# In the High Court of Punjab and Haryana at Chandigarh

**RSA-9835 of 2018(O&M)**
**Date of Decision:5.2.2019**

**Kiranjit Singh Bawa**

**---Appellant**

**vs.**

**State Bank of India and another**

**---Respondents**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

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**Present:** Mr. Rajiv Kataria, Advocate
for the appellant

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**<u>Rekha Mittal, J.</u>**

The present appeal directs challenge against orders dated 21.5.2018 passed by the Civil Judge (Senior Division), Kapurthala (hereinafter referred to as “the trial court”) and dated 3.10.2018 passed by the Additional District Judge, Kapurthala whereby application under Order 7 Rule 11 of the Code of Civil Procedure (in short “the Code”) filed by respondent No. 1 for rejection of plaint, was allowed.

Counsel for the appellant would argue that the appellant with his co-plaintiff Sonia Bawa, his wife, filed suit for permanent injunction restraining the respondent-defendant-State Bank of India (hereinafter referred to as “the bank”) from taking forcible possession of property bearing No. 1, Palace Road, Kapurthala owned by plaintiff-appellant which was mortgaged with the respondent-bank for obtaining loan by M/s Ikaum

Impex, a partnership concern of Sukhwinder Singh and Sonia Bawa. It is further argued that in the aforesaid firm, Sonia Bawa was partner to the extent of 80% and Sukhwinder Singh to the remaining 20% share. It is further argued that in view of allegations raised in para 4 of the plaint that Sukhwinder Singh in connivance with bank officials played fraud with the plaintiffs along with the fact that the plaintiffs lodged FIR No. 147 dated 24.5.2014 under Sections 420, 406, 467, 468, 471,120-B of the Indian Penal Code at Police Station, Kapurthala City initially against Sukhwinder Singh, Amarjit Kaur, Karnail Singh, Paramjit Singh and Gurwinder Singh Bajwa in which later the name of Sonal Gupta, Manager of the bank has also been added would prima facie reveal that there are allegations of fraud and forgery involved in the transaction making outstanding liability of the aforesaid firm to the extent of more than Rs. 6-7 crores, therefore, it is only within the purview of civil court to determine rights of the parties, thus, jurisdiction of the civil court is not barred under Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short “the Act”). Counsel would further apprise the court that on due investigation of aforesaid FIR, challan has been presented in the court and Sonal Gupta, Manager of the bank has also been arrayed as one of the accused in the case. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Mardia Chemicals Limited etc. vs. Union of India and others etc.** alongwith connected case **2004(2) RCR (Civil) 665** and **Nahar Industrial Enterprises Limited vs. Hong Long & Shanghai Banking Corporation along with connected cases 2011(7) RCR (Civil) 95.** Further reference has been made to judgments of this Court **Jammu and Kashmir Bank vs. Jai Lakshmi Dravid 2006(3) RCR (Civil) 835, Punjab National Bank vs. Ram Kishan 2014(3) RCR (Civil) 115, Union Bank of India and another vs. Om Parkash Khurana Civil Revision No. 9060 of 2017 decided on 24.5.2018, Udaibir Singh vs. Punjab National Bank and others Civil Revision No. 4598 of 2016 decided on 13.12.2017** and judgment of the Delhi High Court **Ritu Gupta vs. Usha Dhand and others 2013(46) RCR (Civil) 490** wherein the courts have relied upon judgment of Hon'ble the Supreme Court **Mardia Chemicals Limited etc.'s case (supra).**

I have heard counsel for the appellant, perused the paper book particularly the orders impugned and various annexures appended with the appeal.

Before adverting to the submissions made by counsel for the appellant, it is appropriate to recapitulate that while deciding an application for rejection of plaint under Order 7 Rule 11 of the Code, only averments made in the plaint and documents referred to therein can be taken into consideration for deciding, if the plaint is liable to be rejected on one or more than one ground incorporated in Clauses (a) to (f) of Rule 11 of Order 7 of the Code.

The appellant and his co-plaintiff have not disputed that property in question i.e. Property No. 1, Palace Road, Kapurthala was mortgaged with the respondent-bank for securing loan by firm M/s Ikaum Impex in which Sonia Bawa has a major share holding to the extent of 80%. A relevant extract from para 4, basis of the suit, for grant of injunction is reproduced hereunder for ready reference:-

"That in March, 2014, the plaintiffs were telephonically called and informed by the defendant that an amount of Rs. 6-7 crores have been devolved in account against buyer credit. The plaintiffs were shocked to find out that several transactions against letter of credit terms were modified and were given acceptance by Sukhwinder Singh to the contrary to the mandate in partnership deed. It is pertinent to mention here that in the partnership deed it has been categorically stated at point No. 16 (vii) that no individual partner of the firm shall without the consent in writing of the other partners be entitled to operate bank account on behalf of the firm in his own name. The plaintiff No. 2 never gave any consent regarding the letter of consent. The plaintiffs took this issue with Sukhwinder Singh and he admitted to having diverted/siphoned payments through camouflage operandi of routing by other accounts which was in the knowledge of the bank officials and all this was done by Sukhwinder Singh in connivance with the bank officials. Thus, Sukhwinder Singh in connivance with bank officials played a fraud with the plaintiff."

Para No. 5 makes reference to FIR No. 147 dated 24.5.2014, registered at Police Station, City Kapurthala against Sukhwinder Singh and others. There is also reference to Sonal Gupta, Manager of the bank being added as an accused in the aforesaid FIR on the basis of enquiry.

On due consideration of averments contained in para 4, extracted hereinbefore, it does not give clear picture as to what the plaintiffs exactly wanted to convey from the allegations raised therein. Nothing has been mentioned as to what were the terms and conditions of letter of credit agreed between the bank and loanee which were subsequently modified/altered.

Hon'ble the Supreme Court in **Mardia Chemicals Limited etc.'s case (supra)**, in para 51 has held, reads thus:-

> "However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe, whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the case of English mortgages."

As has been discussed hereinbefore, material averments raised in para 4 of the plaint do not even prima facie suggest as to how action of the secured creditor is fraudulent which does not require any further probe. On the contrary, if the respondent-bank has allowed modification of the terms and conditions of letter of credit as against any previous agreement between the bank and loanee(s) and further allowed withdrawal of amount on the basis of modified letter of credit, the same can be examined by the Debt Recovery Tribunal where the recovery proceedings are pending. In this view of the matter, I do not find an error much less perversity in the orders impugned whereby application filed by the respondent for rejection of plaint by invoking Section 34 of the Act has been allowed.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

**(Rekha Mittal)**
**Judge**

**5.2.2019**
paramjit

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