

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7479 of 2016(O&M)
Date of Decision-07.08.2018

The Primary Cooperative Agri. & Dev. Bank Ltd. and others
... Petitioners

Versus

Smt. Rama Rani ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Johan Kumar, Advocate
for the petitioners.

Mr. Akash Vashisth, Advocate for
Mr. Sanjay Vashisth, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 13.09.2016 passed by Civil Judge (Junior Division), Faridabad, whereby the application filed by the defendants/petitioners under Order 7 Rule 11 CPC was dismissed.

[2]. Plaintiff/respondent filed a civil suit for permanent, prohibitory and mandatory injunction against the defendants on the ground that the plaintiff availed the loan from defendant No.1 for purchase of agriculture land. Account No.20/95 was issued on 30.01.2006 in the name of the plaintiff. With the aforesaid loan, plaintiff purchased the agriculture land. Due to some financial problem and destruction of agriculture crop, produce etc., plaintiff was irregular towards payment of loan installments in her loan account. Plaintiff alleged that when she went to the bank in the

month of February 2015 to deposit some money in her loan account, then she came to know through other customers of the bank that there was subsidy of 50% in the loan account as per policy of the Government and the same was not advanced to the plaintiff. On being contacted, defendant No.1 assured to regularize the loan of the plaintiff as per policy. On such assurance, the plaintiff after arranging the money in the month of March 2015, went to defendant No.1/Bank for repayment of dues for the purpose of regularize her loan account, but defendant No.1 did not pay any heed and the benefit of rebate was not given and the account was not regularized. In the month of July 2015, the plaintiff went to bank and saw her poster affixed by the defendant on the wall of the bank and also at other places in District Faridabad to defame and humiliate the plaintiff. Defendant No.1 refused to take any corrective measure and did not correct the interest in the loan account of the plaintiff.

[3]. Plaintiff further pleaded that she visited the office of defendant No.2, where defendant No.2 assured to remove the photos of the plaintiff in the poster and to grant 50% relief in the interest rate as per Government scheme in the loan of the plaintiff. Thereafter, no progress was made except the assurance granted by the plaintiff in respect of interest rate as per policy of the Government under subvention scheme.

[4]. In para No.14 of the plaint, plaintiff pleaded to the following effect:-

“That the plaintiff on the replied of defendant No.1 and 2 also approach to the defendant No.3 through legal notice on dated 16.02.2016 through the counsel Deepak Kumar Bhati, Advocate, Faridabad wherein the plaintiff again asked the interest relief as per the Govt. instruction within a period of 30 days from the date of receipt of the said notice and copy sent to the defendant No.1 and 2. It is astonishment to the plaintiff when the defendant to escape the liability to reply the legal notice, interest relief etc. came on dated 09.03.2016 to the house of the plaintiff gave the auction sale letter for the sale of property as describe in para No.5 of the plaint on dated 10.03.2016 inspite to reply the said legal notice and to accede the legitimate request of the plaintiff. Copy of legal notice dated 16.02.2016 and postal receipt, auction sale letter in Annexure as P-9 to P-11.”

[5]. Perusal of the aforesaid para would show that on 09.03.2016, defendant came to the house of the plaintiff and issued auction sale letter for the sale of the property on the next day i.e. 10.03.2016. The aforesaid act was done only after the legal notice got issued by the plaintiff on 16.02.2016 through her Advocate.

[6]. Learned counsel for the defendants/petitioners vehemently contended that jurisdiction of the Civil Court is specifically barred under Section 128 of the Haryana Co-operative Societies Act 1984. Learned counsel contended that the bar of jurisdiction of Civil Court would apply to the dispute

which is covered under Section 102 of the Act for which the dispute could have been referred to the Arbitration. The controversy in question falls under the ambit of Section 102 of the Act. Section 102 of the Haryana Co-operative Societies Act, 1984 applies to the dispute touching the constitution, management or business of the co-operative society other than the dispute of a disciplinary action or dispute relating to service matter in respect of a paid servant of the society. The dispute arises between the persons as shown in Clauses (a) to (d) of Section 102(1) of the Act. Such dispute shall be referred to Arbitration of the Registrar for decision and no Court shall have jurisdiction to entertain any suit or proceeding in respect thereof.

[7]. Perusal of the contents of the plaint particularly in the light of para No.14 would show that intended effort of the defendant/Bank was in violation of principle of nature justice. When the defendants visited the house of the plaintiff on 09.03.2016 and without issuing any show cause notice, sought to auction the sale of property on 10.03.2016 i.e. bringing the case under the ambit of Clauses (a) to (d) of Section 102(1) of the Act in relation to the dispute touching the constitution, management and business of the society would require leading of evidence.

[8]. Learned counsel for the petitioners relied upon **The Shahabad Cooperative Sugar Mills Ltd. Vs. Special Secretary to Govt. of Haryana Corp. and others, 2007(1) RCR (Civil) 113**

to contend that the plaintiff has the remedy of invoking Section 102 of the Act as the case would fall under the ambit of dispute touching the business of the society. Section 102 of the Act further prescribes that the dispute should be amongst the persons as categorized in Clauses (a) to (d) and it would be highly debatable as to the existence of dispute of the present nature falling under the ambit of Clause (a) to (d) of Section 102 (1) of the Haryana Co-operative Societies Act 1984. Even the aforesaid precedent is not in the context of Order 7 Rule 11 CPC. The issue of jurisdiction can be appropriately decided by the trial Court after framing all the necessary issues and by inviting the parties to lead evidence to that effect. At the stage of Order 7 Rule 11 CPC, it would be highly debatable to endorse the grounds taken by the petitioners to reject the plaint under Order 7 Rule 11 CPC.

[9]. At the stage of consideration of application under Order 7 Rule 11 CPC, only averments made in the plaint are to be seen. In **State of Haryana and others Vs. Vinod Kumar and others, AIR 1986 (P&H) 407 (Full Bench)**, it was held that even if jurisdiction of Civil Court is specifically barred, still the Civil Court has got jurisdiction under Section 9 CPC if principles of natural justice are violated by the authority in its impugned action. In **Gurbaksh Singh Vs. Financial Commissioner and another, 1991 AIR 435,** the Hon'ble Apex Court has held that if the

authority acts in violation of the statute, it is the Civil Court who has all the jurisdiction under Section 9 CPC to intervene.

[10]. In the light of aforesaid facts, it can be noticed that the relief of declaration as sought by the plaintiff in the suit has to be decided by the Civil Court on the basis of evidence to be led by the parties. The preliminary jurisdiction for adjudication of civil right of the plaintiff can be ousted by way of express bar of jurisdiction, but subject to reservoir as explained by the Full Bench of this Court in **State of Haryana and others Vs. Vinod Kumar and others' case (supra)**. The pleadings made in para No.14 of the plaint would show that the defendants have acted in violation of principle of natural justice and therefore, the jurisdiction of the Civil Court can be invoked to set the action of the defendants right besides claiming rebate available to the plaintiff as per Government instructions.

[11]. For the reasons recorded hereinabove, I find that there is no error of jurisdiction committed by the trial Court while passing the impugned order. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

07.08.2018

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No