IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2597-2021 (O&M)
Date of Decision: April 26, 2022

1. BR Arcades LLP ...Petitioner

Versus

Deepu @ Deepak Kumar and others ... Respondents

CR-2620-2021 (O&M)

2. Phoenix ARC Private Limited ...Petitioner

Versus

Deepu @ Deepak Kumar and others ... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Punit Bali, Senior Advocate with
Mr. Prateek Sodhi, Advocate, for the petitioner (in CR 2597 of 2021).

Mr. Manish Jain, Advocate for the petitioner
in CR No. 2620 of 2021 and for respondent No. 5 in CR No. 2597 of 2021.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Rohit Nagpal, Advocate
for respondent No.1.

FATEH DEEP SINGH, J. (Oral)

The above detailed two civil revision petitions bearing No. 2597 titled as **“ B.R. Arcades LLP Vs. Deepu @ Deepak**

Kumar (hereinafter to be referred as **'the first revision'**) and the revision bearing No. 2620 titled as **Phoenix ARC Private Limited Vs. Deepu @ Deepak Kumar and others** (hereinafter to be referred as **'the second revision'**) having been arisen out of the same very order dated 01.10.2021 (Annexure P-10) of the Court of learned first appellate Court in Civil Appeal No. 11 of 2021 titled as **Deepu @ Deepak Kumar Vs. Prem Pal Gandhi and others** being intercably interconnected are being disposed off together by this common judgment.

Present respondents No. 2 to 4 who were defendants No. 1 to 3 had secured loan from M/s Phoenix ARC Private Limited in the year 2010 which was facilitated through Bank of India and upon default of repayment as per the terms, the lender respondent No. 5 - M/s Phoenix ARC Private Limited adopted due process of law and issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (in short, **'the SARFAESI Act'**). Subsequently, respondent No. 5 in Civil Revision No. 2597 of 2021 and petitioner in revision No. 2620 of 2021 took symbolic possession upon serving notice under

Section 13(4) of the SARFAESI Act and subsequently on 11.12.2018 took physical possession of the property of the borrower. M/s Phoenix ARC Private Limited put the property of the borrower to auction and issued sale notice depicting reserve price of Rs.16,06,50,000/- slated to be held on 01.12.2020. Petitioner BR Arcades LLP in pursuance of the notice participated in the auction and being highest bidder for Rs. 1,60,850000/- had deposited 25% of the total auction amount. It was vide letter dated 01.12.2020 sale was confirmed by the concerned authority and on 14.12.2020 petitioner BR Arcades LLP deposited the entire sale consideration and sale certificate and possession letter of handing over of the physical possession of the properties of the borrower was issued on 14.12.2020.

Faced with the likely consequences of the impending likelihood of concerned property being taken away belonging to the borrower respondents No. 2 to 4 in civil revision No. 2597 of 2021 filed a civil suit No. 518 of 2020 before the Civil Court Kapurthala seeking directions to declare the sale of the property to be illegal with consequential reliefs. It is in between M/s

Phoenix ARC Private Limited approached this Court in Civil Revision No. 2620 of 2021 for setting aside of order dated 01.12.2020 of the Court of learned Civil Judge, Senior Division, Kapurthala whereby the operation of the orders were stayed which were passed in this civil suit in between. Subsequently M/s Phoenix ARC Private Limited moved an application under Order 7 Rule 11 read with Section 151 CPC seeking rejection of the plaint and vide order dated 04.05.2021, the learned trial Court rejected the plaint by allowing the application holding that the remedy lies under the Special Act and the Forum constituted under the SARFEASI Act. It is thereafter a civil appeal was filed in which the impugned orders dated 01.10.2021 were passed allowing the appeal and directing the parties to appear before the learned Civil Judge (Senior Division) Kapurthala for carrying on further proceedings as per the observations of the first appellate Court.

It is against this very order the present petitions have come about before this Court the first one by by M/s BR Arcades LLP and the second one by M/s Phoenix ARC Private Limited.

Heard Mr. Punit Bali, Senior Advocate assisted by Mr. Prateek Sodhi Advocate, for the petitioner (in CR 2597 of 2021), Mr. Manish Jain, Advocate for the petitioner in CR No. 2620 of 2021 and for respondent No. 5 in CR No. 2597 of 2021 and Mr. Akshay Bhan, Sr. Advocate assisted by Mr. Rohit Nagpal, Advocate for respondent No.1.

The very provisions of Order 7 Rule 11 CPC enunciates that a Court has to scrutinize the averments in the plaint and consider all the pleas taken by the opposite party in the written statement and to hold out if the allegations are vexatious to unduly wasting the time of the Court or really to help the Court in cutting short the procedure which otherwise was not legally permissible. Therefore, it is a tool in the hands of the Court to effectuate if it was required to apply its mind on the suit or to reject the plaint. Precisely the plaint cannot be rejected on the basis of the allegations made by the defendant in the written statement or in an application for rejection of the plaint. What is required is that the Court to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, the plaint cannot be rejected by the Court exercising its powers under Order 7 Rule 11 CPC. The Court is under mandate to record reasons if it opts for rejecting a plaint and the primary grounds for rejection of the plaint under Order 7 Rule 11 CPC is whether there is no cause of action, if the relief is under valued and the parties fail to correct the valuation within the time frame so given, where the suit appears to be barred by any law and so forth.

Cutting short the present controversy is over the jurisdiction of the Civil Court in view of the provisions enshrined in the SARFAESI Act. Section 17 (1) of the SARFAESI Act provides by way of this statute an appropriate forum to deal with such matters and any aggrieved party is to approach that recovery Tribunal so formed under this statute.

Reverting back to the instant case, the learned trial Court vide its order dated 04.05.2021 has given a well thought out and reasoned order holding that under the provisions of Order 7 Rule 11 CPC if a suit is barred by any law then the plaint has to be rejected. Since the proceedings under SARFAESI Act already stands initiated by one of the defendant and therefore similar proceedings before a civil Court does not lie and the jurisdiction of the civil Court stands ousted and it is primarily in consonance with the provisions of Order 7 Rule 11 CPC.

It is well settled position of law that initially a notice has to be served in terms of Section 13 sub-section 2 of the SARFAESI Act ensuring that the borrower must be in knowledge of such a process of recovery is being initiated and if the borrower submits any reply the same has to be considered applying the mind and thus in fact to the borrower if there was any permissibility in his stand or not therefore in the present case there has been due adoption of fairness and principles of natural justice. Since due measures have been adopted in terms of Section 13 sub section 4 of the SARFAESI Act and before the very date sale/auction of the property it was open to the borrower to file an appeal in terms of Section 17 of the SARFAESI Act before recovery Tribunal and the Tribunal can exercise if so necessitated its ancillary powers. It is only in a case where allegations are *prima facie* evident to have a limited extent a jurisdiction of civil Court can be invoked that the action of the creditor is fraudulent or the claim is absurd and untenable requiring only then to a limited extent the Civil Court can injunct into the matter. The very purpose of the SARFAESI Act is to speed up the process of recovery within the legal framework and which has been rightly resorted to by the lender present petitioner.

The learned Additional District Judge in the impugned order dated 01.10.2021 has fallen into an error by misconstruing the very provisions of the SARFAESI Act by introducing of his own an element of fraud holding that by virtue of property being under lease from the estate office the jurisdiction of the civil Court can be invoked. The impugned order is purely based on surmises and conjectures primarily own assumptions of the Court of the likelihood of a fraud causing of loss to the State exchequer and fraud with the estate office Chandigarh. Since this Court is already in a number of pronouncements has clearly held that in such cases the jurisdiction of the civil Court are clearly barred especially when the provisions under the SARFAESI Act have already been initiated and which precisely are under way when the civil suit was filed and the lender was trying to secure his amount from the borrower. The first appellate Court in the impugned order had transgressed its limits and as without there being justifiable and legally permissible grounds have set aside a well reasoned order of the trial Court. In the light of the same, the impugned order is set aside by way of acceptance of the instant revision.

April 26, 2022 **(FATEH DEEP SINGH)**
amit rana **JUDGE**

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