IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1747 of 2019(O&M)
Date of Decision:03.04.2019

Tarlok Singh

.................APPELLANT

Vs.

Kotak Mahindra Bank Ltd. and others

.................RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Atul Jain, Advocate
for the appellant.

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DR. RAVI RANJAN, J.(Oral)

I have heard learned counsel for the appellant.

This appeal is directed against the Judgment and Decree dated 05.01.2019 passed by Ld. Additional District Judge, Patiala in CA/0000042/2016, by which he has upheld and affirmed the Judgment and Decree dated 04.12.2015 passed by the Civil Judge (Jr. Division), Patiala in (CS/0009938/2013) whereby the suit for permanent injunction, rendition of accounts and mandatory injunction filed by the plaintiff-appellant was dismissed.

Brief facts of the case as put up by the plaintiff-appellant stands enumerated as under:-

The plaintiff applied for a loan of Rs.10,00,000/- from Citi Financial Consumer Finance India Ltd. Branch at Patiala. It is claimed that out of Rs.10 lacs only Rs.9,25,000/- was disbursed to the appellant-plaintiff and remaining amount of Rs.75,000/- were received by the officials of said company. The said financial company has now been taken over by the Kotak Mahindra Bank Ltd. The loan was to be repaid with interest @ 12% per annum in 120 equal monthly installments of Rs.14,348/- each. It is claimed that the plaintiff-appellant was regularly paying the installments and statement of account was being maintained by him with his bank Punjab National Bank. It is further claimed that the plaintiff-appellant has already repaid more than Rs.7,70,000/- however, despite receiving the said amount, officials of the previous company, without disclosing and without crediting the said amount, got filed a petition under Section 9 of Arbitration and Conciliation Act, 1996(hereinafter referred to as "the Act"), which was decided on 05.03.2010 by pronouncing an Award in favour of the company. It is also claimed that signatures of the plaintiff were obtained on the blank printed forms and the agreement was neither properly submitted nor was it attested by Notary Public. The plaintiff-appellant was never informed regarding any arbitration clause. When the plaintiff came to know about the Award passed by the Arbitrator against him, he filed objection under Section 34 of the Act, however, the same was dismissed by the Ld. Addl. District Judge, Patiala on the ground of delay. The request of plaintiff-appellant made with the officials of the previous company to render the proper and complete account also proved futile. Claim is that the accounts were never properly maintained by the company and the bank.

In the background of the aforesaid fact, the plaintiff sought relief of permanent injunction restraining the defendant-bank or its employees or attorneys from effecting recovery by show of force or by attachment or sale or auction of the mortgaged property of plaintiff-appellant.

The defendants appeared on receipt of the notice and they contested by filing written statement disclosing that the jurisdiction of Civil Court is barred as per Section 34 of Securitisation and Reconstruction of Financial Assests and Enforcement of Security Interest Act, 2002 (hereinafter referred as to “the SARFAESI Act”). It is stated that the plaintiff availed loan of Rs.10 lacs. The claim that merely loan of Rs.9,25,000/- was disbursed to the plaintiff was denied. It is further averred that the plaintiff had duly entered into the loan agreement with the creditor, i.e., City Finance Company by appending his signatures after understanding all the terms and conditions. The Award has already been passed by the Arbitrator against the plaintiff and his objection filed under Section 34 of the Act has also been dismissed. It has further been claimed that a notice dated 12.04.2013 under Section 13(2) of the SARFAESI Act was issued upon the plaintiff-appellant after the account of plaintiff was declared NPA. The notice was served for payment of Rs.12,51,746/- which stood outstanding against the plaintiff-appellant on 12.04.2013 along with future interest @ 18 per annum. A stand was taken before the Trial Court that, after the initiation of proceeding under SARFAESI Act against the plaintiff, suit would not be maintainable on that count also.

The Trial Court upon appreciation of rival pleadings framed following issues:-

> “1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
> 2. Whether the plaintiff is entitled to mandatory injunction as prayed for ? OPP
> 3. Whether the plaintiff has not come to the court with clean hands and has concealed the true and material facts from the court? OPD.
> 4. Whether the plaintiff has no cause of action to file the present suit? OPD
> 5. Whether the plaintiff has got no jurisdiction to try and decide the suit? OPD”

Issue Nos. 1 to 3 and 5 were taken together by the Trial Court in order to avoid the repetition.

The Trial Court has taken notice that Arbitration Award Mark DA was passed against the plaintiff and though the plaintiff, in his cross-examination as PW-1, has stated that he was not aware about the Award having been passed against him, however, from Ex.P3 it is apparent that the plaintiff himself has filed objection under Section 34 of the Act for setting aside the Award dated 24.07.2009 which has already been dismissed. Now the Award having attained finality especially after the objections raised under Section 34 of the Act was dismissed, the dispute could not have been re-opened and decided by a Civil Court. It has also been noticed that during the pendency of the suit, defendants have started proceedings against the plaintiff under the provisions of the SARFAESI Act. The remedy against such action available to the plaintiff would only be before the Debts Recovery Tribunal by filing an appeal under Section 17(1) of the SARFAESI Act. The Civil Court would not have jurisdiction to entertain any suit for proceeding, in view of Section 34 of the SARFAESI Act, to deal with the matter for which Debts Recovery Tribunal is empowered. Accordingly, the suit was dismissed.

The Judgment and Decree was put to challenge before the First Appellate Court which has also taken the similar line and has dismissed the appeal.

Learned counsel for the appellant has vehemently argued that accounts were properly not maintained by the creditor and the appellant is ready to pay the debt if it is accepted that he has already paid a sum of Rs.7,70,000/- or if the Court orders for rendition of the accounts.

However, in view of the provisions contained under the Act including Section 5 and Section 34 as well as Section 36 of the SARFAESI Act, in my considered opinion, the plaintiff-appellant has already missed the bus so far as Civil Court is concerned.

The submission raised on behalf of the plaintiff-appellant that his signatures were taken on blank paper and he was not aware regarding the arbitration clause being there in the agreement for sanctioning loan can be noted only to be rejected for the reason that there is no evidence to that effect available on record. The evidence only suggests that the agreement was there which has been signed by the plaintiff. That apart, these aspects now cannot be opened by filing a suit when the matter has already been decided by the Arbitrator by pronouncing Award under the Act and the plaintiff-appellant has already exhausted the remedy of filing objection under Section 34 of the Act. These objections, having been rejected on any ground, has attained finality and the Award cannot be challenged directly or indirectly in any civil proceeding otherwise it will take away the entire aims and objects of the Arbitration and Conciliation Act, 1996. That apart, a proceeding has already been initiated by the creditor under SARFAESI Act for which remedies lie before some other forum.

In the aforesaid mentioned facts and circumstances, this Court is of the opinion that the Judgments and Decrees passed by both the Courts below cannot be faulted with.

In the result, this appeal, being devoid of any merit, is dismissed.

(DR. RAVI RANJAN)
JUDGE

03.04.2019
Anjal

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No