IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203

CRM-M-36560-2016 (O&M)
Date of decision: 10.05.2019

Sunit Singh and another **...... Petitioners**

Versus

Manoj Singla **...... Respondent**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Aalok Jagga, Advocate for the petitioners.

Mr. Kashish Garg, Advocate for the respondent.

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ANIL KSHETARPAL, J. (ORAL)

This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of complaint Annexure P-14 under Sections 500/501/499/120-B, IPC and other relevant Sections of IPC and the order summoning the petitioners in the aforesaid case. The petitioners before this Court are officials of Jammu & Kashmir bank. As per the assertions made in the complaint, the complainant has been defamed on account of publication of notice of recovery under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as Act of 2002) in the newspapers.

As per scheme of the Act of 2002, initially notice is required to be served through registered post acknowledgment due, however, if that method does not result in service then the secured creditor is entitled to get the notice published in the newspaper. Rule 3 of Security Interest (Enforcement) Rules, 2002 which is extracted as under:-

> ***"Rule 3***
>
> ***Demand Notice****- (1) The service of demand notice as referred to in sub-section (2) of section 13 of the Act shall be made by delivering or transmitting at the place where the borrower or his agent, empowered to accept the notice or documents on behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with acknowledgment due, addressed to the borrower or his agent empowered to accept the service or by Speed Post or by courier or by an other means of transmission of documents like fax message or electronic mail service.*
>
> *Provided that where authorized officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service cannot be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the contents of the demand notice in two leading newspapers, one is vernacular language, having sufficient circulation in that locality.*
>
> *(2) Where the borrower is a body corporate, the demand notice shall be served on the registered office or any of the branches of such body corporate as specified under sub-rule (1).*
>
> *(3) Any other notice in writing to be served on the borrower or his agent by authorized officer, shall be served in the same manner as provided in this rule.*
>
> *(4) Where there are more than one borrower, the demand notice shall be served on each borrower."*

Learned counsel for the petitioners while referring to Section 32 of the Act submit that the secured creditor as well as its officer are protected of action taken in good faith. Section 32 is extracted as under:-

> *"**32. Protection of action taken in good faith.** - No suit, prosecution or other legal proceeding shall lie against (the Reserve Bank or the Central Registry or any secured creditor or any of its officers) for anything done or omitted to be done in good faith under this Act."*

Hence, he submits that the proceedings initiated and the order of summoning is liable to be quashed. He has further submitted that a civil suit for recovery of the amount has already been decreed against the complainant and his appeal has also been dismissed.

On the other hand, learned counsel for the respondent while referring to the assertions made in Para 7 has submitted that the property belonging to the complainant-respondent was released by the bank and therefore, notice against him could not be published.

This Court has carefully considered the submission of learned counsel and with their able assistance gone through the documents filed in the paper book.

It is undisputed that the civil suit for recovery of the disputed amount has been decreed against the complainant also, affirmed in appeal, and the aforesaid judgment has become final. In such circumstances, the assertions made with regard to release of title deed would be of no consequences. The petitioners (proposed accused) had got the notice published in the newspaper in accordance with Rule 3 of that Rules. The aforesaid Act was in good faith and in discharge of their functions as provided under the Act. Hence, the initiation of proceedings through the complaint is gross misuse of the process of the Court. Section 32 of the Act of 2002 protects the officers of a secured creditor. It is not in dispute that the Jammu & Kahsmir bank is a secured creditor.

In view thereof, the complaint as well as summoning order and the consequential proceedings shall stand quashed.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Hence, the petition is allowed.

(ANIL KSHETARPAL)
JUDGE

10.05.2019
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No