

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

CR No.5926 of 2017 (O&M)
Date of decision : 06.04.2018

UCO Bank

...Petitioner

Versus

Jagmohan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Bhatia, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

UCO Bank has filed this revision petition against the order dated 05.05.2017 dismissing an application for dismissal of the suit.

Notice was issued in the revision petition. As per the office report, respondents have been served, however, no one has come present to contest the revision petition.

The plaintiff had filed a suit seeking declaration that the proceedings initiated by the Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter to be referred as “the SARFAESI Act”) are bad, illegal and void ab-initio. The prayer made in the suit is extracted as under:-

“16. It is, therefore, respectfully prayed that a decree for declaration to the effect that the proceedings initiated by defendant No.1 to 3 at the instance of defendant No.4 for taking possession of the land comprised in Khewat No.1231,

Khatauni No.1758, Khasra No.253, Killa No.12/2 (5-0) situated in the area of Village Rupana, Tehsil and Distt. Sri Muktsar Sahib as per copy of jamabandi for the year 2014-15 and the banquet Hall known as M/s Victoria Resorts situated at Rupana, Tehsil and District Sri Muktsar Sahib and further the order passed by defendant No.2 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, vide which, defendant No.2, has issued warrant of possession of the above said property, are illegal, null and void, arbitrary, against the provisions of law and natural justice and against the concerned Act as well and the same are not binding upon the rights of the plaintiff and the same are liable to be set aside, may kindly be passed in favour of the plaintiff and against the defendants with costs of the suit. It is further prayed that a decree for permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiff over the suit land and from delivering the possession of the same to defendant No.4 after taking the possession of the same from the plaintiff under the garb of the warrant of possession issued by defendant No.2 as detailed above, may also be passed in favour of the plaintiff and against the defendants with cost.”

The Bank has also produced on file the order passed by the Debts Recovery Tribunal-III, Chandigarh in SA No.117 of 2017 filed by Victoria Resort, dismissing the application under Section 17 as pre mature.

The proceedings initiated under the SARFAESI Act have been challenged to the Civil Court. Jurisdiction of the Civil Court is barred as per Section 34 of the SARFAESI Act, which is extracted 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 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 (51 of 1993)”

It is clear from the reading of Section 34 that jurisdiction of the Civil Court is barred, once the proceedings under the SARFAESI Act have been initiated. Still further, as per Section 17 of the SARFAESI Act, any person including the borrower aggrieved by any of the measures referred to in Sub-Section 4 of Section 13 taken by the Secured Creditor or his authorized Officer under this Chapter is entitled to make an application to the Debts Recovery Tribunal.

In view of the aforesaid, the order under challenge is set aside.

Revision petition is allowed.

06.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No