IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1024 of 2021
Date of decision :27.05.2021

Gurinder Singh ...Petitioner

Versus

Gobind Kaur and others ...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Viren Jain, Advocate
for the petitioner.

Mr. Ferry Sofat, Advocate
for respondents No.1 and 2.

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SUVIR SEHGAL, J.

Instant revision petition has been filed under Article 227 of the Constitution of India challenging order dated 15.01.2021, Annexure P-3, passed by the learned Civil Judge (Junior Division), Ludhiana, whereby application under Order 7 Rule 11 of the Code of Civil Procedure filed by the Punjab National Bank (for short - "the Bank") - respondent No.4 has been allowed and order dated 15.04.2021, Annexure P-4, passed by the learned Additional District Judge, Ludhiana, whereby appeal against the said order has been dismissed.

Facts, leading to the filing of the petition, are that late Tarlochan Singh, father of the plaintiff-petitioner, was allotted plot No.296-D in Model Town Extension, Ludhiana and construction of the ground floor on the plot was raised from the funds withdrawn by the petitioner from his GPF account with the Punjab Agricultural University, where he was employed. Tarlochan Singh expired intestate on 14.12.2007. He was carrying on the business of nuts and bolts under the name and style of M/s Shine Industrial Corporation as its proprietor, which was taken over by his younger son, Harpreet Singh-respondent No.2. The property continued to be in the name of late Tarlochan Singh and in the year 2016, the petitioner discovered that on the basis of a forged Will dated 11.07.2007, which was registered on 19.05.2008, purportedly executed by his deceased father, the residential property was transferred in the name of his mother-respondent No.1. In August, 2019, when he found a notice under Section 13-(2) of the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short – SARFAESI Act) pasted on the gate of his house, he came to know that the property had been mortgaged by respondent No.1 as a collateral security with the Punjab National Bank – (for short "the Bank") at the behest of his brother-respondent No.2. He filed a suit for declaration to the effect that he is owner in possession of ½ share in the property or in the alternative to the extent of ¼th share and that the alleged Will purported to have been executed by his deceased father is forged and fabricated and the mortgage of the residential house is illegal, null and void and ineffective qua his share. Permanent injunction was sought, restraining the Bank from dispossessing the petitioner from the property or from auctioning or putting the same to sale till the determination of the respective shares of the parties. Upon being served, the Bank filed an application under Order 7 Rule 11 CPC, Annexure P-2, which has been allowed by the trial court vide order dated 15.01.2021, Annexure P-3 and appeal there-against has been dismissed vide order Annexure P-4. Both these orders have been impugned in the present revision petition.

Counsel for the petitioner has contended that a specific plea regarding fraud having been committed has been raised in the plaint and the issues arising out of the suit are purely within the exclusive domain of the civil court and, therefore, the bar of jurisdiction of civil court under Section 34 of the SARFAESI Act does not apply. In support of his contentions, he has placed reliance upon the judgments of the Hon'ble Supreme Court in **Mardia Chemicals Limited vs. Union of India and others 2004 (4) SCC 311** and **Nahar Industrial Enterprises Limited vs. Hongkong and Shanghai Banking Corporation 2009 (8) SCC 646**. A reference has also been made by him to the judgments of the Bombay High Court in **Bank of Baroda vs. Gopal Shriram Panda, Law Finder DOC ID#1824684;** Rajasthan High Court in **ICICI Bank vs. Parmod Kumar Garg and another 2018 (1) Bank J. 360;** Calcutta High Court in **Housing Development Finance Corporation Limited vs. Dorjee Dolma Bhutia and others 2015 (45) RCR (Civil) 394** and Guwahati High Court in **Bank of Baroda vs. Ranjan Chetia and others 2014 (64) RCR (Civil) 634**, wherein the Courts have placed reliance upon the judgment of the Hon'ble Supreme Court in Mardia Chemicals Limited (supra).

Mr. Ferry Sofat, Advocate, who has been served with an advance copy of the petition, has appeared on behalf of respondents No.1 and 2 and has contested the petition. He submits that the suit is mala fide as the petitioner was well aware of the transfer of the residential house in favour of respondent No.1 and had given an affidavit to the Bank consenting to the mortgage.

I have considered the arguments raised by the counsel for the parties and perused the paper book with their able assistance.

Hon'ble Supreme Court in **<u>K. Akbar Ali vs. Umar Khan and others</u> 2021 SCC Online SC 238,** held that Order 7 Rule 11 of the Code of Civil Procedure casts a duty on the Court to determine as to whether the plaint discloses a cause of action or whether the suit is barred by law. In **<u>Dahiben vs. Arvindbhai Kalyanji Bhanusali</u>** (2020) 7 SCC 366, the Apex Court held that if on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit and does not disclose any right to sue, the Court would be justified in exercising its power under Order 7 Rule 11 CPC. The provision under Order 7 Rule 11 CPC has been held to be mandatory in nature and states that the plaint "shall" be rejected if any of the grounds specified in Clause (a) to (e) are made out. In **<u>T. Arivandandam vs T.V. Satyapal and another</u>** 1977 (4) SCC 467, the Apex Court has held that if a clever drafting has created an illusion of a cause of action, it deserves to be nipped in the bud at the first hearing. Similar is the view in **<u>ITC Limited vs. Debt Recovery Appellate Tribunal</u>** (1998) 2 SCC 70. The Court has observed that the trial court must be vigilant against any camouflage or suppression and determine whether the litigation is utterly vexatious and abuse of the process of the Court.

In the backdrop of the above observations of the Apex Court, the plaint, Annexure P-1, deserves to be examined. In Paras 8, 9 and 10 of the plaint, it has been pleaded as under:-

> *"8. After the demise of Sh. Tarlochan Singh the plaintiff did not like to hurt the feelings of his mother Gobind Kaur, Defendant No. 1 to get the property transferred in his name in the municipal corporation as per law. The property continued in the name of S. Tarlachan Singh in the record of Municipal Corporation.*
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> *The plaintiff was paying property taxes levied on the property, water and sewerage charges which was in the*

name of Tarlochan Singh. Punjab Govt. imposed property tax in 2013, the plaintiff has been paying property tax to Municipal Corporation, Ludhiana which was in the name of Tarlochan Singh and paid upto 2016. The plaintiff was stunned when on 6/10/2016 he received the bill of water and sewerage charges which was in the name of Smt. Gobind Kaur.

The plaintiff confronted the Defendant No. 1 and 2 about how the Bill is in the name of Gobind Kaur as he had been paying all such charges which were in the name of Tarlochan Singh. The defendants did not disclose anything and refused to give any reply.

9. The plaintiff then went to the office of Municipal Corporation Ludhiana and inquired as to how the bill for water, sewerage charges was in the name of Gobind Kaur. The officers of Municipal Corporation disclosed that on the basis of some WILL, Gobind Kaur is recorded as owner. However they did not provide any further detail of the alleged WILL. Thereafter, the plaintiff moved application in Suvidha Center under RTI Act to obtain the copy of the WILL. The plaintiff got the copy of the WILL through RTI. It was found that the WILL purporting to be dated on 11.07.2007 typed on a paper and got it registered from Sub Registrar on 19.05.2008 much after the death of Tarlochan Singh who died on 14.12.2007. From the perusal of the copy of the WILL, it was found that the WILL purporting to be in favor of Gobind Kaur, was forged one. Though under the WILL, only limited estate was given till her life. It was alleged in the WILL after the death of Gobind Kaur, plaintiff and Defendant No. 2 would be the owner of the property. On the basis of forged WILL got the property transferred in her name in the Municipal Corporation Record. It was an act of mischief and fraud which has been enacted by Defendant No. 2 by involving Gobind Kaur in his evil designs to capture all the property. 296-D, Model Town extension and business run by SHINE INDUSTRIAL CORPORATION. The plaintiff *further shocked when on one day, a few days back, the plaintiff found that notice was pasted on the gate of the house. The notice was from Punjab National Bank, International Banking Branch, Ludhiana dated 9.8.2019 issued in the name of Sh.Harpreet Singh, Gobind Kaur and the firm SHINE INDUSTRIAL CORPORATION, Harpreet Singh alleged to be proprietor.*

10. This notice was issued under section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. From the perusal of the notice, it was found that Harpreet Singh had taken some credit facilities from the Punjab National Bank and to avail those facilities, he had got mortgaged the building 296-D, Model Town Extension as collateral security with the bank from Gobind Kaur. It shows that officials of defendant bank were also in league with Defendant No.2. On the basis of forged WIL obtained huge amount of credit.

Vide this notice, it was mentioned that amount of about Rs. 45 lakh was outstanding against Harpreet Singh and firm and the Bank has involved the alleged guarantor and Gobind Kaur. The Defendant No.1 has no right and interest in the property. She could not mortgage the building with the Bank.

Sh. Tarlochan Singh was the exclusive owner. He died intestate on 14.12.2007. He was survived by Gobind Kaur as wife, plaintiff and defendant no. 1 as son and Jaskaran Singh s/o Parminder Kaur as Parminder Kaur has died. She survived by her son, Jaskaran Singh. Even as the alleged WILL Gobind Kaur had limited estate. She was not empowered to alienate or execute right of ownership after her death plaintiff and Defendant No.2 was to share equally the property."

An examination of the averments of the plaint show that despite being aware of the fact that the property had been transferred in the name of respondent No.1 in the year 2016, the petitioner did not assert his right in the property. After the Bank had initiated proceedings under the SARFAESI Act and issued a notice dated 09.08.2019 under Section 13(2) thereof, the petitioner filed the instant suit on 19.09.2019 wherein besides seeking declaration as to his share and challenging the Will, he has also sought injunction restraining the Bank from selling/auctioning the property. The facts give a clear impression that the action has been taken by the petitioner with an intention to create a hurdle so that the Bank is not able to recover its dues. It deserves to be noticed that respondents No.2 and 3 were declared as NPA by the Bank on 29.07.2019 and in pursuance to the notice issued under the SARFAESI Act, the Bank has taken over the possession of the property and possession letter has been issued by the District Magistrate, Ludhiana on 16.01.2020.

Another glaring fact which stares in the face of the petitioner is that a 'No Objection Certificate' has been given by him at the time the property was mortgaged with the Bank. It has come on the record that a joint affidavit has been executed by the petitioner alongwith his brother Harpreet Singh, wherein, there is a specific reference to the Will dated 11.07.2007 executed by their deceased father. This fact has been deliberately suppressed by the petitioner.

Still further, Paragraph 22 of the plaint shows that respondent No.2 has filed a suit against the petitioner and his wife for permanent injunction for restraining them from interfering in her peaceful possession of the residential property. The issue of the validity of the disputed WILL shall be gone into by the trial court, where the suit is stated to be pending.

Section 34 of SARFAESI Act bars the jurisdiction of the civil court in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is required to determine by or under the Act. Interpreting the provisions of SARFAESI Act, the Hon'ble Supreme Court in Para 51 in

Mardia Chemicals Limited (supra), which view has been reiterated in the subsequent judgments, has held as under:-

> *"However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe, whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the case of English mortgages."*

Except for a vague assertion that the officials of the Bank are in league with respondent No.2, there is no pleading regarding fraud by the Bank. Material averments in the plaint do not even remotely suggest as to how the action of the bank is fraudulent or absured or untenable.

Another aspect deserves to be taken notice of. If it is the case of the petitioner that he had never given the property as security for the loan nor acquiesced to the same and the respondents had colluded with each other, nothing prevented him from giving an appropriate reply to the notice dated 09.08.2019 issued by the Bank under Section 13(2) of the SARFAESI Act, but the petitioner did not choose to do so. In the absence of any denial from the petitioner, going by the averments of the plaint, the suit is barred under Section 34 of the SARFAESI Act. There is no illegality or infirmity in the orders passed by the Courts below.

Finding no merit in the petition, it is ordered to be dismissed with no order as to cost.

27.05.2021 **(SUVIR SEHGAL)**
sheetal **JUDGE**

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No