

Civil Revision No.3180 of 2018

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

Civil Revision No.3180 of 2018

Date of decision: 14.05.2018

Smt. Shanti Devi and others

.....Petitioners

versus

Industrial Finance Corporation of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Birender Singh Rana, Sr. Advocate,
with Mr. Gagandeep Rana, Advocate, for the petitioners.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Article 227 of the Constitution of India, challenge has been laid to order dated 28.02.2018 (Annexure P-8) of the First Appellate Court, whereby order dated 11.08.2017 (Annexure P-6) of the trial Court, allowing the application of respondent No.1-defendant under Order 7 Rule 11 CPC was upheld.

Briefly stated, plaintiffs leased out suit property to respondent No.2 for 90 years through registered lease deed granting liberty to it to raise construction thereupon and use the same as per its own requirement, retaining limited interest to receive rent from lessee aforesaid. Thereafter, respondent No.2-defendant along with other co-sharers and petitioners-plaintiff mortgaged the suit land in favour of respondent No.1-defendant-financial institution through respondent No.3-defendant to obtain loan.

Respondent No.2-defendant since did not adhere to the financial discipline of the bank, therefore, its loan account was declared NPA by respondent

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No.1 and recovery proceedings were initiated by issuance of demand notice dated 12.01.2017 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act').

The petitioners challenging the said action of recovery of loan amount initiated by respondent No.1, filed a civil suit for declaration and permanent injunction against respondent No.1 to declare that creating of lien by mortgaging the suit land with respondent No.1 for obtaining loan by respondent No.2 was not binding upon the lessor and to restrain respondent No.1 to take possession of the leasehold property.

Upon notice, respondent No.1-defendant-financial institution filed application under Order 7 Rule 11 CPC for rejection of the plaint on the ground of maintainability of the suit and jurisdiction of the civil Court, specifically pleading therein that jurisdiction of the civil Court was barred under Section 34 of the SARFAESI Act and appropriate remedy available to the petitioners was under Section 17 of the SARFAESI Act to challenge the recovery proceedings against respondent No.2.

The trial Court, after hearing both the sides, accepting the application aforesaid of respondent No.1-defendant, rejected the plaint vide impugned order dated 11.08.2017.

Being aggrieved, petitioners approached the First Appellate court, but remained unsuccessful as their appeal too was dismissed vide order dated 28.02.2018.

Learned counsel for the petitioners *inter alia* contends that both the Courts below failed to appreciate that suit property, admittedly, was leased out by the petitioners to respondent No.2. Therefore, the same could

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not be proceeded with by respondent No.1-defendant for recovery of its loan amount advanced to respondent No.2. The suit filed by the petitioners was simpliciter for declaration and permanent injunction to declare mortgage of the suit property by respondent No.2 in favour of respondent No.1 illegal, null and void. Therefore, plaint of the petitioners could not have been rejected by the trial Court.

Having given considerable thought to the submissions made by learned counsel for the petitioners, this Court finds the instant petition completely devoid of any merit for the reasons to follow.

In the lease deed executed by the petitioners, full authority and rights were given to respondent No.2-defendant to deal with the leasehold property in any manner, whatsoever according to its wish or necessity. Therefore, respondent No.2, as a lessee, having full right and authority to deal with the leasehold property in any manner, had a legal right to mortgage the same for obtaining loan according to its requirement.

After leasing out the suit property by the petitioners for 90 years, they remained with no right in it till the expiry of lease period aforesaid. Thereafter only, the petitioners can claim any right in the suit property or to recover its possession. In case, something detrimental would have been done to the suit property against the interest of the petitioners, in that eventuality also they can claim damages from lessee-respondent No.2 only after the expiry of lease period.

Petitioners had only a legal remedy of filing objections before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act to protect their right, if any, in the suit land, though *prima facie* as on date, this Court does not find their any such right in the suit property.

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The trial Court, after discussing the law laid down by the Hon'ble Apex Court, whereby jurisdiction of the civil Court in the matters which are covered under the SARFAESI Act, is specifically barred, has rightly allowed the application of respondent No.1 and rejected the plaint of the petitioners.

I have gone through the impugned orders passed by both the Courts below and find no illegality or perversity in the same.

Hence, present petition, being completely devoid of any merit, is dismissed.

(Ramendra Jain)
Judge

May 14, 2018
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.