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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.937 of 2021
DATE OF DECISION : 27.04.2021

Harvinder Singh …..Petitioner

versus

ICICI Bank Limited .....Respondent

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. P.K. Ganga, Advocate for the petitioner.

<u>ALKA SARIN, J.</u>:

Heard through video conferencing.

The present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the symbolic possession notice dated 05.01.2017 (Annexure P-1) and challenging the order dated 12.09.2017 (Annexure P-5) passed by the Trial Court and order dated 11.12.2018 (Annexure P-7) passed by the Appellate Court whereby the suit of the plaintiff-petitioner has been rejected under Order 7 Rule 11 CPC.

The facts relevant to the present *lis* are that in 2014 the plaintiff-petitioner had taken a loan of ₹15,60,000/- from the defendant-respondent by mortgaging the property in dispute. The plaintiff-petitioner defaulted in the repayment of the loan amount. On 30.09.2015 the defendant-respondent took recourse to Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'Sarfaesi Act') and issued a notice to the plaintiff-petitioner. Since the defendant-respondent did not receive any payment, it exercised powers under Section 13(4) of the Sarfaesi Act and Rule 8 of the Security Interest (Enforcement) Rules, 2002 and issued the impugned notice dated 05.01.2017 (Annexure P-1) taking symbolic possession of the property in dispute.

The plaintiff-petitioner filed a civil suit (Annexure P-2) for declaration challenging the notice dated 05.01.2017 (Annexure P-1) alleging that it was without authority, without notice to the plaintiff-petitioner and without following the procedure prescribed in law and also seeking a consequential relief of permanent injunction restraining the defendant-respondent from taking possession of the property in dispute and alienating it in any manner. The defendant-respondent put in appearance and filed an application (Annexure P-3) under Order 7 Rule 11 CPC for rejection of the plaint on the ground that jurisdiction of the civil court was barred under Section 34 of the Sarfaesi Act. The plaintiff-petitioner filed a reply (Annexure P-4) to the said application and contested the same. Vide order dated 12.09.2017 (Annexure P-5) the Trial Court allowed the application Annexure P-3 and rejected the plaint under Order 7 Rule 11 CPC. The plaintiff-petitioner filed an appeal (Annexure P-6) against the order passed by the Trial Court. Vide order dated 11.12.2018 (Annexure P-7) the Appellate Court dismissed the appeal of the plaintiff-petitioner. Hence, the present civil revision petition.

Learned counsel for the plaintiff-petitioner has contended that the impugned orders Annexures P-5 and P-7 are illegal and arbitrary. According to him the civil suit was maintainable since the plaintiff-petitioner has been cheated by the defendant-respondent and a fraud has been played upon him as the agreed loan amount was not sanctioned/released in his favour. It has been argued that issuance of the impugned notice (Annexure P-1) without approaching the Debts Recovery Tribunal is bad.

I have heard learned counsel for the plaintiff-petitioner. Section 34 of the Sarfaesi Act bars the jurisdiction of the civil court in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. The said Section 34 of the Sarfaesi Act reads as under :

> *"34. Civil court not to have jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)".*

In **'Mardia Chemicals & Ors. vs. Union of India & Ors.'** [(2004) 4 SCC 311] the Supreme Court inter-alia held that *"on measures having been taken under sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debts Recovery Tribunal"*. Thereafter, in the matter of **'M/s Hindon Forge Pvt. Ltd. & Anr. vs. State of Uttar Pradesh & Anr.'** [(2019) 2 SCC 198] the Apex Court held that *"the borrower/debtor can approach the Debts Recovery Tribunal under Section 17 of the Act at the stage of the possession notice referred to in Rules 8(1) and 8(2) of the 2002 Rules"*.

The law is, therefore, well settled and the civil suit of the plaintiff-petitioner was barred by Section 34 of the Sarfaesi Act and he has the remedy available to him under the Sarfaesi Act itself. There is, thus, no error or illegality in the impugned orders passed by the Courts below.

The counsel for the plaintiff-petitioner was also asked to explain the inordinate delay in approaching this Court. The impugned order Annexure P-5 was passed by the Trial Court on 12.09.2017 while the impugned order Annexure P-7 was passed by the Appellate Court on 11.12.2018 whereas the present civil revision petition was filed on 25.02.2021. The counsel for the petitioner could not give any justifiable reason for the inordinate delay on the part of the plaintiff-petitioner in approaching this Court except the Covid-19 Pandemic. However, that started spreading only in beginning of 2020. The present civil revision petition is thus also liable to be rejected on the ground of delay and laches.

In view of the above, this Court finds no error in the exercise of jurisdiction and discretion by the Courts below while dealing with the application filed by the defendant-respondent under Order 7 Rule 11 CPC. The present civil revision petition is devoid of any merit and is dismissed.

Dismissed.

(ALKA SARIN)
JUDGE

27.04.2021
Yogesh Sharma

NOTE:
Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO