

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

126

CR-4263-2022 (O&M)
Date of decision: 11.10.2022

Kotak Mahindra Bank Limited and anotherPetitioners

Versus

Gaurav Arora and othersRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Prateek Gupta, Advocate
for the petitioners.

Mr. Aalok Jagga, Advocate
for respondent No.1.

Mr. Prateek Sodhi, Advocate
for respondents No.2 and 3.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioners are impugning the order dated 05.08.2022 passed by the Lower Appellate Court vide which it directed that no coercive steps would be taken qua the suit property till the disposal of the final appeal.

Mr. Prateek Sodhi, Advocate has put in an appearance and filed his memorandum of appearance on behalf of respondents No.2 and 3, which is taken on record subject to all just exceptions. He undertakes to file his power of attorney in the Registry of this Court.

Learned counsel for the petitioners submits that the impugned order suffers from patent illegality as the Lower Appellate Court failed to appreciate that the plaint of the respondent/plaintiff had been rightly rejected by the Trial Court under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 on the ground of the jurisdiction of the Civil Court being specifically barred under Section 34 of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Per contra, learned counsel appearing for respondent No.1 while opposing the prayer of the counsel opposite submits that the Lower Appellate Court is still seized of the matter and the petitioners without awaiting for the outcome of the appeal had shown undue haste in rushing to this Court.

Learned counsel appearing for respondents No.2 and 3 submits that the interim order had been passed as the petitioners had refused to file any reply to the stay application and had instead requested to fix the appeal for final arguments. He has submitted that in these circumstances, order of the Lower Appellate Court could not be faulted with vide which directions had been issued for not taking any coercive steps qua the suit property.

I have heard learned counsel for the parties and perused the relevant material on record.

At the outset, it would be relevant to point out that the appeal filed by respondent No.1 against rejection of the plaint is still pending adjudication before the Lower Appellate Court. Therefore, this Court would desist from delving into the merits of the case as to whether the plaint was rightly rejected or not.

Furthermore, a perusal of the impugned order dated 05.08.2022 (Annexure P-5) reveals that the petitioners refused to file any reply to the stay application moved by respondent No.1 and instead made a request to the Court concerned, which was admittedly not opposed by respondent No.1, for fixing the matter for final hearing, and

also to hear it along with a connected matter. Hence, in these circumstances, the Lower Appellate Court did not commit any error in passing the interim directions to protect the possession of respondent No.1.

Accordingly, this Court is not inclined to invoke its revisional jurisdiction and set aside the impugned order. However, it would be expected that the Lower Appellate Court would make earnest efforts to decide the appeal filed by respondent No.1 expeditiously in accordance with law.

Dismissed.

11.10.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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