



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

351

CR-5694-2018
Date of decision : 11.11.2024

Om Parkash Singh Petitioner

versus

Adishwar Jain and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Tarranum Madan, Advocate and
Mr. Rohit Kaura, Advocate
for the petitioner.

Mr. Rajeev Anand, Advocate
for respondent No.3.

PANKAJ JAIN, J. (Oral)

1. Tenant filed present suit seeking decree of permanent injunction restraining the defendants from interfering in the peaceful possession of the suit property. The suit property was mortgaged with respondent No.2. An application was moved by the lender-financial institution under Order 7 Rule 11 Code of Civil Procedure asserting that the suit was not maintainable in the light of provision as contained under Section 35 of the SARFAESI Act.
2. During the pendency of the said application filed under Order 7 Rule 11 CPC seeking ejectment of the plaintiff, present application was moved, wherein the plaintiff sought withdrawal of the suit against defendant No.2 i.e. the lender. Vide impugned award, the said application has been dismissed.



3. Counsel appearing for the plaintiff-petitioner submits that the plaintiff being master of the suit is at liberty to withdraw the suit in part and such right being absolute cannot be denied. Reliance is being placed upon ratio of law laid down in *M/s. Hulas Rai Baij Nath vs. Firm K.B. Bass and Co.* reported as **1968 AIR (SC) 111**.

4. Counsel for the lender-respondent submits that the present suit is in fact a collusive suit between the plaintiff and defendant No.1 in an attempt to defeat the rights of the lender. The owner of the property i.e. defendant No.1 defaulted as a borrower leading to service of notice under Section 13(2) on 29.06.2011. Section 13(4) was invoked on 21.09.2011. Section 14 was resorted to on 17.07.2015. The present suit was filed on 06.04.2015 i.e. after Section 13(4) was invoked. He thus submits that the pendency of a simpliciter suit for injunction against the landlord after invoking Section 13(4) is inconsequential. It is defendant No.1-the borrower who is fighting proxy litigation against the lender. In case the present suit is allowed to survive without defendant No.2, the same shall prejudice to the rights of defendant No.2 who is a necessary party in view of law laid down by Supreme Court in the case of *U.P. Awas Evam Vikas Parishad vs. Gyan Devi (dead) by LRs.* reported as **1995(2) SCC 326**.

5. I have heard counsel for the parties and have carefully gone through the records of the case.

6. Counsel for the plaintiff-petitioner is not in a position to deny that the application seeking withdrawal of the suit against defendant No.2 was filed only after an application under Order 7 Rule 11 CPC was moved by defendant No.2 raising plea of statutory bar.



Till the bonafide of the right as being agitated by the plaintiff vis-a-vis defendant No.2 is adjudicated in the light of law laid down by Supreme Court in the case of *Bajarang Shyamsunder Agarwal vs. Central Bank of India and another (2019) 9 Supreme Court 94*, the plaintiff cannot be allowed to withdraw the suit against the party.

7. So far as reliance upon the case of *M/s. Hulas Rai Baij Nath's (supra)* is concerned, the same is of no aid to the plaintiff. Counsel for the plaintiff-petitioner admits that the present application is not for the withdrawal of the suit in toto, but in piecemeal.

8. In view thereof, till application Order 7 Rule 11 CPC is decided, the plaintiff cannot be allowed to defeat the provision of law by simply resorting withdrawal of the suit to come out of the grind of Order 7 Rule 11 CPC.

9. Consequently, the present revision petition is dismissed.

(PANKAJ JAIN)
JUDGE

11.11.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No