

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4139-2019(O&M)

Date of decision: 13.02.2020

State Bank of India

.....Petitioner

Versus

Rohit Kumar Garg and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Gaurav Goel, Advocate for the petitioner
Mr. Siddharth Gupta, Advocate for respondents no.1 and 2
Mr. Amil Kumar Saini, Advocate for respondent no.4

ANIL KSHETARPAL, J. (ORAL)

State Bank of India has filed the present revision petition against order passed by Civil Judge, Sr. Division Bathinda dismissing three applications filed under Order 7 Rule 11 CPC. Main objection of the Bank is to the jurisdiction of the Civil Court in view of bar contained in Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 (hereinafter referred to as the '2002 Act '). It is undisputed that plaintiffs-respondents have already filed petition before Debt Recovery Tribunal under Section 17 of the 2002 Act which was ordered to be dismissed on 17.11.2018. The parties before the Debt Recovery Tribunal are extracted as under:-

- “1. Sh. Rohit Kumar Garg, Aged 30 years,
S/o Sh. Darshan Kumar S/o Sh. Shivji Ram,
R/o H.No.2040/1, Birla Mill Colony, Bathinda
2. Sh.Darshan Kumar Garg, HUF,
Through its Karta
Sh. Darshan Kumar Garg S/o Sh. Shivji Ram,

R/o H.No.2040/1, Birla Mill Colony, Bathinda
.....Applicant

Vs.

1. The Authorized Officer,
State Bank of Patiala
SARC Region-I, Bathinda (Punjab)
2. Sh. Manoj Kumar Nevatia S/o Sh. Murli Dhar Nevatia
E-5, Focal Point, Indl. Area, Dabwali Road,
Bathinda (Punjab)”

Plaintiffs filed the present suit for recovery of possession and for grant of monetary injunction and other reliefs. The relief sought by the plaintiffs as noted in the caption of the plaint is extracted as under:-

“Amended suit for recovery of possession of the House measuring 250 sq. yards situated in Street No.3, Green Avenue, Bathinda, abounded as under:-

East: 30 ft. Street

West: 30 ft. Plot of Mukhtiar Singh

North : 75 ft. Plot of Pargat Singh

South: 75 ft. Plot of Smt. Kamal Kanta

comprised in khasra No. 2399 min (0-10)

to the extent of 1/10 share i.e 0 Bigha 1 Biswa, Khewat/Khatauni No.586/3111, 3112 and Khasra No. 2399 min(0-10) to the extent of 1/10 share i.e 0 Bigha 1 Biswa, Khewat/Khatauni no.586/3111, 3112 and khasra no. 2399 min (0-4), khewat/Khatauni no.586/3111, 3112, Total 1 Bigha 5 Biswas, situated in Patti Mehna, within the revenue limits of Bathinda as per jamabandi for the year 2007-08, as sold by the defendant No.1 to plaintiffs vide registered sale deed No.4241 dated 5.9.2014;

AND

Suit for mandatory injunction directing the defendant No.1 to clear/pay the loan amount taken by him from State Bank of Patiala, Bathinda and get the above said suit house redeemed by in the alternative suit for mandatory injunction directing defendant No.2 to pay the balance sale consideration amount obtained by it by selling the suit house to defendant No.3 in an open auction after deducting the loan amount raised by defendant No. 1 against the suit house, to plaintiffs along with interest @ 18% p.a from the date of deposit of sale consideration amount by defendant No. 3 with defendant No. 2 to till the date of payment of the same to plaintiffs;

AND

Suit for permanent injunction restraining the defendant No.2 from paying the amount of balance sale consideration amount of the suit house after deducting the outstanding loan amount against the suit house, in the loan account of M/s Thermotech Engineers Pvt. Ltd., E-5, Focal Point, Dabwali Road, Bathinda, maintained by making the payment of outstanding loan amount over the same;

AND

Suit for declaration to the effect that the sale certificate issued by defendant No.2 in favour of defendant No.3 regarding the above said suit house measuring 250 sq.yards, situated in Street No. 3, Green Avenue, Bathinda, fully described above, is illegal, null and void, result of connivance of defendants inter-se and is not binding upon the rights of the plaintiffs and is liable to be ignored/set aside;

AND

Suit for mandatory injunction directing defendants No.2 & 3 to hand over the possession of

the above said suit house to plaintiffs after getting the balance amount pending against the suit house on account of loan raised by defendant No.1, deposited from plaintiffs;

AND/OR

it with State Bank of Patiala, SME Branch, Bathinda, which was raised by M/s Thermotech Engineers Pvt. Ltd., from State Bank of Patiala, SME Branch, Bathinda by mortgaging property/ factory, land and building measuring 450 sq. yards in the name of M/s Thermotech Engineers Pvt. Ltd., situated at E-5, Focal Point, Dabwali Road, Bathinda, purchased by it vide registered sale deed No. 5687 dated 4.9.2003, abounded as under:-

North : 90' Anil Kumar
South : 90' Vijay Kumar
East : 45' Street 20' wide
West : 45' Plot No.E-24

AND

Suit for permanent injunction restraining the defendant No. 1 from alienating in any manner i.e by way of sale, gift, lease, mortgage, exchange etc. property measuring 450 sq. yards bearing plot No.E-5, situated at Focal Point, Dabwali Road, Bathinda, abounded as under:-

North : 90' Anil Kumar
South : 90' Vijay Kumar
East : 45' Street 20' wide
West : 45' Plot No. E-24

to any person and also from creating any charge or encumbrance over the same, after getting the same redeemed from State Bank of Patiala, SME Branch, Bathinda in connivance with defendant No.2 who is out to pay the said loan amount out of balance

sale consideration amount received by it by selling the suit house to defendant No.3 after deducting the outstanding loan amount against suit house, to which the plaintiffs are entitled to receive the same.”

In the aforesaid suit parties are as under:-

“1. Rohit Kumar Garg, aged about 30 years, son of Shri Darshan Kumar son of Shri Shivji Ram, resident of House No. 2040/1, Birla Mill Colony, Bathinda

2. Darshan Kumar Garg, HUF, through it's Karta Darshan Kumar Garg, aged about 55 years, son of Shri Shivji Ram son of Shri Kishore Chand, resident of H.No.2040/1, Birla Mill Colony, Bathinda.

..... Plaintiffs

VERSUS

1. Manoj Kumar Nivetia, aged about 45 years, son of Shri Murlidhar Nivetia son of Shri Lakshmi Narain, resident of Street No.3, Green Avenue, Bathinda now resident of House bearing MCB No. Z4/ 04508, Opposite Geeta Bhawan, Harpal Ngar, Bathinda

2. State Bank of Patiala, DAC Branch, Bathinda through it's Branch Manager.

3. Dr. Sumit Bansal, Child Specialist, Street No.3, Green Avenue, Bathinda.

.....Defendants”

The plaintiffs claim that they are bona fide purchasers of the property which was under mortgage and has been sold by the Bank as per procedure prescribed under the 2002 Act.

In the considered view of this Court, whatever relief the plaintiffs are praying for in the present suit can very well be granted by

the Debt Recovery Tribunal. Still further once the plaintiffs have already chosen to file proceedings before the Debt Recovery Tribunal under the 2002 Act, parallel proceedings in the Civil Court shall not be justified. Undisputedly, appeal filed by the plaintiffs against dismissal of securitization appeal is pending before the Debt Recovery Tribunal. Hence, present petition is allowed. Order dated 12.2.2018 is set aside. The plaint shall stand rejected.

13.02.2020
rekha
Whether speaking/reasoned
Whether Reportable

(ANIL KSHETARPAL)
JUDGE
Yes / No
Yes / No