

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.4609 of 2022

Date of Decision: 09.01.2023

State Bank of India

..... Petitioner

Versus

Raj Mohar Singh & Another

..... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Akshay Jain, Advocate for the petitioner.

Nidhi Gupta, J.

Prayer in the present Revision Petition is for directing learned Civil Judge (Senior Division), Fatehabad to decide application under Order 7 Rule 11 CPC (Annexure P4) filed by the petitioner in Civil Suit No.734/2021 titled as "Raj Mohar Singh Vs. State Bank of India Etc.", in a time bound manner.

It is submitted by learned counsel for the petitioner that respondent No.1/plaintiff filed a Civil Suit for permanent injunction seeking the following relief:-

"It is therefore respectfully prayed that a decree for permanent injunction to the effect that the defendant No.1, who is allegedly equitable mortgagee of the defendant No.2 in respect of the property situated at No.II-22, Vakaya Mauja, Model Town, Fatehabad, Haryana (House No.22-II, Model Town, Fatehabad, Tehsil and District Fatehabad) be restrained from interfering forcibly and illegally in the peaceful possession of the plaintiff and from dispossessing the plaintiff from the abovesaid house and from taking forcible possession of the house under the garb of the alleged notice dated 10.09.2021 allegedly issued under Rule 8(1) of the Security Interest (Enforcement) Rules 2002, till the orders regarding ejectment/eviction or possession are passed from the court of law having competent jurisdiction since the plaintiff is a lawful tenant in respect of the said house under defendant No.2, who is

landlord/owner of the same, prior to the alleged equitable mortgage on the house in question in favour of the defendant No.1 and the alleged mortgage created by the defendant No.2 in favour of the defendant No.1 is fraudulent and in connivance and collusion of the defendant No.1 with the defendant No.2 to get the possession of the house in possession of the plaintiff by illegal means under the garb of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, may kindly be passed in favour of the plaintiff and against the defendants.

Any other relief to which the plaintiff is found entitled may also be granted to the plaintiff with costs of the suit.”

It is submitted by learned counsel for the petitioner that the Civil Suit of respondent No.1/plaintiff is not maintainable in view of Section 34 of Securitization and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002, as per which provision Civil Suit is not maintainable. It is submitted that the matter is already pending before the Debt Recovery Tribunal and the statement of Id. Counsel to this effect may be duly recorded. In view of the above facts, the petitioner had filed an application dated 07.10.2021 (Annexure P4) under Order 7 Rule 11 CPC for rejection of plaint. It is submitted that plaintiff/respondent No.1 also filed reply to the aforesaid application on 22.10.2021, however, the learned Court below has not yet taken decision on the petitioner's application under Order 7 Rule 11 CPC. It is further submitted that delay in decision of the petitioner's application is seriously prejudicing his recovery of outstanding amount especially in view of the fact that stay of proceedings has been granted by the learned trial Court vide order dated 30.09.2021 (Annexure P6).

Heard learned counsel for the petitioner.

Issuance of notice is being dispensed with at this stage, as that will only further delay the case.

A perusal of the record of the case shows that reply was filed by respondent No.1/plaintiff as far back as on 22.10.2021. Thereafter, the matter/hearing of petitioner’s application under Order 7 Rule 11 CPC has been adjourned on 23.05.2022, secondly on 25.07.2022, thirdly on 30.08.2022, then on 20.10.2022 and now the case is stated to be pending for 20.01.2023. Each time the case has been adjourned with the following order:-

“Arguments on application under Order 7 Rule 11 CPC for rejection of plaint not addressed. Adjournment sought. Heard. Allowed. Now, to come up on 30.08.2022 for arguments on above said application.”

In view of the above facts, the present petition is allowed with a direction to the learned Civil Judge, Senior Division, Fatehabad to decide the petitioner’s application under Order 7 Rule 11 CPC within one month of the next date of hearing viz 20.01.2023. Accordingly, the present petition stands allowed in above said terms. Pending application(s) if any also stand(s) disposed of.

09.01.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No