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

Sr. No.115

CR No.6484 of 2019
Date of decision: 16.10.2019

Braj Bushan Chaudhary ....Petitioner

versus

Chandra Bushan Chaudhary and another ....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Manoj Kumar Sharma, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral)

The present petition has been filed to challenge therein order dated 21.08.2019 passed by the Civil Judge (Junior Division), Sohna (for short – the Trial Court) through which an application filed by respondent No.2 under Order 1 Rule 10 CPC has been allowed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner filed a suit seeking therein to be declared owner in possession to the extent of half share of 7 kanals 11 marlas of land detailed and described in para no.3 of his plaint (for short – the suit property). Relief for permanent injunction to restrain respondent No.1/defendant from dispossessing the petitioner from the suit property in any manner was also sought. When the petitioner's suit was at the stage of plaintiff's evidence, an application was preferred by respondent No.2-Bank of India (for short – the Bank) under Order 1 Rule 10 CPC seeking therein to be impleaded as a defendant in the petitioner's suit.

Such application had been filed on the ground that on 22.11.2013, respondent No.1, who is petitioner's real brother, alongwith others, had been granted a loan of Rs.25 lakhs. Respondent No.1 was a guarantor for repayment of such loan and had also mortgaged his house and property measuring 75 sq. yds. which fell within the suit property. The loan was not repaid. Thereafter, in the year 2015, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 (for short the Act) were initiated by the Bank. Initially, notice under Section 13(2) of the Act was issued to which the Bank received no response. Thereafter, possession notice under Section 13(4) of the Act was issued against respondent No.1. After the expiry of 60 days from the date of notice of possession, the Bank moved an application for taking physical possession of the mortgaged property and on 23.05.2017 orders in favour of the Bank were passed by the District Magistrate, Gurugram. Thereafter, a Receiver was appointed for delivering physical possession of the mortgaged property to the Bank. It was at that time that respondent No.1 got issued a notice through his counsel to the Bank informing the Bank about the pendency of the present suit. In these circumstances, an application was filed by the Bank under Order 1 Rule 10 CPC seeking to be impleaded as a party in the petitioner's suit. Such application has been allowed by the Trial Court through the order under challenge in the present proceedings.

Learned counsel for the petitioner has been heard.

The petitioner and respondent No.1 are real brothers. As per the record, respondent No.1 alongwith others, had taken a loan of Rs.25 lakhs from the Bank which was not repaid leading to initiation of proceedings by the Bank under the Act. On the initiation of such proceedings, the petitioner filed the instant suit seeking therein to be declared half owner of the suit property which contained the property mortgaged by his brother-respondent No.1 with respondent No.2-Bank. In such suit, the petitioner also prayed for stay of his dispossession. Prima facie, the petitioner's suit was collusive in nature and had apparently been filed to prevent respondent No.2-Bank from proceeding further with the proceedings initiated by them under the Act to recover the unpaid loan by the petitioner's brother-respondent No.1.

In view of the above facts, no error is found in the impugned order permitting the impleadment of respondent No.2-Bank in the petitioner's suit especially when the petitioner had filed the instant suit after respondent No.2-Bank had initiated proceedings under the Act against respondent No.1 for taking possession of a part of the suit property which respondent No.1 had mortgaged with the respondent No.2-Bank at the time of taking loan which he did not repay and that the proceedings in the petitioner's suit were being used as a defence by respondent No.1 against the recovery proceedings sought to be taken against him by the Bank.

Dismissed.

(DEEPAK SIBAL)
JUDGE

October 16, 2019
Jyoti 1

Whether speaking/reasoned Yes/No
Whether reportable Yes/No