IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 3517-2018 (O&M)
Date of decision: 24.05.2018

Kusum Gupta

…..Petitioner

versus

Union Bank of India and others

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Dr.Anmol Rattan Sidhu, Senior Advocate with
Mr.Mahir Sood, Advocate for the petitioner
Mr.Shailendeer Kashyap, Advocate
for respondent no.1/ Caveator
Ms.Shalhi Mahajan, Advocate for respondent no.2/ Caveator

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 11.5.2018 (Annexure P1) passed by learned Additional District Judge, Chandigarh, whereby the Court refused to stay the operation of the order endorsed on 30.11.2017 (Annexure P12) passed by learned District Magistrate, Chandigarh.

Heard.

At the time of preliminary arguments, learned counsel for the respondent no.1/ Bank and respondent no.2 have appeared as Caveators. They have also been heard.

After going through the impugned order, it comes out that present petitioner along with her son Aashish Mohan Gupta stood as guarantor of loan in favour of Hind Motors Limited. Now, the proceedings

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2018.05.31 17:17
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under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "SARFAESI Act") are pending before learned District Magistrate, Chandigarh, in which, learned District Magistrate, Chandigarh passed the order endorsed on 30.11.2017 Annexure P-12) for taking possession of the mortgaged property i.e. House No.161, Sector 27-A, Chandigarh measuring 1000 square yards. It also comes out that the said order of the learned District Magistrate, Chandigarh was challenged by way of CWP No.29002 of 2017 before this Court, which was withdrawn on 20.3.2018 when the documents regarding the mortgage were shown to the Court.

Now, the present petitioner has filed Civil Suit before the Court of learned Civil Judge (Senior Division), Chandigarh, in which, interim injunction was refused. The order was challenged before learned Additional District Judge, Chandigarh, who also declined to grant injunction.

It was pointed out by learned counsel for the petitioner that Under Section 17 of the SARFAESI Act, a guarantor can move the Debt Recovery Tribunal to raise objections, which he wish to raise. Learned counsel for the petitioner has requested this Court that he may be granted time till Monday to file a petition before Debt Recovery Tribunal and till then his dispossession may be stayed. Learned counsel for the petitioner has relied upon the authority of Hon'ble Supreme Court in *Mardia Chemicals Ltd. & others vs. Union Bank of India and others, 2004(4) SCC 311.*

Learned counsel for respondent -Bank has vehemently opposed the prayer on the ground that the order by learned District Magistrate, Chandigarh was endorsed on 30.11.2017. It was first challenged by way of

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CWP No.29002 of 2017, in which no relief was granted and the CWP was withdrawn. Now, Civil Suit has been filed, which was not maintainable and the guarantor could approach the Debt Recovery Tribunal under Section 17 of SARFAESI Act. Therefore, when the Civil Suit is not maintainable, no interim relief can be granted.

After considering the facts and circumstances, I do not find any illegality or infirmity in the impugned order passed by learned Additional District Judge, Chandigarh. Equally efficacious, rather proper remedy, is available under Section 17 of SARFAESI Act to the petitioner and her son, who has not approached any Court so far. Therefore, approaching this Court through Civil Writ Petition or Civil Suit is not proper. No ground to grant any interim relief.

So far as the authority in *Mardia Chemicals Ltd. & others (supra)*, is concerned, this Court observe that the Apex Court under Article 142 of Constitution of India can pass any order in the interest of justice. Therefore, on the basis of the said authority, no interim direction is to be granted, considering litigation discussed above.

Learned counsel for the petitioner has also referred to the authority of Single Bench of this Court in *Bank of Baroda vs. Vinod Kumar, 2015 SCC Online P&H 10175.*

I am of the considered view that in case when the exclusive jurisdiction lies only with Debt Recovery Tribunal, suit before Civil Court could not be filed. This Court has already refused to exercise writ jurisdiction in the matter. Therefore, no interim relief is to be granted.

Faced with these circumstances, learned counsel for the petitioner has contended that there is a delay in approaching Debt Recovery

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Tribunal and that time consumed in pending CWP and before Civil Court may be excluded while computing the limitation before Debt Recovery Tribunal.

It being so, it is observed that time consumed in litigation in CWP and Civil Suit, referred to above, will be excluded while computing limitation in approaching Debt Recovery Tribunal.

The present revision petition stands dismissed accordingly.

Since the main case has been dismissed, therefore, the pending CM, if any, also stands disposed of.

24.05.2018 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes
Whether Reportable: No

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