

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

CR no.3378 of 2019

Date of Decision: 27.05.2019

Rajinder Singh and another

...Petitioner

Vs.

LIC Housing Finance Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Manoj Makkar, Advocate, for the petitioners.

Amol Rattan Singh, J (Oral)

By this petition, the petitioners challenge the order passed by the learned Additional District Judge, Rohtak, dated 07.05.2019, by which his appeal against the order passed by the learned Civil Judge (Jr. Divn.)-cum-JMIC, Rohtak, dated 02.04.2018, dismissing his application filed under Order 39 Rules 1 and 2 of the CPC, has also been dismissed.

The petitioners (plaintiffs before the trial court) have instituted a suit against the respondents, seeking a declaration to the effect that the letter issued to them by the respondents-defendants on 25.09.2017 be declared to be illegal, unjust, perverse etc. and not binding on the plaintiffs.

The said letter (is not on record but produced in Court by the learned counsel on the asking of the court), is one by which an amount of Rs.245409.68 p. has been demanded from the petitioners, such amount contended to be accruing on account of default in re-payment of the loan stated to have been advanced by the respondent-LIC Housing Finance

Limited, to the petitioners.

The learned appellate court, vide the impugned order, has first noticed that the petitioners herein had applied for a loan of Rs.8 lacs which had been sanctioned on 14.07.2009, but with it contended that only Rs.7,50,000/- had been received by them.

It was further noticed that, admittedly, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short “the Act of 2002”), had been initiated against them seeking the aforesaid recovery.

Consequently, holding that recovery proceedings under the provisions of the Act of 2002 already having been initiated against them, the petitioners have a right to approach the Debts Recovery Tribunal against any such demand raised against them by the respondents-defendants.

Hence, on that ground, the prayer of the petitioners in the application filed under Order 39 Rules 1 and 2 of the CPC has also been rejected by the appellate court, on the very ground as it was by the learned trial court.

Learned counsel for the petitioners submits that there being no proceedings pending before the Debts Recovery Tribunal and in fact no notice having been issued to them under sub-section (4) of Section 13 of the Act of 2002, the Courts below have wholly erred in dismissing the application on the ground of an alternative remedy being available.

Having considered the matter, it is first to be noticed that once

proceedings under the Act of 2002 have been initiated by a secured creditor, the jurisdiction of the civil court is barred under Section 34 of the said Act, which reads as follows:-

“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).”

Section 17 of the said Act enables any person aggrieved of any measure taken by a secured creditor under the aforesaid proceedings, to approach the Debts Recovery Tribunal, airing such grievance, for the Tribunal to take a decision thereon.

In the present case, though, as already said, the demand notice issued by the respondents has not been annexed with the petition, it having been produced in Court, it is seen that it is in fact a notice issued under sub-section (2) of Section 13 of the Act of 2002; and consequently, the petitioners' contention that no proceedings whatsoever have been initiated under that Act, is a wholly fallacious argument before this Court.

Even if no notice as may be required to be issued under sub-section (4) of Section 13 of the Act has been issued (as contended), the remedy of the petitioners, to air even that grievance, is not before a civil

court but before the Debts Recovery Tribunal.

That being so, I see no reason to entertain this petition, which is consequently dismissed *in limine*.

Naturally, the petitioners would be at liberty to approach the Debts Recovery Tribunal in respect of their grievance.

It maybe stated here that a petition in respect of a tenant on a property in respect of which proceedings under the Act of 2002 had been initiated, had come up for hearing before this Court, bearing CR no.4652 of 2018, which was dismissed on 27.07.2018, on the same ground, with that order having been challenged by way of an SLP before the Supreme Court and such SLP (no.22389 of 2018) also having been dismissed by the Supreme Court on 27.08.2018.

27.05.2019
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes