

**RA-CR-55-2019 (O&M) IN
CR-7403-2013**

1

121

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

**RA-CR-55-2019 (O&M) in
CR-7403-2013
Date of decision : 13.05.2019**

Joseph K. Masih

... Petitioner

Versus

LIC Housing Finance Ltd. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Joseph K. Masih, petitioner in person.

AMIT RAWAL, J. (ORAL)

The present review application has been filed on the premise that the review applicant was not heard at the time when the revision petition was dismissed assailing order of the trial Court, rejecting the plaint by entertaining the application under Order 7 Rule 11 of the Code of Civil Procedure.

The review applicant/petitioner submitted that the petitioner had earlier filed two injunction suits, which were dismissed as withdrawn, vide Annexure P-26 and P-27. Similar application was filed in the injunction suit and the Court below, after detailed discussion, noticed that the matter was not covered under the provisions of Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act'). This fact has not been noticed by this Court, therefore, there is an error apparent on record.

**RA-CR-55-2019 (O&M) IN
CR-7403-2013**

2

It was further argued that against the judgment and decree of the trial Court, whereby the suit of respondent No.1/LIC for recovery was decreed, the appeal is pending, wherein the petitioner had deposited the security, but in the meantime, proceedings under SARFAESI Act, for issuing notice under Section 13(2), were initiated and certain objections were filed, which were not noticed. This Court, while noticing the aforementioned fact in CWP No.12645 of 2015, issued the notice of motion and the matter is pending consideration.

I have heard the petitioner in person, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Masih.

Vide Annexure P-2, the following claim was sought:-

"Suit for declaring that land bearing Khewat No.39/57 Khasra No.164/13 (7-7) situated at the Village Karoran hudbast No.352, Tehsil Kharar is free from any encumbrance along with the building/house on it bearing No.49, Shivalik Vihar Nayagaon Village Karoran Tehsil Kharar and further declaring that notice dated 10.3.2004 of defendant No.1 to the plaintiff and threatening action in it is illegal, null and void and is misuse of the legal process and suit for permanent injunction and stay of the operation of the said illegal notice dated 10.4.2004 under Order 7 Rule 1 CPC."

It is a matter of record that against the judgments and decrees of the Courts below, the petitioner has filed the appeal bearing RSA No.2165 of 2015, in which, notice of motion has been issued and is pending adjudication for 17.05.2019. In my view, the petitioner cannot be permitted to avail parallel remedy by filing the suit, sought to be rejected, with the

**RA-CR-55-2019 (O&M) IN
CR-7403-2013**

3

aforementioned relief. Moreover, order dated 14.05.2013 (Annexure P-21), would not come in the rescue of the petitioner, for the simple reason that it was proved that earlier the injunction suit, was withdrawn, whereas in the present suit, the petitioner sought the declaration seeking the property free from mortgage.

This Court, while dismissing the revision petition, had already noticed the applicability of the provisions, aforementioned, even the law, in view of the *ratio decidendi* culled out by Hon'ble the Supreme Court in **“M.D. Frozen Foods Exports Pvt. Ltd. & others V/s Hero Fincorp Ltd.”** **2018 (1) RCR (Civil) 23, 2017 AIR (SC) 4481**, with regard to the applicability of the SARFAESI Act, in respect of the previous loan transaction, has a retrospective effect.

In view of the aforementioned observation, I do not find any error apparent on the fact of record. No ground for interference is made out.

The review application is also accompanied by an application seeking condonation of delay of 168 days in filing the review application. The explanation given in the application is bereft of the reasonable cause.

Resultantly, the review application is dismissed on merits as well as on limitation.

13.05.2019
Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**