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

C.R. No.7403 of 2013
Date of Decision.19.09.2018

Dr. Joseph K. Masih ...Petitioner

Vs

LIC Housing Finance Ltd. and another ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: None.

-.-

AMIT RAWAL J. (ORAL)

The present revision petition is directed against the order dated 30.10.2013 (Annexure P-1) passed by Additional District Judge, SAS Nagar, Mohali and 15.12.2010 (Annexure P-2) whereby the application submitted by the defendant-respondent under Order 7 Rule 11(d) CPC for rejection of the plaint has been allowed and affirmed in appeal by the lower Appellate Court.

The plaintiff instituted the suit seeking declaration that the land in dispute i.e. Khewat No.39/57, Khasra No.164/13 (7-7) situated in village Karoran, Hadbast No.352, Tehsil Kharar being free from any encumbrance along with building/house bearing No.49, Shivalik Vihar Nayagaon, Village Karoran, Tehsil Kharar by challenging notice dated 10.03.2004 issued by defendant No.1, LIC Housing Finance with consequential relief of injunction of the said notice.

In the aforementioned suit, the respondent-defendant submitted an application under Order 7 Rule 11 (d) CPC on the premise that in view of the provisions of Section 34 of the

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called the SARFAESI Act), the civil court has no jurisdiction to try and entertain the suit. The plaintiff had taken housing loan and had become defaulter as did not pay outstanding due, despite being given notice of clearing the dues.

The aforementioned application was contested by the petitioner-plaintiff on the premise that the application was not maintainable as the defendants had no locus standi, much less, it was not registered with the Central Registry under Section 3(a) of the SARFAESI Act. It is mandatory for any banking and financial institution to be registered. The house was also situated on the agricultural land, therefore, exempted from the provisions of Section 31(1) of the SARFAESI Act.

Taking into consideration the aforementioned facts, the trial Court allowed the application holding that the civil court had no jurisdiction to entertain and try the suit. Since the order allowing the application, assailed in the appeal, was also affirmed by the lower Appellate Court, the same has been challenged in the present revision petition.

The ground of challenge is that the respondent-defendant-LIC was not registered as financial institution within the meaning of Section 2(m) (ii) of the SARFAESI Act, therefore, the Court could not have considered the application submitted by the defendants under Order 7 Rule 11 CPC. At the best, it ought to have framed the preliminary issue, onus to prove was on the parties by leading evidence in support of their claims. Reliance has been laid to letter dated 18.10.2010 (Annexure P-18), an information sought under the RTI Act, declaring LIC Housing Finance Company Ltd. along with other 23 housing finance companies as financial institution vide notification dated 10.11.2003.

There is no representation on behalf of the petitioner. The revision petition was admitted on 02.05.2017 by passing the following order:-

> *"Heard.*
>
> *Admitted.*
>
> *Keeping in view the nature of controversy involved, office is directed to list the case for regular hearing in the week commencing from 17.07.2017."*

During the pendency of the revision petition since 4.12.2013, there was no interim order.

I have gone through the paper book. It would be apt to reproduce Section 34 of the SARFAESI Act and Order 7 Rule 11 CPC which read 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)"*

O 7 R 11. Rejection of plaint-

The plaint shall be rejected in the following cases :-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law :

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

If at all any measures have been taken by the financial institution, the petitioner-plaintiff had to avail remedy of appeal and take all the pleas including the one taken in the reply to the application under Order 7 Rule 11 CPC, inasmuch as for seeking declaration with regard to land being free from encumbrance by challenging the notice under the provisions of the aforementioned Act, there is express bar of Civil Court to entertain such suit. All such pleas taken before the Civil Court could have been taken by the petitioner by availing the remedy of appeal.

For the reasons aforementioned, I do not find any illegality and perversity in the orders under challenge. No ground for interference is made out. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

September 19, 2018
Pankaj*

Whether Speaking/Reasoned Yes

Whether Reportable No