IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

104 CR No.2512 of 2017
Date of decision:27.2.2019

Punjab and Sind Bank

... Petitioner

versus

Sanjay Mehtani and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Dipinder Singh, Advocate,
for the petitioner
Mr.Sanjeev Gupta, Advocate,
for respondent no.1
...

AMOL RATTAN SINGH, J. (Oral)

1. To avoid repetition of dictation, the order passed yesterday, i.e. 26.2.2019, is reproduced herein below:-

> "By this petition, the petitioner Bank challenges the order of the Civil Judge (Junior Division), Panchkula, dated 4.3.2017, by which the application filed by the petitioner (defendant no.3 in the civil suit) under Order 7 Rule 11 of the Code of Civil Procedure has been dismissed.
>
> The ground taken by the petitioner seeking rejection of the plaint in the suit filed by respondent no.1 herein, was that the petitioner herein, i.e. the Punjab and Sind Bank, had already issued notice to respondents no.2 and 3 herein, i.e. the landlords of the suit premises, under Section 13 of the

SARFAESI Act, 2002, and therefore in terms of Section 34 of the said Act, the jurisdiction of the civil suit was barred. Section 17 of the said Act was also referred to in the application, to contend that any person aggrieved of any measures initiated by the secured creditor to recover the loan/debt, would have the right to approach the Debts Recovery Tribunal but not the civil Court.

Though the said application (copy Annexure P-4) is seen to be dated 11.7.2016, learned counsel for the petitioner submits that even the provisions of sub section 4A of Section 17 were brought to the notice of learned trial Court at the time when arguments were addressed on the application under Order 7 Rule 13 CPC.

The said provision, as also Section 34 of the aforesaid Act, are reproduced as under:-

**"Section 17.**

xx xx xx xx

**4-A** Where-

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,-

(a) has expired or stood determined; or

(b) is contrary to Section 65-A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of Section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act."

**xx xx xx xx**

**"Section 34. Civil Court not to have jurisdiction.-** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other

> authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."

Consequently, the contention is, as already noticed above, that the civil Court had absolutely no jurisdiction to entertain the suit instituted by respondent no.1 herein, with even the landlords impleaded as defendants in the said civil suit, i.e. respondents no.2 and 3 herein.

Notice having been issued in this petition on 6.4.2017, eventually an order was passed on 5.2.2018 by a coordinate Bench that despite service, none of the respondents had appeared and consequently they were ordered to be proceeded against *ex parte*.

On the last date of hearing, i.e. 21.2.2019, learned counsel for the petitioner had made a request for this case to be taken up out of turn immediately after 4.00 pm as its turn had not come in normal course.

It was therefore ordered to be listed today in the urgent motion list, to even now determine as to whether the respondents still wish to appear and address arguments.

Today, Mr.P.S.Tobria has appeared for respondents no.2 and 3 and seeks to filed his power of attorney even though they too had been proceeded against *ex parte.* However, he is still permitted to address arguments.

He submits that as a matter of fact the loan having been repaid by respondents no.2 and 3 herein, i.e. by the landlords of the premises in question, to the petitioner-Bank, the property no longer stands mortgaged with the bank.

Though learned counsel for the petitioner even then insists upon arguing the matter, he is directed to obtain instructions in that regard so that an appropriate order can be passed by this Court.

Adjourned to 27.2.2019.

To be shown in the urgent list."

2. Today, learned counsel for the petitioner has taken instructions that as regards the property as is subject matter of the suit out of which this petition arises, the mortgage on that property has been redeemed by the petitioner-Bank upon payment of Rs.2.50 crores loaned to the respondents by the Bank.

He however submits that despite that, the suit filed by respondent no.1 impleading the petitioner Bank as defendant no.3 therein, has not been withdrawn qua the petitioner.

3. Learned counsel for respondent no.1, i.e. the plaintiff before the trial Court, submits that the petitioner Bank no longer being a necessary party to the suit instituted by respondent no.1 against respondents no.2 and 3 herein, (i.e. the landlords of the suit property), as also against the Bank, respondent no.1 would withdraw the suit qua the petitioner, i.e. defendant no.3 in the suit.

4. That being so, respondent no.1 is held to that statement, with this petition having been rendered as infructuous. It is therefore disposed of as such, with the suit to be treated as withdrawn qua the petitioner Bank.

27.2.2019 **( AMOL RATTAN SINGH )**
pk **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No