147 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5274-2022 (O&M)
Date of decision: 17.11.2022

Rohit Kumar Garg

....Petitioner

Versus

State Bank of Patiala and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Charanpuneet Singh, Advocate for the petitioner
Mr. Akshay Jain, Advocate for the respondents

<u>ANIL KSHETARPAL, J (Oral)</u>

The State Bank of India (previously known as State Bank of Patiala) has filed a suit with the following caption:-

> *"Suit for Declaration to the effect that alleged sale deed no.4241 dated 05.09.2014 regarding house measuring 250 Sq. Yards comprising in Khewat/ Khatauni no.557/2975, 2976, Khasra no.2399 min, bounded as under:-*
> *East :- 30' Street 24' wide;*
> *West:-30' Vacant Plot of Mukhtiar Singh:*
> *North:- 75' Vacant Plot of Pargat Singh,*
> *South:- 75' House of Kamal Kant;*
> *situated in Patti Mehna, bearing MC. No.225 (New No MCB/Z-2/13592), Gali no.3, Near BSNL Office Avenue, Bibiwala Road, Bathinda, alleged to have been executed by defendant no.1 in favour of the defendants no.2 and 3, is ineffective, inoperative, without consideration, mere paper transaction, prepared fraudulently, with an ulterior motive to get wrongful benefit and thereby to cause wrongful loss to plaintiff bank, executed purely against the terms & conditions of loan agreement, mentioning false recital of property being free from all encumbrances, free from all disputes and also that no loan has been taken against above said house from any bank etc. and also regarding transfer of possession, although possession of said house was not transferred to defendants no.2 and 3 and in fact it was with the defendant no. 1, front whom the same was taken by plaintiff bank under SARFEASI Act proceedings and accordingly the said sale deed is not binding against the rights of plaintiff bank and its vendee defendant*

> *no.4 (who has purchased this house in public auction, from plaintiff under The Securitization & Reconstruction of Financial Assets and Enforcement of Security Interests Act proceedings), in any manner and does not create any right, title or interest in favour of defendants no.2 and 3 and mutation no.78836, Patti Mehna, Bathinda sanctioned on the basis of above said sale deed at the back of plaintiff is also illegal, null, void and against the right of plaintiff and defendant no.4; and the concerned Revenue/ Municipal records thereof are liable to be corrected accordingly.*
> *AND*
> *Suit for Permanent Injunction restraining the defendants no.2 and 3, from further alienating the above detailed suit property bounded as under East: 30' Street 24' wide;*
> *West:- 30' Vacant Plot of Mukhtiar Singh;*
> *North:- 75' Vacant Plot of Pargat Singh;*
> *South:- 75' House of Kamal Kant;*
> *situated in Patti Mehna, bearing MC. No.225 (New No. MCB/Z-2/13592), Gali no.3, Near BSNL Office, Green Avenue, Bibiwala Road, Bathinda as they have got no right, title or concern with the same."*

Defendant no.2 is the petitioner herein. His application under Section 10 of the Code of Civil Procedure, 1908, to stay the proceedings in the suit till the decision of the Regular Appeal No.111 of 2019, pending before the Debt Recovery Appellate Tribunal, New Delhi, has been dismissed. Challenging its correctness, the present revision petition under Article 227 of the Constitution of India has been filed.

Learned counsel representing the petitioner submits that the proceedings are already pending in the Debt Recovery Appellate Tribunal. Therefore, there may be chances of contradictory findings. He submits that it will be in the interest of justice if the proceedings in the civil suit are stayed.

Section 10 of the Code of Civil Procedure, 1908, is applicable if two suits are pending and the matter directly or substantially in issue in both the cases is same. In the present case, the trial court has found that all the issues involved in the case are not identical. It is evident that the proceedings before the Debt Recovery Appellate Tribunal relate to validity of the auction proceedings conducted by the Bank and consequential alienation of the suit property in favour of defendant no.4, whereas, the Bank has filed a suit that the property, which is subject matter of mortgage, has been transferred in order to defraud the creditors. Thus, the issues involved in the proceedings before the Debt Recovery Appellate Tribunal as well as before the civil court are not same. Thus, no ground to interfere is made out.

Dismissed.

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

17.11.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No