In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 4220 of 2018

Date of Decision: 23.12.2022

HDFC Limited

... Petitioner(s)

Versus

Gurpinder Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Shekhar Verma, Ms. Maninee and Mr. Aneesh, Advocates, for the petitioner(s).

Anil Kshetarpal, J.

1. The petitioner herein claims to be a secured creditor. Smt.Indu Devi mortgaged the property in favour of the petitioner on 18.04.2013 in order to secure the repayment of the debt. Since there was default in the repayment of the loan amount, the petitioner recalled the entire debt vide notice dated 28.01.2017. Subsequently, on 16.02.2017, notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("hereinafter referred to as "the 2002 Act") was also issued to Smt. Indu Devi.

2. Sh.Gurpinder Singh filed a suit for possession by way of specific performance of the agreement to sell. He claimed an agreement to sell dated 25.05.2015 of the secured assets in his favour. In the aforesaid suit, the petitioner was impleaded as defendant No.2. An application filed by the petitioner for the rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") in view of

Section 34 of the 2002 Act has been dismissed on the ground that the Debt Recovery Tribunal does not have the jurisdiction to grant the relief of specific performance. In fact, the order passed by the trial Court is a non-speaking order, which reads as under:-

> "Arguments on application under Order 7 Rule 11 Code of Civil Procedure heard, whereby the defendant No.2 has sought rejection of plaint on the ground that the suit is barred under Section 34 of SARFAESI Act, 2002. After hearing of learned counsel for the parties and after perusing of record carefully, I found no merits in the application as the present suit is for Specific Performance, which cannot be decided by debt recovery tribunal nor the tribunal has been authorized under the SARFAESI Act to decide the matter based upon a contract between two parties. The application is accordingly dismissed. Earlier the case was fixed for filing written statement by defendant No.2. On request of Shri Abhinav Sharma, Advocate, adjourned to 04.05.2018 for filing written statement by defendant No.2."

3. Further, Section 17 of the 2002 Act reads 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,1 [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) tomake 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.

(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 subsection (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 part 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."

4. Despite the service of notice, Sh. Gurpinder Singh has remained unrepresented.

5. The learned counsel representing the petitioner contends that in view of Section 17 of the 2002 Act, any person, including the borrower aggrieved by any of the measures taken by the secured creditor in accordance with the provisions of the 2002 Act, is entitled to file an

application before the Debt Recovery Tribunal under Section 17 of the 2002 Act. He submits that the plaintiff can file an application claiming a genuine agreement in his favour. He submits that the Debt Recovery Tribunal has the powers of a Civil Court particularly when the measures referred to in the 2002 Act have already been taken by the secured creditors.

6. This Court has considered the submissions. The jurisdiction of the Civil Court is clearly barred under Section 34 of the 2002 Act, which is extracted as under:-

> "**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)."

7. Though, the exact date of filing of the suit for specific performance has not been given, however, it appears to have been filed after the notice of recalling of the debt was issued by the petitioner bank. The impression of the Court gets re-enforced from the reading of para 10 of the plaint wherein it has been asserted that the cause of action finally accrued on 25.01.2017.

8. The petitioner has taken steps in accordance with the provisions of the 2002 Act in order to recover the debt. The deed of mortgage was executed on 18.04.2013, whereas, the alleged agreement to sell in favour of

the plaintiff was entered on 25.05.2015. Hence, the rights of the petitioner are superior to that of the plaintiff-respondent.

9. Keeping in view the aforesaid facts, the appropriate remedy for the respondent is to file an application under Section 17 of the 2002 Act before the Debt Recovery Tribunal. Thus, liberty is being granted to the plaintiff-respondent to first file an application before the Debt Recovery Tribunal to prove that the agreement to sell in his favour is a genuine and bonafide transaction and till the decision thereupon, the proceedings in the suit for possession by way of specific performance of the agreement to sell shall be kept in abeyance.

10. With the observations made above, the present revision petition is disposed of.

(Anil Kshetarpal)
Judge

December 23, 2022
"DK"

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