IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212 **CR No.2603 of 2020 (O&M)**
Date of decision: 22.01.2021

Phoenix ARC Private Ltd. **.....Petitioner**

versus

Deepu @ Deepak Kumar and Ors. **....Respondents**

CORAM: Hon'ble Mr. Justice Girish Agnihotri

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

Mr. Vikas Bahl, Senior Advocate with
Mr. Nikhil Sabharwal, Advocate and
Ms. Surabhi Kaushik, Advocate
for respondent No.1.

Mr. APS Madaan, Advocate and
Mr. Alok Jagga, Advocate
for respondents No.2 to 4.

Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Akshit Chaudhary, Advocate
for respondent No.6.
(the aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in Virtual Court).

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GIRISH AGNIHOTRI, J. (Oral)

The petitioner Phoenix Arc P.Ltd. (acting in its capacity as trustee of Phoenix Trust FY 15-22) has filed the present Revision petition *inter alia* with a prayer for setting aside the order dated 01.12.2020 (Annexure P1) passed by Civil Judge (Sr.Divn.), Kapurthala whereby, status quo has been ordered in respect to the assets of respondent No.4 mortgaged

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with the petitioner, with a further prayer for staying the operation of impugned order dated 01.12.2020 (Annexure P1).

Records of the case show that on 07.12.2020, this Court had passed the following order:-

> *"The petitioner Phoenix Arc P.Ltd. (acting in its capacity as trustee of Phoenix Trust FY 15-22) has filed the present petition inter alia with a prayer for setting aside the order dated 01.12.2020 (P1) passed by Civil Judge (Sr.Divn.), Kapurthala whereby status quo has been ordered in respect to the assets of respondent No.4 mortgaged with the petitioner.*
>
> *Learned counsel appearing for the petitioner makes reference to Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and also refers to the judgment by the Hon'ble Supreme Court of India in case of* ***Jagdish Singh vs. Heeralal (2014) 1 SCC 479****.*
>
> *Based upon the above submissions, learned counsel submits that the Civil Court cannot adjudicate upon the matter which has to be determined by DRT under 2002 Act. He further inter alia submits that the claim/relief of the complainant – respondent No.1, if at all, would only be against respondents No.2 to 5 with regard to his first prayer i.e. direct them to transfer shares in his favour.*
>
> *Notice of motion.*
>
> *At this stage, learned counsel further while making reference to the pleadings in the petition and with specific reference to para 14 submits that prior to this, the petitioner had made repeated efforts to sell the property and it is the 4th attempt when a buyer has participated in the e-auction and has further deposited 25% of the amount (total*

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bid Rs.16,08,50,000). He further submits that the said buyer has even assured the petitioner that he is willing to deposit the remaining amount of Rs. 12,06,37,500/- by 15.12.2020. Learned counsel for the petitioner therefore apprehends that in case operation of the impugned order is not stayed, there is every likelihood that the petitioner may lose this buyer as well.

At this stage, learned counsel for the petitioner submits that the buyer mentioned in para 14 of the petition is a necessary party and is required to be impleaded. On the oral request made by the counsel, BR Arcades LLP through Designated Partner Shri Ishwar Chand Bansal SCO No.93, Sector 17D, Chandigarh is ordered to be impleaded as party respondent No.6. Registry is directed to carry out necessary correction in the memo of parties.

Notice of motion for 15.12.2020.

In view of the above peculiar facts and circumstances, operation of the impugned order is stayed. However, it is further directed that respondent No.6 shall not create any encumbrance on the property till the next date of hearing.

Let other respondents be served ***dasti*** *also for the date fixed."*

Thereafter, respondents had put in their appearance on 16.12.2020. This Court on 16.12.2020, while briefly noticing the contentions made by the counsel for the respondents, had passed the following order:-

"Today, on resumed hearing of the case, learned Senior counsel Mr. Bahl, assisted by Mr. Nikhil Sabharwal, Advocate, puts in appearance for respondent No.1.

As per office report, notice issued to respondent No.5 has been received back served. Despite service, none has appeared on his behalf.

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> *Learned counsel appearing for respondent No.1 takes an objection by making reference to the judgment titled as* ***"A.Venkataubbiah Naidu vs. S. Challappan reported as 2000(4) RCR (Civil) 396"****. He submits that the parties have two alternate remedies, either to file an appeal against the interim order or file an application under Order 39 Rule 4 for vacation of stay.*
>
> *Learned counsel for respondent No.6 prays that the entire amount in pursuance to the auction, has been paid and sale certificate has also been issued in his favour. He however prays for a short accommodation to complete his instructions and file a short affidavit, if necessary.*
>
> *On request, adjourned to 21.12.2020.*
>
> *Interim order to continue."*

Learned counsel for respondent No.1 submits that respondent No.1 filed the suit (CNR No.PBKP02-000794-2020 518-CS-2020 titled as Deepu @ Deepak Kumar Vs. Sh. Prem Pal Gandhi and Ors.) which was presented on 01.12.2020 in the Civil Courts, Kapurthala. On 01.12.2020, Civil Judge (Sr. Divn.), Kapurthala, passed an order issuing notice in the suit as well as in the application under *Order 39 Rule 1 and 2 read with Section 151 CPC*. It was further directed vide order dated 01.12.2020 that the parties shall maintain status quo regarding the assets of defendant No.3-Company.

Learned Senior counsel representing respondent No.1 makes reference to judgment of the Hon'ble Supreme Court of India reported as ***"2000(4) RCR (Civil) 396*** titled as ***A.Venkataubbiah Naidu vs. S. Challappan"***.. By further making reference to para Nos. 4, 9, 10, 19 and 20 of the

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judgment (supra), learned Senior counsel submits that it was held by the Hon'ble Supreme Court of India that the High Court should not have entertained a petition under Article 227 of the Constitution of India when the party had two other alternate remedies.

Learned Senior counsel representing respondent No.6, however, submits that if the documents i.e. plaint (copy attached as Annexure P-4), Memo of Understanding (copy attached as Annexure R4), are referred to, it would show that in fact the Civil Court wrongly **exercised** its jurisdiction while passing order dated 01.12.2020 (Annexure P-1). He makes reference to judgment of Madras High Court reported as ***"2002(1) CTC 458 titled as Rt Rev Dr. V. Devasahyam, Bishop in Madras CSI and Another".***

Learned counsel for the petitioner makes various submissions. He submits that as has been noticed by this Court in the order dated 07.12.2020, the Hon'ble Supreme Court of India has clearly laid down that in the matters as in the present case, the Civil Court does not have jurisdiction. He further submits that in fact, in case, the brief background of the case is examined, it would show that the petitioner has a good prima facie case. He, however, submits by making reference to petition and particularly para 3 of the petition, that in the year 2010, respondent No.4 had approached the Bank of India through respondent Nos.2 and 3 for grant of various facilities including Term Loan of Rs.4200.00 lakhs with sub-limit of Letter of Credit of Rs.1000.00 lakhs and Bank Guarantee of Rs. 75.00 lakhs. He then submits that respondent No.4 deposited the title deeds of the

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immovable property with Bank of India as security towards sanction and disbursal of aforementioned financial facilities. He also submits that in the year 2013, the above stated sanctions were modified/enhanced. The Borrower defaulted in making the due repayment in terms of the loan agreements executed and on 30.09.2013, the company was declared NPA(Non-Performing Asset). He further submits that subsequently, the debt was acquired by the petitioner by way of a Deed of Assignment dated 24.03.2015 in exercise of its rights under Section 5 of SRFAESI Act (in short the 'Act'). It is further submitted that the petitioner had issued notice dated 23.01.2018 under Section 13 (2) of the SRFAESI Act, demanding an amount of Rs.79,10,28,210/-. It was also submitted that the petitioner took symbolic possession of the property in question on 03.05.2018 while exercising its powers under Section 13 (4) of the Act. Thereafter, reference has also been made to para 11 and 12 of the petition to submit that in pursuance to notice under Section 14 of the Act, the physical possession of the property was taken on 11.12.2018. Thereafter, public notice in terms of Rule 8 (2) of the Security Interest (Enforcement) Rules, 2002 was published and various efforts were made in 2018-2019 to auction the said property but the efforts failed. It is then submitted by making reference to para 15 of the petition that on 01.12.2020, respondent No.1 filed a Civil Suit at Kapurthala, wherein on 01.12.2020, impugned order was passed. In the petition, reference has also been made to Section 34 of the Act, to submit that 'Civil Court not to have jurisdiction'.

In view of peculiar facts and circumstances of the case as

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noticed above, this Court had put it to the counsel representing all the parties as to if they have any objection if all the parties before this Court are given opportunity to take their appropriate pleas/objections/counter objections before the Court of Civil Judge (Sr. Divn.) Kapurthala before whom the suit in question is pending. In response to the above, all the counsel have broadly agreed and accordingly the present petition is disposed of with the following directions:-

(i) The petitioner may move appropriate application before the trial Court. Apart from the application, petitioner is also at liberty to take all the objections available to it under law before the trial Court.

(ii) The trial Court is directed to grant reasonable opportunity to the parties to file their replies to the stay application filed by the plaintiff. The trial Court may pass an appropriate orders on the same in accordance with law and it is made clear that the order passed by this Court be not treated as any observation on merits of the case.

(iii) It is further directed that till the decision on the stay application and till expiry of 10 days of the date of passing of order on stay application, the interim directions given by this Court vide order dated 07.12.2020 and the directions herein, shall continue.

(iv) It is made clear that respondent No.6 till the above mentioned time period, shall not sell the said property and in case, the said property is put to any use by respondent No.6, it shall be at its own risk and responsibility and shall be without prejudice to anybodies charge upon the same.

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(v) The stay application be decided by the trial Court in accordance with law, as expeditiously as possible, preferably within a period of four months from the date of receipt of certified copy of the order.

Ordered accordingly.

(GIRISH AGNIHOTRI)
JUDGE

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Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No

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