202

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

**Civil Revision No.9060 of 2017 (O&M)
Date of Decision:24.05.2018**

UNION BANK OF INDIA AND ANR.
......Petitioners

Vs

OM PARKASH KHURANA
....Respondent

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

Present: Mr. Shailender Kashyap, Advocate
for the petitioners.

Mr. Kamal Sehgal, Advocate
for the respondent.

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RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioners have assailed the order dated 13.10.2017 (Annexure P-4) passed by the Addl. Civil Judge (Sr. Divn.), Kurukshetra whereby an application under Order 7 Rule 11 CPC filed by the petitioners was dismissed.

[2]. Plaintiff-respondent filed a suit for declaration with consequential relief of permanent injunction. For ready reference, paras no.3, 6, 7, 8 and 9 of the plaint are reproduced hereasunder:-

"3. That the respondent Bank had approached the management of the plaintiff that they were

interested to take over from State Bank of India and offered low rate of interest of 0.50% less than what was being charged by State Bank of India. The plaintiff approached the respondent Bank with a complete business plan and necessary financial data for sanction of financial assistance of working capital limit which included the financial assistance. The respondent bank carried out the detailed techno economic financial liabilities study of the proposal and accorded the first sanction of each credit working capital limit of Rs.430 lac and letter of credit of limit of Rs.500 lac as back as in May 2007. The business of the plaintiff was going on well but during the last renewal of about three years back the respondent Bank started harassing the plaintiff and increased the rate of interest from time to time and subsequently reduced the rate of interest on the request of the plaintiff every year.

6. That from the statement of account of the Bank, the plaintiff as M.D. of the company noticed that an amount of Rs.1,05,00,000/- was credited to the account of the company by transferring the said amount from Chandigarh Branch to Umri Branch. The plaintiff's company was happy that at least good senses have prevailed upon the defendant Bank and they have allowed the benefit of Rs.1,05,00,000/- but subsequently it transpired from the bank statement that the said amount of Rs.1,05,00,000/- was again transferred back to Chandigarh Branch from Umri Branch on 04.04.2015. The plaintiff was *astonished that how a Bank could of its own transfer the amount from one account limit in one branch to the other branch of the said Bank without any authority, right or power. The plaintiff as M.D. wrote letters to the defendant Bank on 30.03.2015 that the bank is not allowed and is not permitted to transfer any funds from any parking accounts with Umri Branch. In fact there was nothing over due in account of the firm of the plaintiff and there was no overdue deposit at all. Thus the defendant Bank played fraud and cheated the company of which the plaintiff is the Managing Director. The defendant Bank also harassed the company by reducing the utilization period of 180 days to 90 days and it harmed the interest of the company as the amount which was pending with the purchasers was not realized in time due to reduction of the period.*

7. That the defendant Bank asked the plaintiff to stop limit in S.B.I., Shahabad and the defendant Bank would give some facility to the plaintiff's company. Before granting facility the defendant Bank asked the plaintiff to show him the original sale deed which was lying with S.B.I. and after seeing the original sale deed the defendant Bank would return the same after confirmation of the matter of stoppage of the accounts in the S.B.I. The defendant Bank Chief Manager promised to return the original sale deed next day but the defendant Bank illegally, unauthorizedly played fraud and cheated the plaintiff by keeping the original sale deed of House No.433/13, Urban Estate, Kurukshetra. The plaintiff requested *many times to return the said sale deed but the defendant is unauthorizedly and illegally keeping the said sale deed with him. The plaintiff as a Managing Director of the Company issued a notice dated 08.05.2015 for return of the said sale deed and also again issued a notice dated 18.05.2015 in this regard. The plaintiff is owner in possession of the House No.433, Sector 13, Urban Estate, Kurukshetra whereas basement and ground floor is under tenancy with a tenant and the plaintiff has never mortgaged the said house with the defendant Bank.*

8. That the plaintiff was astonished to see a notice dated 19.10.2015 in the hands of defendant when the defendant came to the factory of the company and directed the plaintiff to go with him to the house No.433, Sector 13 and he stated that this House No.433/13 had been mortgaged and they were to take symbolic possession of the said house, having mortgaged the said house with the Bank. The plaintiff was shocked to know it that the plaintiff had never mortgaged the said house No.433/13 with the defendant Bank and the defendant Bank has just played fraud and cheated and converted the original sale deed which was taken by him just to see and confirm the said sale for granting enhance loan. It was never mortgaged and it was never intended to be mortgaged and there was no offer no acceptance and no contract of mortgaging the said house in any way. Thus the defendant Bank had no authority or power to take possession of the said house in any manner.

9. That in fact the said house was under tenancy of one Sh. Ram Bahadur since 01.10.2014 i.e. even before agreeing for the grant of enhanced loan by the Bank to the Mahavir Techno Company of which the plaintiff is the Managing Director. The tenancy is there continuing and tenant is in possession of the basement as well as ground floor. Thus the defendant bank had no authority or power to pass any orders or ask for taking symbolic possession of the said house in any manner against the loan of the company. In fact the plaintiff had never mortgaged the said house with the defendant Bank for any loan or any transaction in respect of the loan and as such the defendant had no right to take possession of the property. Moreover the said house was still mortgaged with the State Bank of India in the papers of Haryana Urban Development Authority and HUDA had not issued any PTM for the said property and as such the defendant Bank had no authority or power to create mortgage of its own without obtaining PTM from the HUDA. In fact it seems that the Bank has used the earlier bank papers prepared for grant of loan and these papers have been converted into a mortgage of the house No.433 which documents are in fact the forged and not the correct documents as the house was never pledged nor mortgage and the defendant Bank with the intention of cheating prepared forged documents and played fraud with the plaintiff. "

[3]. Perusal of the aforesaid contents of the paragraphs would show that the case of the plaintiff is revolving around the fraud allegedly committed by the Bank in the context of showing the property to be mortgaged with the Bank.

[4]. The defendants/petitioners filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the civil Court has got no jurisdiction under Section 34 of 'The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002' (for short 'the SARFAESI Act').

[5]. In reply to the application, the plaintiff/respondent highlighted the following factual details:-

> *"............the Bank never sent any such appraisal report about the mortgaging of the some other property viz the house in favour of the Bank and on the asking of the bank that if the plaintiff would mortgage any property in favour of the Bank. It may also be pointed out that an email it was specifically asked by the Bank to explore the possibility of additional collateral security so as to maintain the existing collateral coverage vide their email dated 19.09.2014 and the plaintiff replied to the bank detailing his properties vide letter dated 21.09.2014, and informed that no other property could be given..........*
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> *.............For mortgaging the property the Bank has to take a stamp paper from the plaintiff to be purchased by him and on that stamp paper the declaration could be obtained. The demand of collateral security as per email letter dated*

19.09.2014 was there and the plaintiff submitted reply to the said demand on 21.09.2014. The plaintiff asked the defendant to produce the stamp paper for submitting its declaration about the loan and mortgaging the property. The plaintiff never purchased any stamp paper from any stamp vendor. The enhancement of loan was sanctioned on 3.11.2014 whereas the Bank authorities have produced a copy of the stamp paper mentioning the date as 25.09.2014 on the back side of the stamp paper No.01AA571484 but this stamp paper does not mention the name of the plaintiff even the who purchased it? The bank authorities who played fraud and made and used the said stamp paper for preparation of loan. The declaration on the said stamp paper is dated 15.12.2014. How before sanction the stamp paper could be purchased more than three months back and that too not by the plaintiff. Thus it is a fraud played by them. The bank has also played a fraud with the plaintiff which is clear from the fact that even expenses for Notary Charges and Stamp charges to the tune of Rs.600/- has now been supplied by the Bank for spending the amount on 05.11.2014. This record has been submitted in the court by the defendant Bank along with account statement with the application under order 7 rule 11...................."

[6]. Petitioners sought to rely upon official documents at the time of proceedings under Order 7 Rule 11 CPC. Learned counsel for the petitioners submitted that the documents having been originated from the official record have the presumption of correctness and the same can be relied at this stage.

[7]. As against this, learned counsel for the respondent by

relying upon ***Mayar (H.K.) Ltd. and Ors. vs. Owners and Parties, Vessel M.V. Furtune Express and Ors., AIR 2006 SC 1828***; ***Ram Prakash Gupta vs. Rajiv Kumar Gupta and Ors., 2007(4) R.C.R. (Civil) 605***; ***Ramesh B. Desai and Ors. vs. Bipin Vadilal Mehta and Ors., 2008(1) R.C.R. (Civil) 921***; ***Prem Lala Nahata and Anr. vs. Chandi Prasad Sikaria, AIR 2007 SC 1247***; ***Popat and Kotecha Property vs. State Bank of India Staff Association, 2005(4) R.C.R. (Civil) 334***; ***Kamala and Ors. vs. K.T. Eshwara Sa and Ors., 2008(3) R.C.R. (Civil) 199***; ***Mardia Chemicals Ltd. and Ors. vs. Union of India (UOI) and Ors., 2004(2) R.C.R. (Civil) 665*** and ***Rajesh Grover vs. Smt. Rita Khurana and Ors., 2005(4) R.C.R. (Civil) 721*** contended that at the stage of consideration of application under Order 7 Rule 11 CPC, only averments in the plaint are to be seen. No other documents can be seen except the plaint which discloses cause of action in favour of the plaintiff.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. The Debt Recovery Tribunal (hereinafter to be referred as 'the DRT') cannot be treated to be a civil Court as the same is having limited jurisdiction. The DRT cannot pass a decree of

declaratory relief and cannot decide plea of fraud which is exclusively under the domain of civil Court. The DRT can only comment upon the measures undertaken under the SARFAESI Act'. It cannot comment upon the plea of fraud, nor it can give findings on fraud as the same requires regular procedure to be adopted in civil proceedings before the civil Court.

[10]. The documents relied upon by the petitioners can be proved only by summoning the concerned person from the Bank in accordance with law. In ***Nahar Industrial Enterprises Ltd., vs. Hong Kong & Shangai Banking Corporation, 2011(7) R.C.R. (Civil) 95*** it was held that jurisdiction of civil Court is plenary in nature and civil Court is entitled to decide the respective claims of the parties in a suit unless the same is ousted expressly by a statute or by necessary implications. A *casus omissus* cannot be supplied by the court to oust jurisdiction of the civil court. The DRT cannot be treated to be a civil Court as the same is constituted with specific purpose and has limited jurisdiction. It can issue only recovery certificates though it has jurisdiction to decide jurisdictional issues.

[11]. In ***Arasa Kumar and anr. vs. Nallammal and ors., 2004(4) CTC 261 (Madras)*** the rights of the parties could only be determined by the civil Court and the bar in terms of Section 34 of the SARFAESI Act would not apply. Even in ***Mardia***

Chemicals Ltd. and Ors.'s case (supra) the Hon'ble Apex Court has held that the jurisdiction of civil Court can be invoked where a secured creditor is alleged to have played fraud and the claim is alleged to be absurd and untenable.

[12]. Having considered the facts and circumstances of the case, I find that at this stage the documents relied upon by the petitioners cannot be looked into as the requirement of Order 7 Rule 11 CPC is only to see averments given in the plaint. The view expressed in the cited precedents by learned counsel for the respondent has force of law.

[13]. In view of above, the present revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

May 24, 2018 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No