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

**CR No.4025 of 2019 (O&M)
Date of Decision: 1.12.2022**

Central Bank of India .....Petitioner

Vs.
Jugnu Gumber & another .....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. I.P. Singh, Advocate for the petitioner.

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DEEPAK GUPTA, J.

This revision is directed against the order dated 16.02.2019 passed by the Court of learned Additional Civil Judge (Senior Division), Sri Muktsar Sahib, whereby an application moved by the petitioner under Order 1 Rule 10 CPC to impleaded it as a party in the civil Suit titled 'Jugnu Gumber vs. Sharda Rani' (CNR No.PBSM02-000721-2016), was dismissed.

2. The facts of the case, in brief, are that Shri Gulab Rai Batra along with his wife respondent No.2 – Sharda Rani; and Sukha Singh availed loan facility from the petitioner Bank in 2014. Respondent No.2 had mortgaged her residential house by way of an equitable mortgage in favour of the petitioner Bank. Due to non-payment of the loan amount, account was declared NPA on 28.02.2016. The proceedings under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, `SARFAESI Act') were initiated by issuing notice dated 23.03.2016 under Section 13(2) of the SARFAESI Act to pay an amount of apprx. ₹26 lakhs along with future interest. The borrowers failed to comply with the

same. The application under Section 14 of the SARFAESI Act was filed before District Magistrate for police assistance to take physical possession of the mortgaged property but no steps were taken by the concerned authorities. The mortgaged property was put to sale for 22.9.2017. The sale was confirmed in favour of one Mangat Ram for an amount of ₹29.25 lacs, which stood deposited. The sale certificate was issued in favour of auction purchaser. The possession of the property in question has not been delivered so far.

3. Further case of the petitioner is that respondent No.1 Jugnu Gumber alleging him to be a tenant under respondent No.2 Sharda Rani in connivance with her, filed a suit for permanent injunction titled 'Jugnu Gumber vs. Sharda Rani' [as referred in opening para of this order] to restrain said respondent No.2 from interfering in his possession and from dispossessing him from the mortgaged house. It was alleged by him that house was taken on rent vide rent note dated 01.04.2016 for a period of 11 months. The said suit was decreed ex parte vide judgment & decree dated 07.10.2017 (Annexure P2).

4. Petitioner then filed Civil Writ Petition No.7162 of 2018 for setting aside the judgment dated 07.10.2017 and for directing the Deputy Commissioner concerned for taking actual physical possession of the mortgaged property and deliver the same to the petitioner. This writ petition was disposed of on 22.03.2018. Following order was passed :-

> "4. Though there may be some merit in the contention, nevertheless such like issues will have to be raised before the Civil Court only. In this view of the matter, we dispose of this writ petition with liberty to the petitioner- bank to make an application for impleadment in the litigation and to challenge the said decree by

taking all the pleas that there was no tenancy in existence when the residential house was mortgaged/ hypothecated and that the decree was collusive in nature and has been obtained in order to defeat the bank's legitimate rights under the 2002 Act. The Civil Court at Sri Muktsar Sahib is directed to decide those applications within a period of three weeks from the date of its filing, after hearing the parties and if need be, by taking the application on day to day basis.

5. Ordered accordingly."

5. The petitioner contends that as some negotiations were taking place with the respondents regarding settlement, application for impleadment was not filed immediately after passing of the above said order dated 22.03.2018. The petitioner moved an application under Order 1 Rule 10 CPC (Annexure P5) for impleadment as a party dated 30.01.2019 challenging the judgment and decree dated 07.10.2017 and for impleading it as a party but the said application has been dismissed by the trial court vide impugned order dated 16.02.2019 (Annexure P.1).

6. The contention of the petitioner is the suit was filed by respondent N: 1 after the account was declared NPA on 28.02.2016 and notice under Section 13(2) of the SARFAESI Act was given on 23.03.2016. Even the alleged tenancy was created later on vide rent deed dated 01.04.2016; that learned trial court has failed to comply with the direction passed by this High Court in CWP No.7162/2018; that as per Sections 34 and 35 of the SARFAESI Act, the jurisdiction of the Civil Court was barred; that as per amended Section 17(4A) of the SARFAESI Act, the issue of tenancy was to be decided by the Debt Tribunal only; that the tenant cannot claim any protection, where tenancy is created after

the mortgage of the property without consent of the secured creditor bank and also in a case where the tenancy is created after issuance of notice of default and demand of the Bank under Section 13 of the SARFAESI Act. The judgment and decree dated 07.10.2017 was passed by the trial Court without jurisdiction and so, these are void ab initio. The trial Court also failed to take into consideration the fact that this Court had given liberty to the petitioner to be impleaded as a party and to challenge the judgment and decree dated 07.02.2017 and so, dismissal of the application amounts to disobedience of the order passed by this Court.

7. Notice of motion was issued. There was no representation on behalf of respondent No.1 despite service. However, initially there was representation on behalf of respondent No.2 but later on nobody appeared even on her behalf at the time of arguments.

8. Heard. Record perused.

9. Petitioner wanted to be impleaded as a party in Civil Suit No.123 of 2016 titled Jugnu Gumber Vs. Shardha Rani, which had already been decided on 07.10.2017. The application was moved by the petitioner on 30.01.2019. Order 1 Rule 10 CPC enables the Court to add any person as party at any stage of the proceedings, if the presence of such person before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all questions involved in the suit. However, any such party can be impleaded only during pendency of the proceedings before the court and not after culmination of the proceedings.

10. In present case, since the proceedings of the suit had already culminated into the decree dated 07.10.2017, obviously no suit was pending when the application dated 30.01.2019 was moved by the petitioner. So, the application

has been correctly dismissed by the trial Court vide impugned order dated 16.02.2019.

11. The contention of the petitioner that the trial Court has disobeyed the order dated 22.03.2018 passed in CWP No.7162 of 2018 is misconceived because direction given in the writ petition was for impleadment in the litigation and not in the pending litigation. Liberty was also given to challenge the decree dated 7.10.2017.

12. Though the petitioner – Central Bank of India was not a party to the suit titled <u>Jugnu Gumber Vs. Shardha Rani</u> culminating into decree dated 7.10.2017 but being aggrieved by the said decree, the petitioner could have filed the appeal against the said decree, even if not a party to the suit, as it is settled position of law that though a stranger cannot be permitted to file an appeal in any proceedings but in case he satisfies the Court that he falls within the category of aggrieved person, he can be allowed to file an appeal. If a judgment and decree prejudicially affects the person, who is not party to the proceedings, he can prefer an apeal with the leave of the Appellate Court. Reference in this regard can be made to the observations made by Hon'ble Supreme Court in **<u>Smt. Jatan Golcha Vs. M/s Golcha Properties (P) Ltd.</u>**, 1970 SCC(3) 573, wherein it was held :

> "it is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be pre-judicially affected by the judgment."

Similar view has been taken in **<u>State of Punjab Vs. Amar Singh & Others</u>**, (1974) 2 SCC70.

13. In this case, there is nothing on record to suggest that the petitioner

preferred to file an appeal against the judgment and decree dated 07.10.2017 (Annexure P.5).

14. There is another aspect of the matter. The petitioner being not a party to the judgment and decree dated 07.10.2017, these are not binding on the petitioner. Not only this, by way of judgment and decree dated 07.10.2017, suit of the alleged tenant Jugnu Gumber (respondent No.1) has been decreed only to the extent that he is not to be dispossessed without due process of law. The petitioner has the remedy under law in view of the provisions contained in the SARFEASI Act to seek possession of the secured asset i.e. the mortgaged property. Section 13 of the SARFEASI Act provides about the enforcement of the security interest. As per the own case of the petitioner, it had initiated proceedings under Section 13(4) of the SARFEASI Act and had even moved application under Section 14 of the Act before District Magistrate, Sri Muktsar Sahib. It appears that when the District Magistrate did not take steps for delivering of possession, the petitioner did not proceed further to pursue the matter.

15. Besides above, sub-section 4(A) has been added by the legislature to Section 17 of the SARFEASI Act. After its amendment, Section 17 reads as under:-

> "(4A) Where—
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> (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."

16. A reading of above provision would clearly reveal that any person claiming tenancy or lease hold rights upon the secured asset can file an application before the Debt Recovery Tribunal, who has the jurisdiction to examine the effect of lease or tenancy. If the Debt Recovery Tribunal is satisfied that tenancy rights or lease hold rights claimed in the secured assets falls within sub-clause (a) (b) (c) (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 has power to pass such order as it deems fit. Jurisdiction of the Civil Court in such matters is clearly barred as per Section 34 to be read with Section 35 of the SARFEASI Act. A similar view has been taken by a co-ordinate Bench of this Court in **Maan Mohan Vs. Kamal Parkash Goyal and others, 2018(2) Law Herald 1051**.

17. In the aforesaid circumstances, it is held that though the impugned order dated 16.02.2019 (Annexure P1) can not be faulted but the petitioner is not without any remedy. It can take appropriate steps as per law for delivery of the possession of the secured interest. This revision is disposed of accordingly.

December 1, 2022 **(DEEPAK GUPTA)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No