**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH**

**C.R. No.3532 of 2016 (O&M)**
**Date of Decision.10.12.2018**

LIC Housing Finance Limited ...Petitioner

Vs

Balvir Singh and another ...Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sumit Batra, Advocate
for the petitioner.

Mr. Rohan Garg, Advocate for
Mr. P.S. Ahluwalia, Advocate
for respondent No.1.

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**AMIT RAWAL J. (ORAL)**

The present revision petition is directed against the impugned order dated 09.02.2016 whereby the application for rejection of the plaint as per the provisions of Order 7 Rule 11 CPC read with Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002 has been dismissed.

Mr. Batra, learned counsel appearing on behalf of the petitioner submitted that the respondent-plaintiff had instituted the claiming following relief:-

*"Suit for declaration to the effect that the plaintiff is the owner and in possession of one House No.2148, measuring 30'x60' (200 sq. yards) having an area of 6-2/3 marla situated in the area of Village Fatehulapur, within the municipal limits of Kharar which is 20/1077*

*share of land measuring 17K – 19M comprised in Kh.Kh.No.130/157, Khasra Nos.15//2(3-4), 3/2(0-9), 9(0-16), 3/3(4-0), 8(5-16), 26(3-14) and bounded as East: Bahi 60' plot No.2149, West: Bahi 60' plot no.2147, North: Bahi 30' plot No.2168, South: Bahi 30' Rasta 35' wide and is bonafide purchaser for consideration and for further declaration that defendant Kanwaljit Singh has not created any equitable mortgage of the above said house with defendant No.1 and has not signed any loan agreement creating equitable mortgage of the above said house with defendant no.1 and further defendant no.1 has got absolutely no right or lien or change over the above said house in any manner.*

*And*

*For permanent injunction restraining the defendant No.1 from taking possession of the above said house or putting the same to auction for recovery of Rs.72,55,411.72 ps and for interfering in the peaceful possession of the plaintiff over the said house."*

The subject matter of the suit property was already mortgaged with the LIC vide mortgage deed of 2011 for a sum of ₹75,50,000/- whereas the respondent-plaintiff vide registered sale deed dated 01.01.2013 purchased the property from Kanwaljit Singh for a sum of ₹29,50,000/-. The suit is being couched in a very guarded and meticulous manner as indirectly it tantamounts to challenge the proceedings under the SARFAESI Act. In this regard, he has relied upon the judgment rendered by the Hon'ble Supreme Court in ***Jagdish Singh Vs. Heeralal and others (2014) 1 SCC 479*** unreported judgment of Delhi High Court in ***Oriental Bank of Commerce Vs. Harminder Singh and others*** passed on 21.07.2017 wherein the plaintiff had sought protection from dispossession at the hands of financial institution i.e. Oriental Bank of Commerce.

Per contra, Mr. Rohan Garg, learned counsel appearing on behalf of the respondent-plaintiff submitted that the decree for declaration cannot be granted by the Tribunal, as it does not have jurisdiction to grant the same, even if the plaintiff is relegated to file the remedy under Section 17 of the SARFAESI Act. There is categoric pleading with regard to ingredients of fraud in paras No.4 to 7 of the plaint, which is permitted to be raised in Civil Court as per the ratio decidendi culled out by Hon'ble Supreme Court in ***Mardia Chemicals Ltd. etc. Vs. Union of India and others (2004) 4 SCC 311*** and also unreported judgment of this Court rendered in ***Indiabulls Housing Finance Ltd. Vs. Ravinder Kaur and another*** rendered in C.R. No.527 of 2013 decided on 26.02.2018, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Batra. Paras 4 to 7 of the plaint reads as under:-

> *"4. That the defendant No.1 prepared forged and fictitious document on behalf of the Kanwaljit Singh for creating equitable mortgage of the property in dispute in favour of defendant no.1 on behalf of Kanwaljit Singh.*

*In fact, Kanwaljit Singh has not created the equitable mortgage of the above said house nor has he signed any document in favour of defendant No.1 for creating equitable mortgage. Kanwaljit Singh has not created any equitable mortgage of the above said house nor he has signed any document in favour of defendant No.1 creating equitable mortgage. Kanwaljit Singh has not authorized any person to create equitable mortgage in respect of the property in suit in favour of defendant No.1. All the documents showing the property in suit to be equitably mortgaged with defendant No.1 are forged and fictitious document prepared in defendant No.1 in its favour. All these documents are illegal, null and void and are not binding on the rights of the plaintiff. In order to hide the forgery and fabrication the defendant No.1 did not make any effort to get the alleged factum of equitable mortgage mentioned in the revenue record. In the revenue record for the last more than 12 years, the land in dispute along with house is shown to be free from all sorts of encumbrances.*

*5. That the plaintiff after inspecting revenue record and finding the property in suit to be free from all sorts of encumbrances for the last more than 12 years from the date of purchase, purchased the land in dispute along with constructed house through registered sale deed dated 1.1.2013, for a sum of Rs.29,50,000/-. The* *plaintiff is thus bona fide purchaser for consideration without notice and as such the plaintiff is entitled to the declaration prayed for to the effect that he is the owner and in possession of the above said house and has purchased the same on the basis of the entries in the revenue record and as such he is entitled to the declaration prayed for.*

*6. That the defendant No.1 after conniving with defendant Manjit Kaur has prepared the forged and fabricated loan documents of creating equitable mortgage of the above said house. Kanwaljit Singh the real owner has not created any equitable mortgage. He has not signed any document in this regard in favour of defendant No.1. All the documents are thus illegal, null and void and not binding on the rights of the plaintiff and as such the plaintiff being bona fide purchaser on the basis of revenue entries in the last more than 12 years is entitled to the declaration prayed for.*

*7. That the defendant No.1 on the basis of forged and fictitious documents now, is trying to take forcible possession of the house in dispute from the plaintiff and in that regard he has even issued a notice for taking possession of the property in dispute through the notice dated 26.10.2015. This action of the defendant is such that there exists no standard for ascertaining actual damage likely to be caused by illegal act of the* *defendant and moreover the act complained of is such that its breach cannot be compensated in terms of money and as such the plaintiff is entitled to the injunction prayed for."*

On juxtaposition of averments in para 4 to 7 extracted above as well as the prayer, it is revealed that plaintiff claimed titled on the basis of sale deed by impleading the vendor Kanwaljit Singh as well as LIC Housing Finance Limited, allegedly claiming the property to be under mortgage. However, for the purpose of injunction regarding auction of the property, LIC Housing Finance Limited would be at liberty to oppose the application moved under Order 39 Rule 1 and 2 CPC or at any stage of the suit but under the guise of provisions of Section 34 of the SARFAESI Act, cannot seek rejection of the plaint. Section 34 of the SARFAESI Act reads as under:-

*"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 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."*

The language of Section 34 starts with a non obstante clause with regard to applicability of other laws. The aforementioned provision has been interpreted by the Hon'ble Supreme Court in ***Nahar Industrial Enterprises Ltd. Vs. Hong Kong & Shanghai Banking Corporation 2011 (7) RCR (Civil) 95*** wherein in respect of the claims laid by the financial institution, the question arose as to whether a person can be permitted to take up plea of counter-plea and in such situation, the DRT would have jurisdiction to adjudicate, it was held that it would be in the domain of the Civil Court. I cannot remain oblivious of fact that the aforementioned judgment has been referred to the Larger Bench, which is pending adjudication.

Be that as it may, suit of the respondent-plaintiff cannot be thrown out, in view of the purported defence of the petitioner-defendant as per the ratio decidendi culled out in ***Mardia Chemicals Ltd.' case*** (supra). However, this would not preclude the petitioner-Financial Institution to raise all possible pleas available and prove the same in accordance with law.

In view of the aforementioned observations, the impugned order cannot be said to be suffered from illegality and perversity. No ground for interference is made out.

The revision petition is dismissed.

**(AMIT RAWAL)**
**JUDGE**

**December 10, 2018**
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No