IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.8886 of 2018.

Date of Decision: April 16, 2018

ICICI Bank Limited ......Petitioner

versus

Additional District Magistrate, Sangrur and others .....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SHEKHER DHAWAN.

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Present: Mr.Sandeep Suri, Advocate, for the petitioner.

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Surya Kant, J. (Oral)

The grievance of the petitioner-ICICI Bank Limited in the instant writ petition is that the Additional District Magistrate, Sangrur and Naib Tehsildar, Dhuri have failed to implement the order dated 29.12.2016 passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, for the purpose of taking physical possession of secured assets of the borrowers-respondent Nos.3 to 5.

Shorn of the details, suffice to mention that a sum of more than Rs.1.35 crore is due towards the respondent-borrowers and for recovery thereof, the petitioner-bank has taken measures under Sections 13 & 14 of the 2002 Act. The Additional District Magistrate, Sangrur passed the order dated 29.12.2016 under Section 14 of the 2002 Act to provide assistance to the petitioner-bank in taking physical possession of the secured assets. It further appears that the borrowers took time from the Additional District Magistrate, Sangrur to pay the due amount meanwhile.

The allegation of the petitioner-bank is that instead of paying the due amount, the borrower-respondent No.3 has now got filed a collusive civil suit through respondents No.5 & 6 who claim themselves to be tenants in the mortgaged property, i.e., residential house No.233, Ward No.10A, Dr.Kaplash Street, Dhuri, District Sangrur and the Civil Court at Dhuri has passed an ad-interim injunction order on the basis of statement made by the borrower 'admitting' the tenancy.

It further appears that respondent No.3-borrower approached the Debts Recovery Tribunal also but its SA was dismissed on 26.09.2017.

There appears to be some merit in the contention raised on behalf of the petitioner-bank that the civil suit is *prima-facie* collusive. However, such a question can be effectively determined by the Civil Court at Dhuri. The writ petition is accordingly disposed of with liberty to the petitioner-bank to move applications before the Civil Court at Dhuri for (i) its impleadment as party-defendant; (ii) for vacation of ad-interim injunction, and (iii) for rejection of plaint under Order 7 Rule 11 CPC in view of Section 17 (4A) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Civil Court at Dhuri is directed to decide such applications positively within one month from the date of their filing and if need be, the matter be heard on day to day basis. The Civil Court will also find-out whether the alleged tenancy was created after the house had been mortgaged and if so, whether any prior permission of the bank was taken to rent out the house. Such a question would be crucial to determine whether the civil suit is collusive and lacks *bonafide*. In case the Civil Court vacates the stay, Additional District Magistrate, Sangrur and Naib Tehsildar, Dhuri are directed to take further action in accordance with law within a period of one month from the date of vacation of stay.

Ordered accordingly.

Dasti.

[SURYA KANT]
JUDGE

April 16, 2018
mohinder

[SHEKHER DHAWAN]
JUDGE

Whether speaking/reasoned	**:**	**Yes/No**
Whether Reportable	**:**	**Yes/No**