IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.3643 of 2013 (O&M)
Reserved on 25.07.2018

Date of Pronouncement 14.09.2018

Manoj Kumar and another

... Appellants

Versus

Haryana Financial Corporation and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. S.K.Garg Narwana, Senior Advocate with
Mr. Naveen Gupta, Advocate,
for the appellants.

Mr. Dhiraj Chawla, Advocate,
for respondent No.1.

None for respondent Nos.2 to 4.

TEJINDER SINGH DHINDSA, J.

Plaintiffs, namely, Manoj Kumar son of Ram Parkash and Ram Parkash son of Suraj Bhan filed a suit for permanent injunction restraining the defendants i.e. Haryana Financial Corporation as also State authorities from recovering the amount of loan payable by M/s Suraj Poultries Private Limited, Hisar and further restraining the defendants from taking coercive steps against the plaintiffs i.e. by way of arrest or detention.

It was pleaded on behalf of the plaintiffs that plaintiff No.1 was the Director in M/s Suraj Poultries Private Limited and a loan was applied for from defendant No.1/Haryana Financial Corporation. Plaintiff No.2 stood Guarantor being father of plaintiff No.1. It was averred that since Haryana Financial Corporation caused delay in releasing the loan as such plaintiffs took a decision not to pursue further advancement of the loan. Plaintiff No.1 retired from the directorship of the Company and plaintiff No.2 also withdrew his guarantee. Intimation in this regard was sent to Haryana Financial Corporation. It was pleaded that under such circumstances, the plaintiffs were not responsible for repayment of the loan. The Haryana Financial Corporation had got issued a certificate for recovery under Section 32(G) of the State Financial Corporation Act for Rs.2,52,37,138/- (Rs. Two Crores Fifty Two Lakhs Thirty Seven Thousand One Hundred and Thirty Eight) from the specified authority vide order dated 06.06.2006 and now the State Financial Corporation is threatening to arrest the plaintiffs for recovery of the amount allegedly outstanding against M/s Suraj Poultries Private Limited.

Suit of the plaintiffs was contested on merits by stating that defendants No.2 and 3 i.e. State of Haryana through Collector Jind and Assistant Collector, Second Grade-cum-Tehsildar, Jind are recovering the dues of defendant No.1 i.e. Haryana State Financial Corporation as arrears of land revenue in execution of the recovery certificate dated 06.06.2006 issued under Section 32 (G) of the State Financial Corporation Act 1951. It was further stated that plaintiff No.1 is the Director of M/s Suraj Poultries and both the plaintiffs being Director and Guarantor are jointly and severally liable to pay the dues of the Company. It was further stated that the Haryana State Financial Corporation had taken deemed possession of the Unit i.e. M/s Suraj Poultries Private

Limited dated 16.02.1999 and since then about 20 attempts have been made to sell the unit by publication of sale proclamation in the newspapers for sale of unit but the Directors being influential persons have not allowed anybody to purchase the unit. Accordingly, the Haryana Financial Corporation was left with no other option but to proceed further in accordance with law and to recover its dues under Section 32 (G) of the State Financial Corporation Act 1951

On the pleadings of the parties, the following issues were framed by the trial Court:-

1. ***"Whether the defendants have no right to recover the loan amount from the plaintiff as alleged? OPP.***
2. ***Whether the plaintiffs are stopped by their own act and conduct? OPD.***
3. ***Whether the suit is not maintainable in the present form? OPD.***
4. ***Whether the suit is bad for non-joinder of necessary parties? OPD.***
5. ***Whether the plaintiffs have not come with clean hands? OPD.***
6. ***Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD.***
7. ***Relief."***

Suit of the plaintiffs was dismissed by the trial Court on 15.12.2009 and a civil appeal having been preferred has also been dismissed vide judgment dated 09.05.2013 passed by the learned Additional District Judge, Jind.

Resultantly, the plaintiff Manoj Kumar is in second appeal before this Court.

Learned Senior counsel representing the plaintiff/appellant has argued that the defendants have taken into possession the assets of the Company i.e. M/s Suraj Poultries Limited some time back. The primary security of the loan which is the land, building and other assets of the Company have not been sold by the Haryana Financial Corporation and it is open for the Corporation to recover its amount from the primary security which is in its possession for almost a decade. Further contended that both the Courts have overlooked the effect of Section 4 of the Haryana Public Moneys (Recovery of Dues) Act, 1979 which is in the nature of a saving clause. It is argued that as per Section 4, the property of the person which is the subject of any mortgage etc. in favour of the State Government, the State Government/Corporation shall first sell that property which is under mortgage with the Corporation and if the property in question is less than the sum due to the Corporation then proceedings will be taken against other property owned by the defaulter.

Counsel for the parties have been heard at length.

Courts below have concurrently held the suit of the plaintiff to be not maintainable by taking a view that respondent Nos.2 and 3 herein are recovering the dues of the loan amount as arrears of land revenue in execution of a recovery certificate dated 06.06.2006 issued under Section 32 (G) of the State Financial

Corporation Act, 1951 and as such jurisdiction of Civil Court is barred.

The short issue which arises for consideration is whether in the facts of the case the Courts below were justified in dismissing the plaintiffs suit as not maintainable and being barred by law.

The question as culled out hereinabove is no longer *res integra*. The Hon'ble Supreme Court in ***Om Aggarwal Vs. Haryana Financial Corporation and others, 2015 (2) RCR (Civil) 913*** has examined the provisions under the State Financial Corporation Act, 1951 and the Haryana Public Moneys (Recovery of Dues), Act 1979 and has held as follows:-

> ***23 "So far as the provisions of the Act are concerned, Section 3 of the Act empowers the Corporation to make recovery of its outstanding dues from the defaulter as arrears of land revenue by getting the certificate of recovery of the amount issued from the competent authority whereas sub-section (4) of Section 3 in clear terms takes away the jurisdiction of the Civil Court to entertain or/and adjudicate "any case" relating to the recovery of any sum due from the defaulter. It also takes away the jurisdiction of Civil Court to proceed with any pending case involving such issue. If any such case is pending on the date of commencement of the Act, such case shall stand abate.***
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> ***24. The provisions of the Act and especially Section 3 thereof came to be interpreted by this Court in S.K.***

Bhargava vs. Collector, Chandigarh and others ***(1998)5SCC 170 and hence its interpretation is no more res integra. Justice B.N Kirpal, speaking for the Court, held in para 8 as under:***

"8. It is clear from the perusal of the above-quoted section that before a certificate can be issued by the Managing Director under sub-section (2) of Section 3, he must determine the "sum due" from the defaulter as enjoined upon him by Section 3(1)(b). It is difficult to appreciate the contention of the learned counsel for the respondent Financial Corporation that any such determination can take place without notice to the defaulter. The jurisdiction of the civil courts to go into the question as to what is the amount due is expressly ousted by sub-section (4) of Section 3. In its place, the power has been given to the Managing Director under Section 3(1)(b) to determine as to what is the amount due from the defaulter. There can be no doubt that any such determination by the Managing Director will result in civil consequences ensuing. The determination being final and conclusive, would have the result of the passing of a final decree, inasmuch as the defaulters from whom any amount is found to be due, would become liable to pay the amount so determined and the Collector will have the right to recover the same as arrears of land revenue." (Emphasis supplied)

25. Applying the aforesaid principle of law to the facts of the case in hand, it is clear by mere reading of the plaint that firstly, the plaintiff was a "defaulter" as defined under Section 2(c) of the Act; secondly, the

investment made by defendant No.1- Corporation pursuant to an agreement dated 16.07.1996 was in the nature of the "financial assistance" as defined under Section 2 (d) of the Act; thirdly, the demand raised by the respondent was in relation to the amount given by way of financial assistance under Section 3 of the Act and lastly, the subject matter of the suit viz., challenge to the legality of the agreement and the demand fell under Section 3(4)(a) and (b) of the Act.

26. In the light of the four aforementioned facts, which are clearly discernable from the averments made in the plaint, we are of the considered opinion that the provisions of the Act get attracted to the case in hand which, in turn, attract the bar contained in sub-section (4) of Section 3 in filing the civil suit by the defaulter. The suit is, therefore, apparently barred by virtue of bar contained in Section 3(4)of the Act."

In view of the above, the Courts below have rightfully taken a view that jurisdiction of the Civil Court in the matter was barred.

No interference in the matter is called for.

The instant appeal does not raise any question of law.

Appeal dismissed.

14.09.2018 **(TEJINDER SINGH DHINDSA)**
vandana **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No