IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4919-2018 (O&M)
Date of decision : 20.01.2020

Sunita Prashar

...Petitioner

Versus

Canara Bank and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Namish Sodhi, Advocate for the petitioner.

Mr. K.S. Bhatia, Advocate for respondent Nos.1 to 3.

Mr. Ravish Bansal, Advocate for respondent Nos.5, 6 and 7.

****

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-petitioner is in the revision petition against the order passed by the learned First Appellate Court while accepting the appeal and vacating the ad interim injunction granted against the bank to sell the mortgaged property under the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter to be referred as "the SARFAESI Act").

Once the bank with whom the properties are mortgaged, sent a sale notice, the plaintiff filed the proceedings under Section 17 of the SARFAESI Act, before the Debts Recovery Tribunal, challenging the aforesaid proceedings. The petition filed before the Debts Recovery

Tribunal was dismissed for non-prosecution on 15.12.2016.

The plaintiff, thereafter filed the present suit seeking declaration that the sale notice dated 27.02.2017 issued by the bank fixing the date for holding public auction of the property in order to sell the property, is illegal, null and void. The plaintiff also prayed that during the pendency of the suit, the defendant-bank be restrained from initiating any coercive action including sale etc. The Bank defended the suit and pleaded that the Civil Court has no jurisdiction to entertain such suit in view of bar contained in Section 34 of the SARFAESI Act. The Bank also pleaded that out of 4 properties, which are intended to be sold for recovery of debt, two are owned by borrower company, whereas one belongs to a partnership firm where the plaintiff claims to be the partner and fourth one is the residential flat which belongs to the plaintiff but the same was mortgaged by her husband on the basis of the power of attorney.

The plaintiff claims fraud on the ground that she was not in India when the properties were mortgaged. The plaintiff also claims that her signature in the bank record has been forged and the FIR against the bank official has been registered.

Learned First Appellate Court, on appreciation of facts available on the record, found that the bank cannot be restrained from recovery of the amount due against defendant No.4-company. Defendant No.4-company had borrowed an amount of ₹9,00,00,000/-.

Keeping in view the facts of the case, more particularly the bar to the jurisdiction of the Civil Court to entertain civil suit, the plaintiff already having filed a petition before the Debts Recovery Tribunal as also the fact that out of 4 properties intended to be sold through public auction, two are owned by the company, one by the partnership firm and one flat owned by the plaintiff was mortgaged by her husband on the basis of the registered power of attorney in his favour, this Court does not find any good ground to interfere.

Accordingly, the present petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

20.01.2020 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**