.

Defendant-respondent No.1 filed an application under Order 7 Rule 11 CPC for rejection of plaint filed by defendant. It has been submitted before the lower Court that under Section 34 of SARFAESI Act, 2002, Court has got no jurisdiction to try and entertain the matter in question. It has also been submitted that defendant No.2 has already mortgaged the property in dispute in loan raised by him against M/s. J.G. Agro Foods, Focal Point Ghubaya, Jalalabad by depositing of the original title deed of the suit property in favour of the bank on 30.08.2013. Defendant No.2 along with partners of M/s. J.G. Agro Foods, Focal Point, Ghubaya, Jalalabad created charge of the Bank-defendant No.1 over the suit property in question which is still in force. Defendant No.2 was not in a position and entitled to lease out/alienate the property in question until and unless the same is redeemed from the encumbrances of the bank-defendant No.1. At the time of mortgaging the title deed with Bank, defendant No.2 furnished/submitted an affidavit/declaration that the property is free from all encumbrances and it is under his own possession. It is also in the application that defendant No.1 officially visited the property personally at the spot and the same was found in the possession of defendant No.2 and there he was running a shop of spare parts in the demised shop/suit property. It is further the case of applicant-defendant No.1 that defendant No.2 in connivance with plaintiff with malafide intention hatched a

Vineet Gulati
2018.05.14 14:51
I attest to the accuracy and
authenticity of this document
Chandigarh

conspiracy to disturb the proceedings initiated under SARFAESI Act and defeat the right of the Bank-defendant No.1. Defendant No.1 served a demand notice under Section 13(2) of SARFAESI Act on dated 19.01.2017 and the proceedings under Section 13(4) of SARAESI Act on 25.04.2017 against defendant No.2 and partners of M/s J.G. Agro Foods, Focal Point, Ghubaya, Jalalabad were started. Notice was served upon defendant No.2 but he did not file any reply to said notice and also did not mention fact regarding leasing out of property. In this way, the alleged lease agreement qua the suit property is illegal, null and void. It has further been submitted that the plaintiff has full knowledge of the loan and is also aware of the fact that the proceedings under Section 13(4) of SARFAESI Act have been initiated and if he wanted to contest, then he may approach the Debt Recovery Tribunal, Chandigarh. It is also submitted that plaintiff and defendant No.2 are very close relatives and plaintiff has filed the present suit just to create disturbance in the proceedings initiated under SARFAESI Act by the Bank-defendant No.1 and to linger on the matter.

On the other hand, the plaintiff in reply mainly stated that he has filed the instant suit for safe guarding his legal rights concerning rent/lease deed in question. Defendants have got no right to dispossess him by invoking the provision of SARFAESI Act except under the provision of concerned Rent Legislation. It is also stated that defendants have full knowledge about the rent deed dated 30.09.2012. The remaining averments were mainly denied.

Learned Civil Judge (Jr. Divn.) Jalalabad, vide impugned order dated 15.02.2018 allowed the application and held that suit is not maintainable due to bar of jurisdiction and dismissed the suit.

Vineet Gulati
2018.05.14 14:51
I attest to the accuracy and authenticity of this document
Chandigarh

After perusing the impugned order dated 15.02.2018 passed by learned Civil Judge (Jr.Divn.), Jalalabad, I find that this order is as per law and no illegality has been committed by learned lower Court. At the time of arguments, it is admitted that lease deed is not registered one. No document has been placed on record to show that this lease deed was executed in the year 2012. No payment or rent by cheque or by depositing the amount in the account of defendant No.2 by the plaintiff has been shown before the issuance of notice by defendant No.1 under the SARFAESI Act. Further, it is the case of the Bank that proceedings under SARFAESI Act are already pending. It is also admitted fact that plaintiff and defendant No.2 are relatives, which means that plaintiff was knowing about the loan taken by defendant No.2. Furthermore, under the SARFAESI Act, jurisdiction of civil Court is barred.

Further, learned Civil Judge (Jr.Divn.), Jalalabad, in its order dated 15.02.2018, has discussed the provisions of Securitisation Act, 2002 to file appeal before the Debt Recovery Tribunal. It is also mentioned that the amendment of the Act in the year 2016 by amending Section 17 of the Act of inserting sub-section 4A in which it has been provided that *any person, in application under sub section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation such claim shall, for the purpose of enforcement of the security interest, have the jurisdiction to examine whether the lease or tenancy,- (a) has expired or stood determined; or (b) is contrary to section 65 of the Transfer of the Property Act, 1882; or (c) is contrary to the terms of mortgage; or (d) is created after the issuance of notice of default and*

Vineet Gulati
2018.05.14 14:51
I attest to the accuracy and
authenticity of this document
Chandigarh

demand by the Bank under sub section 2 of section 13 of the Act; and (ii) the Debt Recovery Tribunal is satisfied that the tenancy right or leasehold rights claimed in the secured asset fall under sub clause (a) or sub clause (b) or sub clause (c) or sub clause (d) of clause (1), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act. This amendment has been notified on 16.08.2016.

Learned counsel for the petitioner cited judgment passed by the Hon'ble Supreme Court in ***Vishal N. Kalsaria vs. Bank of India and others, 2016(1) RCR (Civil) 911***. I have gone through the above-cited judgment and the same having distinguished facts, will not apply in the present case. As already discussed, plaintiff has failed to show anything on record that rent deed in question was executed before the issuance of notice by producing any type of document to show prima facie that tenancy was created in 2012. The rent/lease deed being unregistered can be prepared at any time by showing the date of the year 2012.

In view of the above discussion, I find that the impugned order dated 15.02.2018 passed by Learned Civil Judge (Jr. Divn.) Jalalabad (w), is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

May 07, 2018 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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

Vineet Gulati
2018.05.14 14:51
I attest to the accuracy and
authenticity of this document
Chandigarh