IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-6831 of 2016(O&M)
Date of Order:05.05.2022

State Bank of Patiala

..Petitioner

Versus

Nalini Sood(since deceased) through her LRs

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.B.Goel, Advocate and
Mr. Rajinder Goel, Advocate
for the petitioner.

Mr. Dinesh Sharma, Advocate for
Mr. Nakul Sharma, Advocate
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

While assailing the correctness of order dated 20.08.2014, passed by Civil Judge (Jr. Divn.), Amloh, on an application under Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the 2002 Act'), the bank has filed the present petition. It has been held that the jurisdiction of the Civil Court is not barred under Section 34 of the Act of 2002.

Some facts are required to be noticed.

Sh. Narinder Sharda, proprietor of M/s Prince Enterprises availed cash credit limit of Rs.22,00,000/- on 10.01.2006 from the petitioner-bank. In order to secure the loan, the plaintiff Nalini Sood, Rajesh

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Kumar and Paramjit Kaur stood as guarantors and Smt. Nalini Sood deposited the title deed no.352 dated 22.05.1997, with the bank. Narinder Sharda failed to maintain financial discipline forcing the bank to issue notice dated 05.11.2006, calling upon the loanee and the guarantors to pay the amount failing which proceedings under section 13 of the 2002 Act were resorted to. On failing to get any response, notice under Section 13 of the 2002 Act was issued on 27.11.2006. The bank after following the procedure, took possession of the mortgaged property and put it to public auction which was held on 31.08.2008. Ms. Anupama Sood daughter of Smt. Nalini Sood was declared successful bidder. She deposited 25% of the amount but thereafter, did not deposit the amount forcing the bank to issue notice. She further deposited Rs.50,000/- and thereafter, did not deposit the balance amount. Smt. Nalini Sood filed the present suit claiming that she never stood guarantor for the alleged loan taken by M/s Prince Enterprises, sole proprietor Narinder Sharda. While asserting that she had applied for a loan of Rs.1,50,000/- from the bank, submitted the documents which was never sanctioned. The documents remained with Mr. P.C.Singla, the then Chief Manager, who misused the documents.

The bank filed an application under Order 7 Rule 11 CPC which was dismissed by the Court.

The trial court while dismissing the application has relied upon the judgment passed by the Supreme Court in ***Mardia Chemicals Limtied vs. Union of India, AIR (2004) 4 SCC 311*** and ***Jammu and Kashmir Bank vs. Jai Lakshmi Dravid, 2006 (3) RCR (Civil) 835.***

This Bench has heard the learned counsel representing the

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parties at length and with their able assistance perused the paper book. The learned counsel representing the respondent has also filed written arguments.

The learned counsel representing the petitioner contends that in view of Section 34 of the 2002 Act, the jurisdiction of the Civil Court is barred as the respondent has equally efficacious alternate remedy before the Debt Recovery Tribunal. He contends that the plaintiff in order to confer jurisdiction on the Civil Court has pleaded fraud without giving its detail as required under Order 6 Rule 4 CPC.

Per contra, the learned counsel representing the respondent contends that the bank manager played fraud while misusing the documents submitted by Smt. Nalini Sood, therefore, the Civil Court has the competent jurisdiction. He once again relies upon the judgment in ***Mardia Chemicals Limtied(supra)***. While referring to the fact that the bank has registered an FIR No.252, dated 03.10.2007, against Narender Sharda, proprietor of M/s Prince Enterprises, Pramjit Kaur and Rajesh Kumar contends that the Civil Court has the jurisdiction.

At this stage, it would be appropriate to notice 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.*

It is evident that the jurisdiction of the Civil Court is barred in respect of the matters where the competent authority is the Debts Recovery

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Tribunal or the Appellate Tribunal as empowered under the said Act. It is further provided that no injunction shall be granted by any Court, or any other authority in respect of any action 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. This aspect has been dealt with in para 33 of the judgment passed by the Supreme Court in ***Nahar Industrial Enterprises Ltd. Vs. Hong Kong & Shanghai Banking Corpn (2009) 8 SCC 646***. Similar is the position in ***Robust Hotels(P) Ltd.& Ors vs E.I.H Limited & Ors. (2017) 1 SCC*** 622.

The judgment passed in ***Mardia Chemicals Limtied(supra)*** is a three judge Bench judgment and in para 51 of the SCC report, the Court observes that where the action of the secured creditors is alleged to be fraudulent or his claim is so absurd and untenable and requires no probe whatsoever then the Civil Court has the jurisdiction in that matter. Primarily, in ***Mardia Chemicals Limtied(supra),*** the Supreme Court opined that requirement of pre-deposit of 75% of the amount demanded by the secured credits by notice under Section 13, is bad. It may be noted here that after the judgment, there is an amendment in the language of Section 17 of the 2002 Act by Act no.44 of 2016. Section 17 has been extensively amended. Section 17 (1) starts with a phrase “any person (including the borrower)”. Thus it is evident that the application under Section 17 of the 2002 Act can be filed by any person, who is aggrieved of the action. Furthermore, in a recent judgment passed by the Supreme Court in ***Electrosteel Castings Ltd. Vs. UV Asset Reconstruction Company Ltd. &Ors., (2022) 2 SCC 573,*** it has been held that mere allegations of fraud without supplying material particulars of the fraud as required in terms of

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Order 6 Rule 4, do not result in ousting the jurisdiction of the Tribunal. The Debt Recovery Tribunal has sufficient jurisdiction under Section 17 to consider whether the respondent was not a secured creditor. Thus, the Court held that the proper forum whose doors should be knocked is the Debt Recovery Tribunal. Similar is the position in ***M/S. Sree Anandhakumar Mills Ltd. vs M/S. Indian Overseas Bank And Ors. (2019)14 SCC 788***. Similarly, in ***Authorised Officer, State Bank Of India vs M/S Allwyn Alloys Pvt. Lt. (2018) 8 SCC 120,*** the Supreme Court once again explained the scope of section 34 once again. In view of the recent judgment of the Supreme Court, it is evident that the judgment passed in ***Mardia Chemicals Limtied(supra)*** is to be understood in the aforesaid context.

The facts of the case clearly indicate that the plaintiff has taken the plea of fraud only to confer jurisdiction on the civil court. It is also evident that the application for getting loan and the documents required to be signed by the guarantors are different. In any case, when the plaintiff-respondent has the jurisdiction before the Debt Recovery Tribunal which has sufficient jurisdiction under Section 17 to consider and decide the matter, it will not be appropriate to entertain the civil suit.

Consequently, while setting aside the order passed by the Civil Court on 20.08.2014, the suit is held to be not maintainable. The respondent, if so advised, may file a petition before the Debt Recovery Tribunal.

Hence, while setting aside the order passed by the trial Court on 20.08.2014, the revision petition is allowed.

All the pending miscellaneous applications, if any, are also

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disposed of.

05th May, 2022 **(ANIL KSHETARPAL)**
nt **JUDGE**

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

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