IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4710-2012(O&M)
Date of decision:-22.7.2019

Punjab Financial Corporation

...Appellant

Versus

Aman Industries and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Ms.Anuradha, Advocate for
Mr.Rahul Vats, Advocate
for the appellant.

Mr.Raj Kumar, Advocate
for respondent No.3.

Mr.Sandeep Bansal, Advocate
for respondent No.4.

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H.S. MADAAN, J.

In nutshell, facts of the case care that Punjab Financial Corporation Ltd., Chandigarh (for short – PFC) had brought a suit against Aman Industries, Hoshiarpur through sole Proprietor Sh.Tarlochan Singh as well as Tarlochan Singh and Bari Doab Bank Ltd. Hoshiarpur through its Branch Manager besides Pritpal Singh seeking a declaration that the plaintiff is mortgagee of the property in dispute measuring 15 marlas detailed in head-note of the plaint, on the basis of mortgage-deed dated

22.6.1982 executed by defendant No.2 – Tarlochan Singh and another mortgage deed in favour of defendant No.3 – Bari Doab Bank Ltd. in respect of the suit land is a result of fraud, misrepresentation, illegal, null and void.

As per the version of the plaintiff, on an application moved by defendant No.1, the plaintiff – corporation sanctioned and agreed to advance a loan of Rs.1,43,000/- to it on the terms and conditions mentioned in the mortgage deed; that out of the sanctioned amount, a sum of Rs.1,22,000/- was advanced and paid to the defendant – loanee on different dates in the form of bank drafts, however, remaining unavailed loan of Rs.21,200/- was cancelled; that in consideration of the plaintiff having advanced this loan amount, defendant No.1 – loanee had mortgaged the property in dispute in favour of the plaintiff vide mortgage deed dated 22.6.1982; that the plaintiff being mortgagee of the property in dispute has got every right or title over the same; that the defendant – loanee did not adhere to the repayment schedule and committed defaults in payment of instalments as agreed upon between the parties; that the plaintiff filed a suit for recovery under Section 31 of the State Financial Corporation Act, 1951, which was decreed on 1.12.1988; that the plaintiff had filed an execution petition against defendants No.1 and 2 but a report was received that properties of Aman industries, Hoshiarpur had already been sold for Rs.6.25 lacs on 8.1.2000 through the Court auction in case of "Bari Doab Bank Versus M/s Modern Electricals" as per order of Chief Judicial Magistrate, Hoshiarpur in Execution No.51 dated 1.8.1993; that the plaintiff came to know about that fact in the month of February, 2002.

According to the case of the plaintiff since the fixed assets of M/s Aman Industries stood mortgaged with the plaintiff and no further mortgage had been allowed by the plaintiff in favour of any third person, as such the mortgage deed, if any, in favour of defendant No.3 executed by defendant No.2 is a result of fraud, misrepresentation, illegal, null and void and as such liable to be cancelled and the same is not binding upon rights of the plaintiff; that an amount of Rs.18,15,133/- was due to the plaintiff from defendants No.1 and 2 at the time of filing of the suit, which the latter did not pay, giving rise to a cause of action to the plaintiff to bring the suit.

On notice, defendants No.3 and 4 had appeared, whereas defendants No.1 and 2 did not put in appearance despite due service and as such were proceeded against ex parte.

In the written statement filed by defendant No.3 various preliminary objections were taken and on merits while denying the assertions in the plaint, it was contended that erstwhile Bari Doab Bank Ltd. had later on merged with Oriental Bank of Commerce with all the assets and liabilities and it had filed a suit for recovery of Rs.50,394.82 against Modern Electrical, Hoshiarpur; that the said suit was decreed and in the execution proceedings, the property belonging to Tarlochan Singh situated at Tagore Nagar, Hoshiarpur was sold as per orders of the Court and no fraud was committed with the plaintiff. In the end, such defendant prayed for dismissal of the suit.

In the written statement submitted on behalf of defendant No.4, it has also raked up various legal objections contending that he is a bonafide purchaser and as such protected under Section 41 of Transfer of

Property Act; that plaintiff and defendants No.1 to 3 in connivance with each other were playing fraud with the Court and the answering defendant and the suit was time barred. On merits, the material assertions in the plaint were controverted contending that the plaintiff was in knowledge of auction and the suit was filed belatedly, as such was time barred.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to declaration as prayed for? OPP.
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.
3. Whether the suit is not maintainable? OPP.
4. Whether the suit is not within time? OPD.
5. Whether the suit is bad for proper Court fee? OPD.
6. Whether the official through whom present suit is filed has no locus standi to file the suit? OPD.
7. Whether the defendant No.4 is bonafide purchaser? OPD.
8. Relief.

In order to prove its case, the plaintiff examined PW1 Ms.Urmila Devi, PW2 Sh.AS Dhanoa.

On the other hand, the defendants examined DW1 Sh.Ashok Kumar and DW2 Sh.Pritpal Singh.

After hearing learned counsel for the parties, the trial Court dismissed the suit of the plaintiff. This was so done vide judgment and decree dated 23.5.2009.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Hoshiarpur which was assigned to Additional District Judge, Hoshiarpur, who vide judgment and decree dated 15.2.2012 dismissed the same.

Dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside.

Notice of the appeal was issued to the respondents. Respondents No.3 and 4 have appeared through counsel, whereas respondents No.1 and 2 were proceeded against ex-parte.

I have heard learned counsel for the parties besides going through the record and I find that the appeal lacks merit and is doomed for dismissal.

The trial Court on analysis of the evidence and in light of the factual and legal position has come to the conclusion that there was no reference of the mortgage by the defendant No.1 and 2 in favour of the plaintiff in the revenue record, as such defendant No.3 bank could not be faulted for a bonafide belief that the property was not subject matter of any earlier encumbrance and further plaintiff has been unable to prove any fault on the part of such defendant No.3 bank by bringing enough cogent and convincing evidence. The auction had been conducted in pursuance of order passed by the Court and the same could be got set aside by initiating proper proceedings in that regard. Further, the dimensions of the property in plaint do not tally with the boundaries as mentioned in the judgment and decree, as such identity of the property is also in dispute, therefore the declaration sought by the plaintiff could not be granted since that would amount to setting aside the judgment and decree by the Court and sale conducted in pursuance thereof. Defendant No.4 was found to be bonafide purchaser for consideration. These findings were affirmed by the First Appellate Court.

No substantial question of law arises in this appeal.

I do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below. There is no merit in the present appeal.

The appeal stands dismissed accordingly.

22.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No