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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7845-2018
Date of decision:-29.01.2019

Housing and Urban Development Corp. Ltd.(HUDCO)

....Petitioner

Versus

Jit Singh **....Respondent**

CORAM: HON'BLE Mr. JUSTICE AVNEESH JHINGAN

Present:- Mr. Munish Jolly, Advocate
for the petitioner.

Mr. N.K.Manchanda, Advocate
for the respondent.

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AVNEESH JHINGAN J. (Oral)

Housing and Urban Development Corporation Limited (HUDCO) has filed the present civil revision petition being aggrieved of order dated 31.07.2018 passed by Additional Civil Judge (Sr. Division), Rupnagar (for short 'trial Court') dismissing the application filed under Order VII Rule 11 of CPC seeking dismissal of suit filed by respondent/plaintiff (herein referred as respondent).

In brief, the facts of the case are that the petitioner initiated proceedings under Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (in short 'the Act') by issuing notice to take symbolic possession of the property in dispute.

The case of the petitioner is that a housing loan was availed by the respondent and the disputed property was given as a security to secure the loan. As there was a default in payment of loan, proceedings under Section 13 of the Act were initiated.

Aggrieved of the notice under Section 13 (4) of the Act, the respondent filed a suit for declaration. Upon notice, the petitioner filed a written statement. During pendency of the suit, an application was moved under Order VII Rule 11 for dismissal of the suit relying upon Section 34 of the Act barring jurisdiction of the Civil Court. The said application was dismissed. Hence, the present revision petition has been filed.

Learned counsel for the petitioner states that the challenge in the suit is to the proceedings under the Act and Section 34 of the Act bars the jurisdiction of Civil Court. The trial Court has erred in dismissing the application.

Learned counsel for the respondent contends that he is neither the borrower nor the guarantor, he is the subsequent purchaser of the property from the wife of the borrower. Being aggrieved of notice of symbolic possession by the petitioner, a civil suit has been filed.

The jurisdiction of civil court is barred for proceedings under the Act. Section 34 of the Act is reproduced below:-

> *"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)."*

As is evident from the aforesaid Section, the jurisdiction of the Civil Court to entertain any suit or proceedings in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered to deal with is barred. Section 17 of the Act provides that 'any person' (including borrower), aggrieved by any of the measures referred to in sub-Section (4) of Section 13 of the Act shall make an application before the Debts Recovery Tribunal.

The grievance raised by the respondent-plaintiff in suit is such which can be dealt by Debts Recovery Tribunal, hence, jurisdiction of the civil courts is barred under Section 34 of the Act.

The Supreme Court in the case of ***Kaniyalal Lalchand Sachdev & others Vs. State of Maharashtra 2011(2) SCC 782*** relied upon its earlier decision in ***Authorised Officer, Indian Overseas Bank & Anr. v. Ashok Saw Mill, (2009) 8 SCC 366*** held that remedy under Section 17 of the Act is available to an aggrieved party even against action under section 14 of the Act. It was observed as under:-

> *"19. In* ***Authorised Officer, Indian Overseas Bank & Anr. v. Ashok Saw Mill, (2009) 8SCC 366*** *the main question which fell for determination was whether the DRT would have jurisdiction to consider and adjudicate post Section 13(4) events or whether its scope in terms of Section 17 of the Act will be confined to the stage contemplated under Section 13(4) of the Act ?*
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> *On an examination of the provisions contained in Chapter III of the Act, in particular Sections 13 and 17, this*

Court, held as under :

"35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.

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39. We are unable to agree with or accept the submissions made on behalf of the appellants that the DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under Section 13(4) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT."

20.We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT.

It was held that the Act itself contemplates remedy for borrower or any other person affected by Section 13 (4) by providing an appeal before Debts Recovery Tribunal.

Resultantly, the impugned order dated 31.07.2018 is set aside. The application filed by the petitioner under Order VII Rule 11 of CPC is allowed. Learned trial Court shall return the suit papers to the respondent.

The present petition is allowed.

29th January, 2019 **(AVNEESH JHINGAN)**
shabha **JUDGE**

Whether speaking/reasoned *Yes*
Whether reportable *Yes*