IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 20.2.2018

(1) CR-7130-2015 (O&M)

Rakesh Goel and another .... Petitioners

Versus

The Sher Wood Officers Society and others .... Respondents

(2) CR-3998-2015 (O&M)

Punjab National Bank .... Petitioner

Versus

Ashok Bhatia and ors .... Respondents

(3) CR-1868-2016 (O&M)

Punjab National Bank .... Petitioner

Versus

Ajay Mahajan and ors .... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ashwani Kumar Chopra, Sr. Advocate with
Mr. Akshit Chaudhary, Advocate for the petitioners.

Mr. D.K.Gupta, Advocate for respondent No. 4.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

This order of mine shall dispose of three connected civil revisions i.e.**CR-7130-2015** tilted as **Rakesh Goel and another versus The Sher Wood Officers Society and others; CR-3998-2015,** titled as **Punjab**

National Bank Versus Ashok Bhatia and ors and **CR-1868-2016** titled as **Punjab National Bank Versus Ajay Mahajan and ors,** as the same question of law and facts are involved in all the revisions. For brevity, the facts are being taken from ***CR-7130-2015***.

Impugned in the revision petition is the order dated 30.5.2015 (Annexure P-9), passed by learned Additional District Judge, Amritsar, affirming the order dated 27.2.2015 (Annexure P-7), passed by learned Civil Judge (Junior Division), Amritsar, vide which the plaint of the plaintiffs-petitioners was returned.

Present petitioners namely Rakesh Goel and his wife-Rita Goel filed a civil suit for declaration that they are owners and in possession of Plot No. 13, measuring 1000 square yards on the basis of allotment letter dated 24.12.2006 and registered partition deed dated 6.11.2009. They have also sought permanent injunction against defendants including Punjab National Bank, Branch Amritsar Cantt.

On appearance before the learned trial Court, respondent No. 4-Bank has moved an application (Annexure P-3) filed under Section 34 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') taking objections that the jurisdiction of the civil Court is barred under Section 34 of the SARFAESI Act.

In the reply, present petitioners-plaintiffs opposed the prayer stating that they had already become the owners of the plot in question by way of partition deed dated 6.11.2009 and that the loan was sanctioned in January 2011. Therefore, a fraud has been committed with respondent No. 4-Bank by office bearers of the society and provisions of the

SARFAESI Act are not applicable.

Learned trial Court vide impugned order dated 27.2.2015 (Annexure P-7) returned the plaint holding that it is barred under Section 34 of the SARFAESI Act. The order was upheld in appeal by learned Additional District Judge, Amritsar vide its order dated 30.5.2015 (Annexure P-9).

In ***revision petition No. 3998-2015,*** impugned is the order dated 11.2.2015 (Annexure P-6), passed by learned Civil Judge (Junior Division), Amritsar vide which an application filed by the petitioner-defendant No. 4 under Order VII Rule 11 of the Code of Civil Procedure, 1908 was dismissed.

Plaintiff filed a civil suit for declaration that he is the owner in possession of the plot No. 81 on the basis of allotment letter dated 29.7.2007 and registered partition deed dated 6.11.2009. They have also sought permanent injunction against defendants including Punjab National Bank, Branch Amritsar Cantt.

In ***revision petition No. 1868-2016,*** impugned is the order dated 7.12.2015 (Annexure P-6), passed by learned Civil Judge (Junior Division), Amritsar vide which an application filed by the petitioner-defendant No. 4 under Section 34 of the SARFAESI Act was dismissed.

Plaintiff-Ajay Mahajan filed a civil suit for declaration that he is the owner in possession of the plot No. 14 on the basis of allotment letter dated 24.12.2006 and registered partition deed dated 6.11.2009. They have also sought permanent injunction against defendants including Punjab National Bank, Branch Amritsar Cantt.

I have heard learned counsel for the parties and gone through the case file.

A perusal of the plaint shows that plaintiffs-petitioners are seeking declaration against defendants-respondents that they are already owners in possession of plot No. 13 on the basis of allotment letter dated 24.12.2006 and partition deed dated 6.11.2009.

Admittedly, in this case a loan of Rs. 20.00 crore was sanctioned in the January 2011 by respondent No. 4-Punjab National Bank against the mortgage of property of respondent No. 1-Society which included the present plot in question. Respondent No. 4-Bank proceeded under Section 13(4) the SARFAESI Act which is reproduced below: -

> '13 (4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—
>
> (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
>
> (b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:
>
> Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:
>
> Provided further that where the management of whole, of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt;
>
> (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
>
> (d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.'

A perusal of the said Section shows that it is referred to certain steps to be taken against the **'secured assets of the borrowers'**. The Section itself makes it clear that assets must belong to the borrowers.

In the present case, admittedly, the plaintiffs-petitioners were the members of Sher Wood Officers Society. A registered partition deed dated 16.2.2009 registered on 6.11.2009 with the Registrar shows that both the plaintiffs-petitioners were party to the said partition deed. So is the case of other plaintiffs. The relevant recital from the same is reproduced below: -

> 'So in this way total area 129 kanal and 1/2 marla land owned by & belongs to the Sherwood Officers Society registered. Now we have prepared a map creating plots in this above said land. So now we do not want to have these plots jointly. So now we in our full senses has divided the plots in this land as per follows through the draw of plots and have made the division of allotted plots in between us of which the detail as per the record of the societies, the sizes/areas and the payment of these have been made to the society and the payment of the concerned party remains as balance the detail of that will be given in the document of partition deed.'

The operative part vested title in the allottee is reproduced as under: -

> 'That each party has taken the possession of the plot as per the division. Each and every plot which has come into the share of each party, he has **become the owner of that and he has got the right to use and mutate it fully in all manners. None of the parties will have any relation with the plot of the other party.** As per this deed of division mutation will be made and if in our absence the revenue officer get it done then that will be acceptable to us. None of the parties will have the right to avoid this deed of division and none of the parties will challenge this deed of division.'

It goes to show that prima facie through the said registered deed title of the plot in dispute is vested in the plaintiffs-petitioners. A registered document is a notice to the general public and can only be challenged by party effected by the same.

The appellate Court has erred in observing that mere execution of registered partition deed by respondent No. 1-Society regarding allotment of specific plots/land to the various members on 6.11.2009 i.e., much prior to the obtaining loan by society on January 2011 for development of land and construction of villas/flats upon the property of the society itself, does not make the petitioners-plaintiffs exclusive owners of the suit property as stated in the partition deed. For the purpose of deciding the application of respondent No. 4-Bank, only prima facie documents are to be seen. The registered partition deed is a registered document and was the prima facie evidence which was to be considered by the trial Court as well as the Appellate Court while deciding the said application.

Once, there is a prima facie evidence that the plaintiffs had the title over the disputed plot w.e.f. 6.11.2009 then further question would arise as to whether the society could mortgage the said plot with respondent-Bank for raising loan on 1.1.2011.

I am of the view that respondent No. 1-Society could mortgage the property which is owned by it and not the property of a third person. It is not that the Bank was not informed about the intentions of the Society to commit fraud with Punjab National Bank-respondent No. 4

Learned counsel for the petitioner has placed on file letter dated 1.11.2006 written by Parampal Singh Sidhu, IPS to Deputy Governor, Reserve Bank of India, Sector 17, Chandigarh; Mr. G.K. Sahni, General Manager, Punjab National Bank North Zone, Amritsar and Mr. J.P.Singh, Assistant General Manager, State Bank of India (Credit Section), Cantt. Branch, Amritsar. The said letter is reproduced as under: -

> 'Subject: - Notice of precaution against proposal of loan by a society.
>
> It is for your kind information that I am a member of the

Governing Body of the Sherwoods Officers Society (Regd.), Amritsar which has its registered office opposite OCM Mills, GT Road, Chheharta, Amritsar. It has come to my notice that Mr. Praneet Bhardwaj, Chairman of the Society, in connivance with some other Governing Body Members is planning to take a housing loan of Rs. 8 to Rs. 10 crores by hypothecating the society housing colony land. The society has already taken a loan of about Rs. 3 crores from Bank of India Branch Amritsar for development of the housing colony. The members of the housing colony have already paid due installments to the society. Since, the development work of housing colony is atmost complete the members are awaiting the allotment of the plots as per rules. In case any new housing loan is given to the society at the stage, the members may resort to litigation against the society as well as the loan-advancing bank.

I therefore, request you to send cautionary note to all the concerned banks so that the chairman of the society is not able to harm the interest of ordinary members on any pretext.

Yours sincerely,

(Parampal Singh Sidhu) IPS.'

It goes to show that the Punjab National Bank was informed about that the impending fraud sought to be committed by respondent No. 1-Society by taking loan and also informing the earlier loan sanctioned by the Bank.

The plaintiffs have raised the plea in the reply that a fraud has been committed with the Bank and that property which is owned by them could not be mortgaged by the Society with the Bank, which is vested in the plaintiffs for 1 year 2 months prior to the alleged loan sanctioned by the Bank.

Now the question would arise whether a suit is maintainable by an owner, who is aggrieved of the Act that property belonging to him has been mortgaged by some body else with the Bank? I find the reply in affirmative.

If the property belongs to the loanee, the Bank can certainly resort to various remedies provided under the SARFAESI Act but at the same time, loanee has no right to mortgage the property of a third person and the Bank cannot invoke the bar of jurisdiction under Section 34 of the SARFAESI Act in such cases. The matter was examined by a Single Bench of this Court in ***CR-6573-2005*** decided on 30.1.2009, titled as ***State Bank of India vs. Raj Kumar Bhandari and others*** , in which it was held that suit for declaration instituted by a third person that they are in possession of the suit property is not maintainable. It has been observed as under: -

> 'The application filed by the petitioner for rejection of the plaint, applying the provisions of the Act, with the plea that the Civil Court did not have the jurisdiction to entertain the dispute, as the same is clearly barred under Section 34 of the Act. The same was rejected by the Court. The undisputed fact in the present case is that respondents No. 1 and 2 are neither loanee nor guarantors to the loan. Section 34 of the Act, which debars the jurisdiction of the Civil Court, clearly provides that it is only with respect to the matters which Debts Recovery Tribunal or the Appellate Tribunal are competent to determine. Section 17(1) of the Act provides that any person aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer may make an application to the Debts Recovery Tribunal. Section 13(4) of the Act authorises the secured creditor to take various steps provided therein to recover the secured debt in case the borrower fails to discharge the liability. Meaning thereby it is a Tribunal constituted for specialised purpose for dealing with the issues pertaining to recovery of secured debts of the financial institutions. The Tribunal has not been conferred the power for deciding the issue of title of the property between the parties or to set aside any sale deed executed in favour of some person, as the claim made by respondents No. 1 and 2 in the present suit is that sale deeds dated 30.7.1992 and 3.8.1992 executed by Smt. Pushpa Singh wife of Iqbal Singh are illegal as on that date, she was not competent to dispose of the property. All these issues cannot possibly be gone into by the Tribunal constituted under the Act. Even if part of the relief claimed in the suit may be within the jurisdiction of the Tribunal, on that account the plaint cannot

be rejected as such as there cannot be partial rejection.'

Similar is the view taken by another Single Bench of this Court in ***CR-2475-2015*** decided on 9.4.2015, titled as ***Central Bank of India vs. Mr. Ram Rattan Alias Rattan Lal and others.***

Keeping in view the above discussions, this Court is of the view that suit of the plaintiffs-petitioners for declaration of their title is maintainable before the civil Court when the property belonging to them has been mortgaged by a third person i.e. respondent No. 1-Society in this case with the Bank-respondent No. 4. The respondent No. 4-Bank is also advised that they should enquire into the fraud committed with them by the Society by mortgaging the property of a third person with them and obtaining the loan and find out the officer/officials involved in the same and take necessary corrective measures.

In view of the above, orders dated 305.2015 (Annexure P-9) and dated 27.2.2015 (Annexure P-7) passed by both the Courts below in **CR-7130-2015** tilted as **Rakesh Goel and another versus The Sher Wood Officers Society and others** is set aside and**;** order dated 11.2.2015 (Annexure P-6) passed by learned Civil Judge (Junior Division), Amritsar in **CR-3998-2015,** titled as **Punjab National Bank Versus Ashok Bhatia and ors** and the order dated 7.12.2015 (Annexure P-6) passed by learned Civil Judge (Junior Division), Amritsar in **CR-1868-2016** titled as **Punjab National Bank Versus Ajay Mahajan and ors** are hereby upheld. Consequently CR No. 7130-2015 is allowed and CR No. 3998-2015 and CR No. 1868-2016 are dismissed.

As the important questions of law and facts are involved, it is desirable that all the above mentioned cases/petitions should be tried by a Senior Civil Judge. Accordingly, matters are remanded back to the Court of Civil Judge, (Senior Division), Amritsar who shall try the case himself and dispose of the same.

Both parties are directed to appear before the learned Civil Judge (Senior Division), Amritsar on 21.3.2018.

(KULDIP SINGH)
JUDGE

20.2.2018
preeti

Whether speaking / reasoned Yes
Whether Reportable: Yes