

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

CR-659-2022 (O&M)

Date of decision : 28.03.2022

Kotak Mahindra Bank Ltd. and Another

... Petitioner(s)

versus

M/s KJ International Limited and Another

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. Prateek Sodhi, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

Learned counsel for the defendant-petitioners, at the outset, limits his prayer in the present case and states that he would be satisfied if a direction is issued to the concerned Court to decide the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908, which is pending for more than a year, in a time bound manner.

Learned counsel for the defendant-petitioners has submitted that the plaintiff-respondent No.1 had failed to repay the financial facilities extended to it and the defendant-petitioners issued a demand notice dated 23.09.2013 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short the 'SARFAESI Act') calling upon them to make the payment of a sum of ₹966.47 crores due as on 15.09.2013 along with future interest and other charges thereon. The plaintiff-respondent No.1 was called upon to make the

payment within a period of 60 days failing which it was stated that the defendant-petitioners would exercise all their rights under Section 13(4) of SARFAESI Act. In furtherance of the action under the SARFAESI Act, the defendant-petitioners filed an application under Section 14 before the District Magistrate, Amritsar seeking assistance in taking over the secured assets belonging to the borrowers. On 13.03.2020 the District Magistrate passed an order directing the Tehsildar, Amritsar for taking over the possession of the secured assets. Thereafter, the defendant-petitioners approached the Naib Tehsildar for taking over the possession of one of the secured assets in terms of the order passed by the District Magistrate. The Naib Tehsildar vide his order dated 07.12.2020 directed the Incharge, P.S. Sadar, Amritsar to provide police protection for taking actual physical possession of the said property and fixed the date for 29.12.2020. However, the possession of the said asset was not handed over to the defendant-petitioners. On 08.01.2021 the Naib Tehsildar once again directed the Incharge, PS Sadar, Amritsar to provide proper police help on 14.01.2021. On the same day, the District Magistrate passed another order in the suit filed by Gaurav Arora, plaintiff in CS No.61 of 2021, staying his previous order dated 13.03.2020 and fixed the matter for 19.01.2021.

In February 2021 the plaintiff-respondents filed a civil suit against the defendant-petitioners for permanent injunction restraining the defendants themselves, through their officials, agents, privies and representatives from interfering in any manner or from taking forceful possession of land measuring 8372 square yards situated in the area of Village Naushera, Teshil and District Amritsar. Along with the plaint an

application under Order 39 Rules 1 and 2 CPC read with Section 151 of CPC was also filed. Vide order dated 19.02.2021 status quo was directed to be maintained with regard to the possession of the suit property. The defendant-petitioners thereafter moved an application under Order 7 Rule 11 CPC read with Sections 32/34/35/17 of the SARFAESI Act for rejection of the plaint.

The grouse of the defendant-petitioners is that the said application under Order 7 Rule 11 CPC has been pending since 24.03.2021 and the defendant-petitioners are not being able to take the possession of the secured asset. The limited prayer made by learned counsel for the defendant-petitioners is that the hearing of the said application be expedited. Learned counsel for the defendant-petitioners would contend that the said property is a secured asset and was mortgaged with the defendant-petitioners and qua which the proceedings under the SARFAESI Act have already been initiated.

Mr. Prateek Sodhi, Advocate has put in appearance on behalf of the plaintiff-respondents and has vehemently contended that no revision under Article 227 of the Constitution of India is maintainable in the present case. He has further contended that the proper remedy for the defendant-petitioners in the present case would have been to approach the Appellate Court by filing an appeal. In support of his contentions, he has relied upon the judgment of Hon'ble Supreme Court in the case of "*A. Venkataubbiah Naidu Vs. S. Challappan*" [2000 AIR (Supreme Court) 3032].

Learned counsel for the plaintiff-respondents has further contended that the plaintiffs were constrained to file a suit since there was an

order by the Debts Recovery Tribunal-1, Chandigarh wherein it was held that the property in dispute was not a secured asset. He has further contended that though the said property was not a secured asset, the defendant-petitioners were initiating the process for securing the said asset and hence, the plaintiff-respondents were constrained to file the suit.

Heard.

In the present case learned counsel for the defendant-petitioners has not pressed the present petition on merits at all. The only submission which has been made by learned counsel for the defendant-petitioners is that the application under Order 7 Rule 11 of CPC has been pending for more than a year and the same has not been decided. The judgment relied upon by learned counsel for the plaintiff-respondents in the cases of A. Venkataubbiah Naidu (*supra*) is qua application under Order 39 Rules 1 and 2 CPC. In the present case the application which has been kept pending is not an application under Order 39 Rules 1 and 2 CPC but an application moved by the defendant-petitioners under Order 7 Rule 11 CPC. As such, reliance on the decision in the case of A. Venkataubbiah Naidu (*supra*) by learned counsel for the plaintiff-respondents is wholly misplaced.

Keeping in view the limited prayer made by learned counsel for the defendant-petitioners, without commenting on the merits of the case, the Court concerned is requested to take a decision on the application under Order 7 Rule 11 of CPC, in accordance with law, expeditiously and preferably within a period of two months from the date of passing of this order.

Disposed off. Pending applications, if any, also stand disposed off.

28.03.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO