138 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2638-2020 (O&M)
Date of decision: 05.09.2022

State Bank of India

....Petitioner

Versus

Mamta Gupta and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kamil Nagpal, Advocate for
Mr. Akshay Jain, Advocate for the petitioner

Mr. Naveen Chopra, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

The application filed by the petitioner-Bank under Order VII Rule 11 of the Code of Civil Procedure, 1908, to reject the plaint in view of the bar to the jurisdiction of the civil court under Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') has been dismissed by the trial court. The civil court has formed an opinion that since the plaintiff has sought a decree for declaration, with a consequential relief of permanent injunction and mandatory injunction, therefore, the suit is maintainable before the civil court. It is not in dispute that proceedings under the SARFAESI Act were initiated by the Bank before filing of the suit. The property in question is charged with various loans extended by the Bank in favour of Dinesh Foods Limited. Section 17 of the SARFAESI Act enables any person to file a petition before the Debt Recovery Tribunal claiming any right in the secured asset. The Parliament, in order to expand the scope of inquiry under Section 17, has, by an amendment w.e.f 01.04.2016, included within its ambit the disputes concerning tenancy as well as leasehold rights upon the secured asset.

Section 34 of the SARFAESI Act bars the jurisdiction of the civil court with respect to matters, which fall within the scope of jurisdiction of the Debt Recovery Tribunal or Appellate Debt Recovery Tribunal.

Learned counsel representing the respondent relies upon the judgments passed in **Mardia Chemicals Limited vs. Union of India, AIR (2004) 4 SCC 311** and **Nahar Industrial Enterprises Ltd. vs. Hong Kong & Shanghai Banking Corporation (2009) 8 SCC 646**. In a recent judgment passed by the Supreme Court in **Electrosteel Castings Ltd. vs. UV Asset Reconstruction Company Ltd. and ors, (2022) 2 SCC 573**, the Court has held that the Debt Recovery Tribunal has the competency and jurisdiction under Section 17 of the SARFAESI Act to consider whether the Bank is a secured creditor or not. Similarly, the Supreme Court in **M/s Sree Anandhakumar Mills Ltd. vs. M/s Indian Overseas Bank and ors (2019) 14 SCC 788** and **Authorized Officer, State Bank of India vs. M/s Allwyn Alloys Pvt. Ltd. (2018) 8 SCC 120** explained the scope of Section 34 of the SARFAESI Act.

In view of the aforesaid overwhelming interpretation on the scope of Section 34 read with Section 17 of the SARFAESI Act, the order under challenge, passed by the court refusing to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908, is not sustainable. Hence, the revision petition is allowed. The plaintiff may avail his remedy before the Debt Recovery Tribunal.

All the pending miscellaneous applications, if any, are also disposed of.

05.09.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No