IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-230-2023 (O&M)
Date of decision: 27.01.2023

Anil Kumar Rohilla

...Appellant

Versus

Religare Housing Development Finance Corp. Ltd., and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Ashish Yadav, Advocate for the appellant.

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H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Anil Kumar Rohilla had filed a suit against defendants Religare Housing Development Finance Corp. Ltd., Gurugram, his brother Sunil Kumar and sister Saroj seeking a declaration that he is owner in possession of the suit property, which is in the form of residential house measuring 39.11 sq. yard situated in village Garhi Harsaru, District Gurugram and notice dated 10.11.2021 issued for taking possession by defendant No.1/financial institution be declared null and void, besides granting a decree for permanent injunction restraining the defendants from taking possession of residential house or from alienating the same by way of auction. According to the plaintiff, the residential house is his ancestral property. Father of plaintiff had expired on 29.08.2020 and during his life time, father of plaintiff had disowned his other brother Sunil Kumar from moveable and immovable property by way of getting a public notice published. The plaintiff had not taken any land from defendant No.1 and notice for possession is illegal.

2. Defendant No.1 financial institution had filed an application under Order 7 Rule 11 CPC, contending that as per Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), the civil Court does not have jurisdiction.

3. The application was resisted by the plaintiff, contending that where civil rights of persons other than the borrowers and guarantors are involved, the civil Court shall have jurisdiction. Since the plaintiff is neither the borrower nor the guarantor, therefore, the suit is maintainable.

4. However, vide order dated 20.09.2022 the trial Court had allowed the application and thereby rejected the plaint, leaving the plaintiff aggrieved and he had approached the Court of District Judge, Gurugram, which was assigned to Addl. District Judge, Gurugram, who vide judgment and decree dated 16.12.2022, upheld the order dated 20.09.2022 and dismissed the appeal. Now the plaintiff/appellant has knocked at the door of this Court by way of filing the present Regular Second Appeal.

5. I have heard learned counsel for the appellant/plaintiff besides going through the record and I find that the appeal lacks any merit.

6. Section 34 of the Act provides bar to jurisdiction of Civil court dilating that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debt Recovery

Tribunal or the Appellate Tribunal is empowered by or under this 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 confered by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

Section 35 of the Act provides that the provisions of this Act to override other laws.-The provisions this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having of effect by virtue of any such law.

7. The submissions made by counsel for the applicant/defendant No.1 are to the effect that in this case, the suit property is a secured asset with respondent No.1 financial institution towards the home loan raised by father and brother of plaintiff. The property in question was mortgaged with respondent No.1 financial institution as security for grant of that loan. The borrowers have since failed to repay the loan amount and which has been declared as an NPA. Respondent No.1 financial institution has already initiated action under the Act, moving an application under Section 14 of the Act which was accepted and Sh. Vikas Lathar, Advocate was appointed as a Duty Magistrate for taking the possession of the secured asset. The civil suit has been filed by the plaintiff to defeat the process initiated under the Act. Brother of plaintiff namely Sunil Kumar-defendant No.2 had approached Debt Recovery Tribunal but no relief was granted to him. In the impugned order, the trial Court has recorded the contentions raised by both the counsel.

9. Although counsel for the plaintiff/respondent tried to refute the assertions made by counsel for defendant No.1 but then as it comes out, the jurisdiction of the civil Court in such type of matters is barred. The plaintiff seems to have invented a story just to wriggle out of Sections 34 and 35 of the Act. The suit in question is clearly barred under Sections 34 and 35 of the Act. If aggrieved, the plantiff can approach DRT under Section 17 of the Act.

10. Counsel for the appellant has referred to judgments **Central Bank of India Vs. Mr. Ram Rattan @ Rattan Lal & Ors.**, in CR-2475-2015 decided on 09.04.2015, **Kaaiser Oils Pvt. Ltd. & Ors. Vs. Allahabad Bank & Ors.** in FAT-166-2017 decided on 30.08.2017, **Ritu Gupta & Ors. Vs. Usha Dhand & Ors.**, in CS (OS) 188-2011 decided on 19.11.2013 and **Punjab National Bank Vs. Ram Kishan** in CR-101-2014 decided on 13.01.2014. These judgments are not applicable due to different facts, circumstances and the context in which such observations have been made.

11. The impugned order/judgment are quite detailed and well reasoned. Those do not suffer from any illegality or infirmity. There is no merit in the instant Regular Second Appeal. No substantial question of law arises in this appeal. The appeal stands dismissed accordingly.

27.01.2023 **(H.S. MADAAN)**

sumit.k **JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No