110

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

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**CR No.357 of 2019**
**Date of Decision: January 18, 2019**

Manoj Kumar

..... Petitioner

Versus

Satish Kumar Kakkar and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Ms. Promila Nain, Advocate
for the petitioner.

**SUDIP AHLUWALIA J. (ORAL)**

1. This revision is directed against the impugned order passed by the Ld. Civil Judge (Senior Division), Chandigarh in CS No.2775 of 2018 on 04.01.2019 whereby the petitioner-plaintiff's application filed under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure (for short 'the CPC') seeking stay on the operation of the notice issued on behalf of respondent No.3 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the SARFAESI Act”) was dismissed.

2. The premise on which the suit was filed in the Civil Court was that the original defendant No.1 had practiced certain frauds to the prejudice of the petitioner-plaintiff, and in the circumstances, the element

of fraud which cuts at the root of every other proceeding/aspect gave a valid cause of action to approach the Civil Court, notwithstanding that the notice issued by respondent No.3 was in exercise of certain statutory powers.

3. The application was dismissed by the Ld. Court below which *inter alia* also held in para No.10 of the impugned order, "*the plaintiff is clearly a borrower and had created security interest over his assets and the Bank is entitled to proceed under the SARFAESI Act and this Court has no jurisdiction*".

4. That jurisdiction of the Civil Court is barred under Section 34 of the SARFAESI Act is indisputable. Therefore, the above observation of the Ld. Court below is correct. The appropriate remedy, in case the petitioner-plaintiff was aggrieved by the impugned notice, lay in approaching the prescribed Forum under the SARFAESI Act, more particularly since there was no averment to the effect that the respondent-Bank itself was in active connivance with the other defendants in committing the alleged frauds, when the suit was filed on 24.09.2018.

5. In such circumstances, in the opinion of this Court, the Ld. Trial Court in rejecting the application for temporary injunction need not have gone into the factual controversies involved, since any observation on the factual disputes could be prejudicial to the parties, coming from a Forum which had no jurisdiction to entertain the matter in the first place.

6. For the aforesaid reasons, while dismissing the revision petition, it is observed that the petitioner-plaintiff is entitled to seek his appropriate remedy before the Appropriate Forum in the given facts and

circumstances, and any part of the observations on merits recorded in the impugned order shall have no bearing whatsoever in the fresh proceeding, if filed by the petitioner before the Appropriate Forum.

**(SUDIP AHLUWALIA)**
**JUDGE**

**January 18, 2019**
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No