

Civil Revision No.1754 of 2020 (O&M)

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

**Civil Revision No.1754 of 2020 (O&M)
DATE OF DECISION : August 11, 2021**

UCO BANK

...PETITIONER

VERSUS

RAKESH BHANOT AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. K.P.S. Dhillon, Advocate, for the petitioner.

Mr. Rishabh Gupta, Advocate, for the respondents.

SUDHIR MITTAL, J.

The petitioner-Bank is the defendant in the suit. It filed an application under Order 7 Rule 11 CPC for rejection of the plaint which was allowed by the Civil Judge (Junior Division) Phagwara vide order dated 15.10.2018 (Annexure P-11). The plaintiffs preferred an appeal against the said order and the same was allowed by learned Additional District Judge, Kapurthala vide order dated 29.11.2019 (Annexure P-1). This order is under challenge in the revision petition.

2. Certain relevant facts need to be elucidated. The plaintiffs wanted to construct a hotel in their own property. They approached Punjab & Sind Bank, Phagwara Branch for a term loan of Rs.3.5 crores and the same was sanctioned vide letter dated 17.09.2010. In the year 2011, the plaintiffs entered into a collaboration agreement with Clarks Inn Group of Hotels and this led to plans for construction of a 3 Star hotel. This required

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additional funds and the plaintiffs contacted the petitioner-Bank for a loan of Rs.6.5 crores as the total projected requirement of funds was Rs.10 crores. Vide letter dated 05.08.2013, the loan was sanctioned. The sanction was based upon the willingness of Punjab & Sind Bank to enter into a consortium arrangement under which the security offered by the plaintiffs was to be shared with the petitioner-Bank. On 19.08.2013, first instalment of Rs.2.5 crores was released followed by release of second instalment of Rs.2 crores on 27.09.2013. The consortium agreement did not finally fructify which resulted into a loan of Rs.4.5 crores having been advanced without any security. It has been alleged that a sum of Rs.2 crores was transferred into the account of the plaintiffs on 31.12.2013 to enable them to clear the loan of Punjab & Sind Bank and get the title deeds released, which could then be deposited with the petitioner-Bank. Transfer of this amount was allegedly made from the account of a third party and without his knowledge leading to registration of FIR No.348 dated 06.10.2014. The loan of Rs.3.5 crores given by the Punjab & Sind Bank was in fact cleared and after getting the security released, it was deposited with the petitioner-Bank. Meanwhile, the petitioner-Bank had issued notice dated 24.09.2014 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the Securitisation Act). This was followed by notice dated 08.01.2015 under Section 13(4) of the said Act. Consequently, suit for declaration that notice dated 08.01.2015 was illegal and unlawful and further declaration that defendants had no right to take possession of the property offered to secure the loan with consequential relief of injunction was filed on 08.06.2015.

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3. It is thus, evident that the suit has been filed challenging notice issued under Section 13(4) of the Securitisation Act whereafter, symbolic possession has admittedly been taken. The major ground cited in support of the suit is fraud and the relevant pleading in this regard contained in paragraph 5 (iv) of the plaint is reproduced below:

“(iv) That the defendant has played fraud upon the plaintiffs as given in the above Paras and as the defendant Bank is answerable for payment of Rs.2 crores to M/s Gurdas Agro and Rs.50 lacs raised from another party for which action has been initiated against the officials of the defendant Bank, as such, defendant Bank is interested in selling Hotel property in question in connivance with the bidders M/s Gurdas Agro at lower value of Rs.10 crores, so that secretly under the grab of sale, the amount raised from M/s Gurdas Agro and other party are settled, due to which the Bank has not released the other credit to the plaintiffs. Moreover, the restructuring proposal given by the plaintiffs vide their letter dated 29.09.2014 was rejected without assigning any valid reason on 18.11.2014 copy of which is attached herewith. That is why, the defendant-Bank is neither agreeable to restructure the loan, nor releasing the final installment of Rs.2.00 crores nor ready to accept the installments for the outstanding loan of Rs.4.50 crores, despite the fact that the Hotel Project is running in good condition”.

4. In the application under Order 7 Rule 11 CPC, Section 34 of the Securitisation Act has been relied upon for rejection of the plaint. Section 34 is as follows:

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“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).”

5. This provision makes it clear that jurisdiction of the Civil Court is expressly barred where the matter is within the jurisdiction of a Debts Recovery Tribunal. Section 17 of the Securitisation Act provides that measures taken by the secured creditor under Section 13(4) can be called in question before the Debts Recovery Tribunal. Thus, jurisdiction of the Civil Court stands expressly barred.

6. The learned Additional District Judge, Kapurthala has passed the impugned order by returning a finding that the conduct of the petitioner-Bank was fraudulent and in terms of the observation of the Supreme Court in *Mardia Chemicals Ltd. etc. vs. Union of India, 2004(4) SCC 311 and Nahar Industrial Enterprises Ltd. vs. Hong Kond & Shanghai Banking Corporation, (2009) 8 SCC 646*, the Civil Court would still have jurisdiction where a fraud had been played. This is also the argument raised by learned counsel for the petitioner.

7 For deciding this question, the plaint needs to be read. As mentioned hereinabove, the allegation of fraud has been levelled on the basis that a sum of Rs.2 crores was transferred into the account of the

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plaintiffs on 31.12.2013 by diverting the same from the account of a third party. This led to the registration of an FIR not only against the bank officials but against the plaintiffs as well. Thus, they have been put to great inconvenience and have been unable to serve the debt of the petitioner-Bank. There is no dispute regarding receipt of Rs.4.5 crores and deposit of title deeds after getting the same released from the Punjab & Sind Bank. Receipt of Rs.2 crores on 31.12.2013 is also not disputed. Thus, there is no fraud so far as disbursement of loan amount and deposit of title deeds is concerned. To bring the suit under the exception carved out by ***Mardia Chemicals (supra) and Nahar Industrial (supra)***, the plaintiffs were required to plead conduct which would dis-entitle the lending institution from taking steps under the Securitisation Act. One example could be an allegation that no loan was in fact taken and that the documents relied upon are forged. This is an extreme situation and may never arise. Another situation which can be visualized, would be one where it is alleged that the security offered did not cover the amount sought to be recovered.

8. Reliance by counsel for the respondents upon ***Punjab National Bank vs. Ram Kishan, 2014(30) RCR (Civil) 115, Rakesh Goel and another vs. Sher Wood Officers Society and others, 2018(2) PLR 607*** and ***Ritu Gupta and another vs. Usha Dhand and others, 2013(46) RCR (Civil) 490*** is misconceived and misplaced. In the case of ***Ram Kishan (supra)***, the suit was held to be maintainable as the allegation in the plaint was that documents of guarantee had been forged and the plaintiff had never stood guarantee for the amount sought to be recovered. The judgment is thus, distinguishable. In ***Rakesh Goel (supra)***, the facts were that the plaintiffs had never mortgaged their property. The said property had been purchased

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by them from a society who had mortgaged the same after transfer in favour of the plaintiffs. This is not the situation in the instant case. **Ritu Gupta (supra)** is also distinguishable as therein, the claim made in the plaint was that the title deeds submitted as security were in fact forged documents because the plaintiffs were the actual holders thereof.

9. Counsel for the petitioner-Bank has relied upon **Authorised Officer, State Bank of India vs. M/s Allwyn Alloys Pvt. Ltd. and others, 2018(3) RCR (Civil) 10** wherein, it has been held as follows:

“6. After having considered the rival submissions of the parties, we have no hesitation in acceding to the argument urged on behalf of the Bank that the mandate of Section 13 and, in particular, Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, “the 2002 Act”), clearly bars filing of a civil suit. For, no civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under this Act to determine and no injunction can be granted by any Court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. The fact that the stated flat is the subject matter of a registered sale deed executed by the respondent Nos. 5 and 6 (writ petitioners) in favour of respondent Nos. 2 to 4 and which sale deed has been deposited with the Bank along with the share certificate and other documents for creating an equitable mortgage and

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the Bank has initiated action in that behalf under the 2002 Act, is indisputable. If so, the question of permitting the respondent Nos.5 and 6 (writ petitioners) to approach any other forum for adjudication of issues raised by them concerning the right, title and interest in relation to the said property, cannot be countenanced. The High Court has not analysed the efficacy of the concurrent finding of fact recorded by the DRT and DRAT but opined that the same involved factual issues warranting production of evidence and a full-fledged trial. The approach of the High Court as already noted hitherto is completely fallacious and untenable in law.”

10. Thus, the finding is that where it cannot be disputed that an action under the Securitisation Act is based upon creation of an equitable mortgage jurisdiction of the Civil Court is barred. This is also the situation in the present case.

11. For the aforementioned reasons, the revision petition is allowed and impugned order dated 29.11.2019 (Annexure P-1) passed by the Additional District Judge, Kapurthala is set aside. Order dated 15.10.2018 (Annexure P-11) passed by the trial Court is restored.

August 11, 2021
Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes