In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1766 of 2020

Date of Decision: 08.04.2021

Joginder Singh Lather

... Petitioner(s)

Versus

Yes Bank Limited

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. V.K.Sachdeva, Advocate
for the petitioner.

Anil Kshetarpal, J.

The petitioner assails the correctness of the order of learned Civil Judge (Junior Division), Bahadurgarh, passed while rejecting the plaint under Order VII Rule 11 CPC on the ground that the petitioner has already availed the remedy under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"). It is not disputed that the petitioner has already filed an application under Section 17 of the SARFAESI Act on 03.06.2019, which is pending before the Debts Recovery Tribunal, Delhi. Subsequently, the petitioner filed a suit against the bank seeking declaration that certain documents signed by him to create equitable mortgage by deposit of title deeds of the property are illegal and the bank fabricated these documents after obtaining his signatures on blank papers. The bank filed an application under Order VII Rule 11 CPC to reject the plaint in view of the provisions of Section 34 of the SARFAESI Act which debars the Civil Court from entertaining such suits. The application, as noticed above, has been allowed by the Court vide order dated 04.02.2020.

This Court has heard learned counsel for the petitioner and with his able assistance, perused the paper-book.

Learned counsel for the petitioner contends that since the petitioner has alleged fraud, therefore, the jurisdiction of the Civil Court is not barred. He further contends that under Section 9 CPC, the Civil Court has plenary jurisdiction and therefore, in absence of specific bar, the Civil Court would have the jurisdiction to entertain and decide the civil dispute.

This Bench, after having considered the argument, expresses its inability to accept the same. On careful reading of Section 17 of the SARFAESI Act, it is apparent that any person including the borrower, aggrieved by any of the measures, referred to in sub-Section 4 of Section 13 of the SARFAESI Act, taken by the secured creditors, is entitled to make an application to the Debts Recovery Tribunal having jurisdiction in the matter. The question is whether the petitioner, after having filed an application under Section 17 of the SARFAESI Act, can still maintain the suit. On careful reading of Section 34 of the SARFAESI Act, it is apparent that the jurisdiction of the Civil Court is barred to entertain any suit or proceeding in respect of any matter, which the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal is empowered by or under the SARFAESI Act to determine. Thus, before the petitioner succeeds in this revision petition, he is required to establish that the dispute, required to be adjudicated, does not fall within the jurisdiction of the Debts Recovery Tribunal. In absence thereof, the jurisdiction of the Civil Court stands barred. Still further, it is not in dispute that the respondent-Bank has initiated the proceedings under

Section 13 of the SARFAESI Act against which the petitioner has already filed the proceedings before the Debts Recovery Tribunal.

Learned counsel, while drawing the attention of the Court to para 35 to 40 of the plaint, contends that since the petitioner has made allegations that the signatures of the plaintiff were obtained on blank papers, therefore, the jurisdiction of the Civil Court is not barred. Paras 35 to 40 of the plaint are extracted as under:-

> *"35. That the plaintiff categorically submits that the plaintiff never signed and never executed the alleged declaration deed dated 27th July, 2017 in the present form. The defendant bank had obtained signatures of the plaintiff on blank papers which are now being alleged to have been signed and executed by the plaintiff as alleged declaration form alleged to have been signed on behalf of the plaintiff for himself, for and on behalf of Virendra Singh Lather and for and on behalf of M/s PD Memorial Religious & Educational Association. It is surprising that the defendant Bank is claiming to have granted and disbursed the loan even prior to alleged declaration of creation of mortgage in favour of defendant bank. It is also pertinent to mention that till 30.5.2018 and till 21.6.2018, the defendant bank has not made any mention of the alleged mortgage or the alleged declaration dated 27.07.2017 in its respective notices sent under SARFAESI Act, 2002.*
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> *36. That there was no occasion for the plaintiff to sign the alleged declaration form on 27.07.2017 since the original title deeds of the property had been already deposited and received by the defendant bank on 29.11.2016 itself and with that the equitable mortgage had been already created on 29.11.2016 itself for the loans of Rs.10.00 Crores.*
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> *37. That the plaintiff also submits that he did not visit the branch of defendant bank at Bahadurgarh on 27.07.2017 and did not deposit any alleged title documents in respect of land*

the original title deeds of the property had been already deposited and received by the defendant bank on 29.11.2016 itself and with that the equitable mortgage had been already created on 29.11.2016 itself for the loans of Rs.10.00 Crores.

38. That the alleged declaration dated 27.07.2017 is also forged and fabricated documents since it is referring to an alleged power of Attorney. It is submitted that the defendant Bank has also forged and fabricated. Power of Attorney alleged to be executed by Virendra Singh Lather on 27.07.2017 and the defendant Bank has falsely stated that the plaintiff signed the alleged declaration form dated 27.07.2017 on the basis of alleged Power of Attorney also clearly shows that it is also a false and fabricated document. Once, the original Title documents of the property had been already deposited on 29.11.2016, there was no occasion for Virendra Singh Lather to execute any alleged power of attorney authorizing therein the plaintiff to deposit the title deeds for the purpose of other alleged loans which are not even identified.

39. That the alleged Memorandum of Entry alleged to be executed on 28.07.2017 is not signed by the Plaintiff and is a false and forged and fabricated document.

40. That alleged documents , i.e. Declaration form dated 27.07.2017, Memorandum of Entry dated 28.07.2017 and Power of Attorney dated 21.07.2017, which have been shown to be notarized, are totally false and fabricated since the Plaintiff has never visited any Notary Public and has not signed in any register of any Notary Public and the defendant bank has procured false certification of Notary public on the alleged documents".

On careful reading of the pleadings in the aforesaid extracted portion, it is apparent that the plaintiff has alleged that he voluntarily did not sign or execute the declaration dated 27.07.2017; he did not visit the branch of the Bank at Bahadurgarh on 27.07.2017 and did not deposit the alleged document of title. It is further alleged that the memorandum of entry dated 28.07.2017 and the power of attorney dated 21.07.2017 are false and fabricated documents.

Learned counsel for the petitioner has failed to convince the Court that the Debts Recovery Tribunal cannot examine the correctness of these assertions while adjudicating the petition filed under Section 17 of the SARFAESI Act.

In view of the above, no ground is made out to interfere. Hence, the revision petition is dismissed.

(Anil Kshetarpal)
Judge

April 08, 2021
"DK"

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