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

C.R. No.6618 of 2014 (O&M)
Date of Decision.20.12.2018

State Bank of Patiala SAMB (Stressed Assets Management Branch)
...Petitioner

Vs

Rajinder Kumar and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Umang Kumar Khosla, Advocate
for the petitioner.

Mr. Aakash Singla, Advocate
for respondents No.1 and 2.

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AMIT RAWAL J. (ORAL)

The revision petition is directed against the impugned order dated 16.05.2014 whereby application of the petitioner-Bank for rejection of the plaint, in view of the provisions of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter called "SARFAESI Act"), has been dismissed.

Mr. Umang Kumar Khosla, learned counsel appearing on behalf of the petitioner submitted that one M/s Arora Trading Co., a partnership frim of Ram Gopal Bansal son of Kaur Sain Bansal and Kamaljit Narula son of Surinder Kumar Narula had obtained a facility of working capital of a sum of ₹23 lakhs as cash and ₹2 lakhs as contingency limit. In lieu thereof, executed necessary documents in favour of the bank. Rajiv Goyal defendant No.1, Ashok Kumar Jindal brother of plaintiff No.1 and son of Raja Ram, Joginder Kaur wife of Nachhatar Singh, Shakuntla Bansal wife of Ram Gopal, Rikhi

Ram son of Anant Ram stood guarantors. Since they did not adhere to the financial discipline, resulted into initiation of proceedings under Section 19 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 whereby a sum of ₹20,90,505/- was sought to be recovered. The Debt Recovery Tribunal issued a recovery certificate dated 8.12.2008. In order to scuttle the recovery of the aforementioned amount, plaintiffs filed suit for injunction, which was not maintainable, as they alleged to have become owner on the basis of sale deed bearing vasika No.5780 and 5782 dated 30.12.1993. The Court below ought not to have dismissed the application, in view of the categoric bar envisaged under Section 34 of the SARFAESI Act, therefore, there is infirmity and illegality.

Mr. Aakash Singla, learned counsel appearing on behalf of the respondents-plaintiffs submitted that it is yet to be discerned as to whether the surrender deed relied upon by the Bank was actually executed by the plaintiffs as the original was not brought on record in the absence of any written statement nor was accompanied by application under Order 7 Rule 11 CPC. However, post impugned order, the original was placed on record, which also creates certain suspicion. An affidavit in this regard has already been filed. Permission as sought under Section 13 (4) of the SARFAESI Act reflects the property of Vaskia No.5780 and 5782 measuring 300 and odd sq. yards whereas subject matter of the suit property is 274 sq. yards, thus, supported the order by submitting that it is the averment in the plaint which has to be seen and not the defence.

I have heard learned counsel for the parties and appraised the paper book. The facts as noticed above are not in dispute. The injunction sought is with regard to sale deeds referred to above i.e. 5780 and 5782 of 30.12.1993 in respect of property measuring 274 sq. yards. No doubt, Rajiv Goyal and Ashok Jindal brother of plaintiff No.1, beneficiaries of surrender deed were arrayed as defendants No.4 and 5 in the proceedings initiated under Section 19 of the 1993 Act and rightly stated as guarantors. The particulars of the property subject matter of the mortgage have not seen light of the day. Section 34 of the SARFAESI Act begins with non-obstante clause barring jurisdiction of the Civil Court, in view of any other prevailing laws. For the sake of brevity, 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.*"

Keeping in view such situation, I am of the view that application under Order 7 Rule 11 CPC could not have been decided by Civil Court, thus, the order under challenge cannot be said to be suffering from any infirmity or illegality. However, it would not preclude the petitioner-Bank to file the written statement and press for framing of the issue to be treated as preliminary, for, controversy as indicated above requires evidence.

While upholding the order under challenge, the revision petition is disposed of with direction that on filing of the written statement, trial Court shall frame the issue with regard to maintainability of the suit and in case such issue is framed, it shall be treated as preliminary. Parties shall be afforded 3-3 effective opportunities and an endeavour shall be made to dispose of the same as expeditiously as possible.

(AMIT RAWAL)
JUDGE

December 20, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No