112 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5160 of 2019
Date of Decision: 20.11.2019

Baldev Raj

.....Petitioner

Versus

Anjla Sahni and another

........Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. G.S. Randhawa, Advocate for
Mr. Sanjeev Gupta, Advocate for the petitioner.

NIRMALJIT KAUR, J. (ORAL)

The present revision petition is filed against the order dated 30.07.2019, passed by the Additional Civil Judge (Senior Division), Ambala (for short, the trial Court), vide which, prayer of the petitioner to grant stay was rejected in view of the remedy available to him under Section 17 (i) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the SARFAESI Act).

The only argument raised by learned counsel appearing for the petitioner is that the civil suit was filed by him prior to the invoking of provisions under the SARFAESI Act.

The said argument has no merit. As per the well settled proposition of law rendered by Hon'ble the Apex Court in various judgments, the latest one on the point being in case of *Sree Anandhakumar Mills Ltd. Vs. Indian Overeas Bank and others, Civil Appeal Nos.7214-7216 of 2012, decided on 03.05.2018*, wherein in para 1 after discussing the facts, it was held in para 4, as under:-

> "1. The appellant herein seeks to challenge the order of the High Court of Madras by which the suit filed by the second respondent - Nandini has been held to be maintainable in law, notwithstanding the provisions of

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Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"). Accordingly, the injunction granted by the learned trial Court was held to be justified and the sale transaction that had taken place in favour of the appellant (during the period when the injunction order was stayed by the High Court) has been invalidated."

"4. The matter need not engage the Court in any great detail as in view of the law laid down by this Court in *Jagdish Singh* vs. *Heeralal* it would clear and evident that the suit filed by the second respondent (i.e. O.S. No.106 of 2009) is not maintainable. In *Jagdish Singh* (supra) this Court after an elaborate consideration of the provisions of the SARFAESI Act, particularly, Section 2 (zf), 2(zc), 13(1), 17, 18 and 34, took the view, on almost similar facts, that a suit for partition would not be maintainable in a situation where proceedings under the SARFAESI Act had been initiated. It was also held that the remedy of any person aggrieved by the initiation of proceedings under the SARFAESI Act lies under Section 17 which provides for an efficacious and adequate remedy to a party aggrieved."

Admittedly, on 06.09.2018 the petitioner/plaintiff had filed an application under Order 1 Rule 10 CPC for impleading Bank as defendant No.2 in the suit after notice of publication appeared in the local newspaper on 30.10.2018. The said application was duly allowed and the bank was impleaded as one of the parties. Therefore, he cannot take shelter behind the suit for permanent injunction admittedly filed as a tenant of defendant No.1, whose property stood mortgaged to the secured creditor defendant No.2-Bank. The threat of dispossession, if at all, is from defendant No.2, who

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have already approached the Debt Recovery Tribunal and initiated proceedings under the SARFAESI Act. Thus, the remedy, if at all, is available to the petitioner only under Section 17 of the SARFAESI Act.

In view of the above, no ground for interference is called for.

It may be clarified that Section 7(i) seems to have been wrongly recorded in the impugned order, whereas, it should be Section 17 (i) of the SARFAESI Act.

Dismissed accordingly.

(NIRMALJIT KAUR)
JUDGE

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Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No

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