

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

**Civil Revision No.4842 of 2018 (O&M)
Date of Decision: 17.09.2019**

Bharat Bhushan Jain

.....Petitioner

Vs

Sudarshan Kumar Jain and another

....Respondents

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

Present:Mr. Amit Jain, Advocate
for the petitioner.

Mr. Satish Jain, Advocate
for respondent No.1.

Mr. Vikas Chatrath, Advocate and
Mr. Khushkaran Kumar, Advocate
for respondent No.2-Bank.

RAJ MOHAN SINGH, J.

[1]. Petitioner has laid challenge to the order dated 02.02.2018 passed by the Civil Judge (Jr. Divn.) Chandigarh and order dated 04.07.2018 passed by the Addl. District Judge, Chandigarh, whereby the application under Order 39 Rules 1 and 2 CPC was dismissed.

[2]. Brief facts are that the plaintiff/petitioner filed a suit for permanent injunction restraining the defendants/respondents

from illegally taking possession of two rooms with attached bathroom on the ground floor of the house in question except in due course of law. Plaintiff/petitioner claimed himself to be a tenant in the property vide rent note dated 01.11.2010, followed by another rent agreement dated 01.06.2014. Petitioner pleaded that he was paying the rent regularly from the very inception of the tenancy against receipts to respondent No.1. The plaintiff has been running his office in the demised premises since 01.11.2010. The suit came to be filed when the respondents started threatening the plaintiff to dispossess him in an illegal manner.

[3]. Record of the case would show that a mortgage was created in the year 2012 by the owner in favour of respondent No.2-Bank. The grievance of the petitioner before the Courts below was that in view of **Vishal N. Kalsaria vs. Bank of India & Ors, 2016(1) R.C.R. (Civil) 911**, the tenancy was protected because once tenancy was created, a tenant can be evicted only after following the due process of law under the Rent Act. The tenant cannot be evicted forcibly by use of provisions of SARFAESI Act. The suit was filed after the amendment in Section 17 of the SARFAESI Act, wherein Section 4-A was inserted in Section 17 of 2002 Act w.e.f. 01.09.2016..

[4]. Learned counsel for the petitioner submitted that case

of the petitioner does not fall under clauses 1(a) to 1(d) and Sub-section 4-A and Section 17 of 2002 Act. The amendment in question has not taken away the jurisdiction of civil Court. Only an additional remedy has been provided because earlier there was no provision for the tenant to approach the Debt Recovery Tribunal. In support of his contention, learned counsel relied upon **State of Haryana and ors. vs. Vinod Kumar and ors., 1986(1) PLR 222 (Full Bench)** and **Gurbax Singh vs. Financial Commissioner and another, 1991 PLJ 190** and **Vishal N. Kalsaria's** case (supra).

[5]. Learned counsel further submitted that the amendment in the Act is not mandatory for the tenant to approach Debt Recovery Tribunal as the statutory right vested in the tenant cannot be bulldozed by such amendment and even by non-obstante clause in Section 35 of the SARFAESI Act.

[6]. Learned counsel further submitted that case law viz. **CR No.693 of 2018** titled '**State Bank of India vs. Sonia Saini and others**', decided on 24.05.2018; **CR No.8144 of 2017** titled '**Maan Mohan vs. Kamal Parkash Goyal and others**' decided on 20.02.2018; **CR No.8286 of 2018** titled '**Dil Bahadur vs. Vijay Kapoor and others**', decided on 05.12.2018 and **CR No.2996 of 2018** titled '**Manoj Kumar vs. State Bank of India**

and another' decided on 07.05.2018 are distinguishable as in those cases the orders were passed on the application under Order 7 Rule 11 CPC holding that the civil suit is barred. In the instant case, no application was filed under Order 7 Rule 11 CPC. Both the Courts below have proceeded to consider the application under Order 39 Rules 1 and 2 CPC and, therefore, the first stage has already passed. The second stage would be either to get the issue framed in respect of jurisdiction of the Court or the issue can be decided at the last stage. Both the Courts are not justified in declaring the suit to be barred by jurisdiction of the civil court on the stage of consideration of application under Order 39 Rules 1 and 2 CPC.

[7]. As against this learned counsel for the respondents by relying upon **RSA No.6184 of 2017** titled '**Shakti Trading Co. vs. Kailashwanti and another**', decided on 18.01.2018; **ICICI Bank Limited vs. Krishna Kumar Bishnoi and others, 2018(2) DNJ 622 (Rajasthan); Dharmendra Kumar vs. District Magistrate, Raipur and ors., 2018(1) CivilJ803 (Chattisgarh)** and **Alpha Beta Shiksha Samiti (Regd.) vs. State of Rajasthan through District Collector and District Magistrate and another, 2017 AIR (Raj) 81** submitted that the injunction cannot be granted as the jurisdiction of the civil court is barred.

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

[9]. There cannot be any dispute with regard to the proposition involved in the aforesaid precedents cited by learned counsel for the parties. The aforementioned judgments were passed either on the application under Order 7 Rule 11 CPC or at the final stage of the suit/civil revision and RSA. In the instant case, the defendants did not file any application under Order 7 Rule 11 CPC and the suit has proceeded further. At the stage of consideration of application under Order 39 Rules 1 and 2 CPC, the courts below have declined the injunction on the premise that the civil court has no jurisdiction.

[10]. The Hon'ble Apex Court in **Tayabbhai M. Bagasarwalla vs. Hind Rubber Industries Pvt. Ltd., 1997(2) R.C.R. 473 (S.C.)** held that when an issue of jurisdiction or objection to jurisdiction of civil court is raised while passing any interim order, the Court should decide the question of jurisdiction at the first instance, but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim order as may be called for, in the facts and circumstances of the case. The issue of jurisdiction goes to the very roots of the case for which no application was filed for rejection of the plaint under Order 7

Rule 11 CPC by the defendants. A mere objection to jurisdiction does not instantly disable the Court from passing any interim order. It can pass appropriate order. At the same time, the Court can decide the question of jurisdiction at the earliest. The interim orders so passed are orders within the jurisdiction of the Court when passed and effective till the Court decides that it has no jurisdiction to entertain the suit. The interim orders undoubtedly would come to an end with the decision that the Court had no jurisdiction to try the suit. The aforesaid view expressed by the Hon'ble Apex Court in **Tyabbhai M. Bagasarwalla's case** (supra) has been relied by the High Court in **Basakhi Ram vs. Suresh Kumar, 1998(3) R.C.R. (Civil) 175.**

[11]. In view of aforesaid legal position, it would be unnecessary to decide the controversy on the basis of precedents cited by learned counsel for the parties. At this stage, this Court is of the view that the orders passed by the Courts below in the application under Order 39 Rules 1 and 2 CPC cannot be given effect for declaring the civil court to have no jurisdiction. The suit has different stages at which it can be dismissed. The first stage is under Order 7 Rule 11 CPC. Once the first stage is over, the second stage would be, by treating the issue of jurisdiction to be a preliminary issue and decision

thereon. The third state would be at the time of final determination of the *lis*. There is a fourth stage also in between which confers upon the Court when the defendants finds that the allegations made in the plaint are the result of clever drafting and if the said clever drafting has created an illusion of cause of action, then it should be nipped in the bud at the first hearing by examining the parties under Order 10 CPC. On this proposition, the ratio laid down by the Hon'ble Apex Court in **Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, 2012(3) R.C.R. (Civil) 811** can be relied.

[12]. In view of facts and circumstances of the present case, it is not necessary to consider the precedents cited by learned counsel for the parties on the basis of amendment of Section 17 of the SARFAESI Act and insertion of Section 4-A in the said Section 17 of 2002 Act w.e.f. 01.09.2016. The present controversy can be appreciated only in the limited context at this stage that till the issue of jurisdiction is decided by the Court in accordance with law, the Courts are legally competent to pass interim orders till such time the Court comes to a conclusion that the civil court has no jurisdiction. All such orders would come to an end with the decision of the Court.

[13]. In view of above, ratio of **Tyabbhai M. Bagasarwalla'** as relied by the High Court in **Basakhi Ram's** cases (supra) is relied and at this stage without making any opinion on the case law relied upon by learned counsel for the parties, I deem it appropriate to set aside the impugned orders passed by the Courts below and remand this case to the trial Court to decide the application under Order 39 Rules 1 and 2 CPC on merits. However, there would be no bar for filing an application under Order 7 Rule 11 CPC in a pending case, if the defendants think that the pleadings have created an illusion in respect of cause of action. In such eventuality, they may resort to provision of Order 10 CPC to avail their legal remedies in accordance with law.

September 17, 2019

Atik

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No