IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.107+293

Case No. : CR-4165-2022 (O&M)

Date of Decision : November 28, 2023

Punjab and Sind Bank and others .... Petitioners
vs.
Sunita Rani and another .... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Anant Bir Singh Sidhu, Advocate
for the petitioners.

Mr. Karan Sharma, DAG, Haryana
for non-contesting respondent no.2.

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GURBIR SINGH, J. :

1. Challenge in this revision petition is to the order dated 03.08.2022 (Annexure P-4), passed by learned Civil Judge (Junior Division), Panchkula (hereinafter referred to as – the Trial Court), whereby application moved by the petitioners/defendants, in a suit filed by respondent no.1/plaintiff, for rejection of her plaint, has been dismissed.

2. The brief facts, as culled out from the petition, are that respondent no.1/plaintiff filed a suit for declaration stating therein that she mortgaged the property i.e. plot measuring 13¼ marlas, as mentioned in the head note of plaint, the possession of which was illegally and forcibly taken by the defendants, which was collateral security for the primary loan on Showroom No.118-A, Mansa Devi Road, ManiMajra, Chandigarh and the stock lying there has been burnt and destroyed in fire tragedy occurred on

09.12.2017. The bank's charge and lien on the mortgaged property has been validly discharged. Further, decree regarding recovery of damages and consequential relief of permanent injunction was also sought restraining the defendants to proceed against any of the assets of the property in question, belonging to the plaintiff or its sureties, or to effect any recovery pursuant to the loan sanctioned in favour of the firm of plaintiff's husband.

3. The facts, as mentioned in the plaint (Annexure P-1), are that the firm of the plaintiff's deceased husband was engaged in the business of sale and marketing of consumer goods. He was in need of funds. In the year 2014, he approached defendant Bank for getting CC limit against the stock of the firm lying in the Showroom No.118-A, Mansa Devi Road, ManiMajra, Chandigarh. The husband of plaintiff took cash credit facility and mortgage loan of Rs.75,00,000/- for business purpose by mortgaging residential house and hypothecation of stock etc. House renovation loan of Rs.15,00,000/- was also availed by the proprietor of the plaintiff firm. For initial two years, instalments were regularly paid and the Bank had been debiting the premium amount from the CC limit of the plaintiff's firm with it and had been getting Fire and BHB Insurance Policy for stocks of the plaintiff's firm lying in the Showroom No.118-A, Mansa Devi Road, ManiMajra, Chandigarh.

4. Due to non-payment of instalments of loan in time, on 07.07.2017, the defendant Bank took physical possession of the mortgaged residential house in question including the household goods and plaintiff's belongings, without any order by the competent authority.

5. On 09.12.2017, fire broke out at the aforesaid Showroom which resulted into the loss of the stock. Since the said premises was in the possession of the defendant Bank, so, the Bank was liable for loss of stock and further, in lieu of the said loss, the charge created by the Bank stood automatically discharged.

6. The mortgaged property was given by the plaintiff on rent to M/s Om Trading Company, Proprietor Ajay Kumar. On account of default by the deceased husband of the plaintiff, on 28.05.2017, the tenant informed the plaintiff that the godown had been sealed by the Bank without any orders passed by the District Magistrate, Panchkula. The plaintiff had filed a Civil Suit as Proprietor of M/s Rattan Trading Company titled as **Sunita Rani vs. Punjab and Sind Bank and others** and during pendency of the said suit, the Bank, on the directions of the Court, produced insurance policy covering damages in case of any fire in the said showroom. The petitioner Bank has engaged itself in getting the insurance claim and selling stock by removing the same from the said showroom. The petitioner Bank has no authority to seal or sell the godown constructed over the plot in question without taking appropriate permission from the competent authority. By taking unauthorized possession of the godown of the tenant of the plaintiff, the Bank had caused loss to the plaintiff. As per social obligation, the tenant of the plaintiff was paid compensation to the tune of Rs.25,00,000/- by the plaintiff and her husband. Due to such huge liability and under this trauma of unnecessary financial burden for no fault of theirs, husband of the plaintiff suffered serious mind stroke and he expired on 07.01.2020. After his death, on going through the entire record, the plaintiff came to know that there was no financial obligation or liability towards the petitioner Bank.

7. Learned counsel for the petitioners has argued that on appearance, the petitioner Bank moved application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that as per Section 34 of the SARFAESI Act, the Civil Court has no jurisdiction to entertain the suit. The plaintiff was aggrieved against the action of the Bank under the SARFAESI Act and the remedy against the same lies before the Debts Recovery Tribunal. The learned Trial Court dismissed the application on the ground that defence raised by the defendant Bank cannot be looked into under Order 7 Rule 11 CPC and only averments are to be seen.

8. Notice was issued in the present revision petition but no one has put in appearance on behalf of respondent no.1. Learned State counsel has appeared to represent respondent no.2.

9. I have heard learned counsel for the parties and perused the case record.

10. Section 34 of the SARFAESI Act reads as under :-

> ***34. Civil court not to have jurisdiction** — No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).*

11. The jurisdiction of Civil Court is specifically barred. In case, any action is to be taken in respect of any matter, Debts Recovery Tribunal or the Appellate Tribunal is empowered under the said Act to take action. The learned Trial Court has failed to take the same into consideration. If any person is aggrieved by the action of the secured creditor under the SARFAESI Act, the remedy against the same lies before the Debts Recovery Tribunal, as per the provisions of Section 17 of the SARFAESI Act, which reads as under :-

> ***"17. Right to appeal —***
> ***(1)*** *Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, 1[may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, 1[may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken\:" 2[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.] 3[Explanation.— For the removal of doubts it is hereby declared that the communication of the reasons to the*

borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.]3[Explanation.—For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.]" 4[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) *If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or* *more measures referred to in-sub-section (4) of section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.*

(4) *If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section l3 to recover his secured debt.*

(5) *Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application: Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).*

(6) *If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to*

> *the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.*
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> ***(7)*** *Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]****"***

12. In case **Electrosteel Castings Limited vs. UV Asset Reconstruction Company Limited and Others** – **Civil Appeal No.6669 of 2021**, Hon'ble Apex Court has held that the debtor can initiate proceedings before the Debts Recovery Tribunal i.e. the appropriate forum, under Section 34 of the SARFAESI Act. In the case in hand, the plaintiff's plea, that there was no liability of the husband of the plaintiff and tenant had to suffer with the action of the Bank, is not a ground which can be allowed to be taken by a Civil Court against the bar created to entertain such suit by the Civil Court. The relevant discussion is in para no.8 of the judgment in **Electrosteel Castings Limited** ***(supra)***, which is reproduced hereunder for ready reference :-

> *"8. Having considered the pleadings and averments in the suit more particularly the use of word 'fraud' even considering the case on behalf of the plaintiff, we find that the allegations of 'fraud'*

are made without any particulars and only with a view to get out of the bar under Section 34 of the SARFAESI Act and by such a clever drafting the plaintiff intends to bring the suit maintainable despite the bar under Section 34 of the SARFAESI Act, which is not permissible at all and which cannot be approved. Even otherwise it is required to be noted that it is the case on behalf of the plaintiff-appellant herein that in view of the approved resolution plan under IBC and thereafter the original corporate debtor being discharged there shall not be any debt so far as the plaintiff - appellant herein is concerned and therefore the assignment deed can be said to be 'fraudulent'. The aforesaid cannot be accepted. By that itself the assignment deed cannot be said to be 'fraudulent'. In any case, whether there shall be legally enforceable debt so far as the plaintiff-appellant herein is concerned even after the approved resolution plan against the corporate debtor still there shall be the liability of the plaintiff and/or the assignee can be said to be secured creditor and/or whether any amount is due and payable by the plaintiff, are all questions which are required to be dealt with and considered by the DRT in the proceedings initiated under the SARFAESI Act. It is required to be noted that as such in the present case the assignee has already initiated the proceedings under Section 13 which can be challenged by the plaintiff-appellant herein by way of application under Section 17 of the SARFAESI Act before the DRT on whatever the legally available defences which may be available to it.

We are of the firm opinion that the suit filed by the plaintiff - appellant herein was absolutely not maintainable in view of the bar contained under Section 34 of the SARFAESI Act. Therefore, as such the courts below have not committed any error in rejecting the plaint/dismissing the suit in view of the bar under Section 34 of the SARFAESI Act."

13. Since the Civil Suit was patently barred, so the learned Trial Court has wrongly held that defence raised by the defendants could not be considered. When the suit is barred by jurisdiction, then the Court is suo motu bound to pass the order or definitely can pass the order if same is brought to the notice of the Court. It is not a question of defence and cannot be seen by Court.

14. In view of the above discussion, the present revision petition is allowed and the order dated 03.08.2022 (Annexure P-4), passed by learned Trial Court is set aside and plaint filed by respondent no.1 herein (plaintiff before the learned Trial Court) is hereby rejected.

15. Pending applications, if any, shall stand disposed of along with this judgment.

November 28, 2023 **(GURBIR SINGH)**
monika **JUDGE**

Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*