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

**CR-3775 of 2016(O&M)
Date of decision:03.03.2022**

HDFC Housing Development Corporation Ltd.

...Petitioner

Versus

Inder Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Shekhar Verma, Advocate, for the petitioner.
Mr. Jagmeet Singh, Advocate, for
Mr. K.S.Chahal, Advocate, for respondent no.1.**

ANIL KSHETARPAL, J (Oral)

The defendant no.3 in a suit for grant of decree of declaration to the effect that the plaintiff is owner of the residential house, assails the correctness of the order passed by the Civil Judge (Senior Division),Sangrur, on 14.03.2016, while dismissing an application under Order 7 Rule 11 CPC.

The petitioner-bank filed an application under Order 7 Rule 11 CPC claiming that the jurisdiction of the Civil Court is barred under Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act').

It has been claimed by the petitioner that Randhir Singh while mortgaging the property had taken a loan and on the default committed by him, the bank initiated proceedings under the SARFAESI Act. The respondent (Inder Singh) filed the suit claiming decree of declaration to the effect that he is owner of the property and therefore, entitled to possession.

The Civil Court dismissed the application while observing that the plaintiff is not mortgagee and since there is a dispute with regard to the ownership, therefore, the Civil Court has got the jurisdiction.

Section 17 and Section 34 of the SARFAESI Act, 2002 are extracted as under:-

> ***17. [Application against measures to recover secured debts]—***
> *(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter,may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:*
> *[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]*
> *[Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]*
> *1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—*
> *(a) the cause of action, wholly or in part, arises;*
> *(b) where the secured asset is located; or*
> *(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]*
> *[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.*
> *[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management*

or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—
(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and
(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and
(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.
(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt

[(4A) Where—(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—
(a) has expired or stood determined; or
(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or
(c) is contrary to terms of mortgage; or
(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and
(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]
(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:
Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of

> *pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).*
> *(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.*
> *(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]"*
>
> ***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)."*

On a careful reading of sub-section (1) of Section 17 of the SARFAESI Act, 2002, it is evident that any person including the borrower is entitled to file an application if the secured creditor or his authorised officer take any of the measures referred to in sub-section 4 of Section 13 of the SARFAESI Act, 2002. The important phrase used by the Statute is "any person including the borrower". Obviously, the intent of the Parliament is to include any person who is neither the borrower nor the guarantor. Further, the Debt Recovery Tribunal has the jurisdiction to decide all the incidental questions.

The learned counsel representing the respondents have failed to address any significant argument in order to defend the order in question.

Hence, the petition is allowed while observing that the plaintiff shall have liberty to file an application under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal.

All the pending miscellaneous applications, if any, are also disposed of.

March 03, 2022 **(ANIL KSHETARPAL)**
nt **JUDGE**

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