IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

140 **CR-668-2024 (O&M)**
Date of Decision: 05.02.2024.

Ram Kumar and another ...Petitioners.

Versus

Central Bank of India and another ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Jainainder Saini, Advocate
for the petitioners.

Mr. Naren Pratap Singh, Advocate
for respondent No.1.

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Sukhvinder Kaur, J.

By way of present revision petition, the petitioners/ plaintiffs have challenged the orders dated 06.11.2023 and 11.08.2023 (Annexure P-6 and P-4) passed by, District Judge, Hisar and Civil Judge (Junior Division) Hisar, respectively, vide which application filed by the respondents under Order 7 Rule 11 CPC for rejection of plaint was allowed.

2. The brief facts of the case are that the plaintiffs have filed the suit for declaration to the effect that the notice dated 11.08.2022 issued under Section 13(2) of The Securitization & Reconstruction of Financial Assets and Enforcement of Security Act, 2002 (hereinafter referred as SARFAESI Act) issued by defendant No.1 to the plaintiffs and further steps

emanating therefrom are illegal, null and void, against the principles of natural justice, against the Banking Law and are the result of fraud of the defendants and the same are liable to be set aside with the directions to the police to lodge FIR against the concerned officers/ officials of the defendants who have grabbed the money of the plaintiffs and created forged and false accounts of the plaintiffs. With consequential relief of permanent injunction to the effect that the defendants be restrained from effecting any recovery on the basis of legal accounts prepared by them from the plaintiff and take any steps whatsoever it may be under SARFAESI Act. Mandatory injunction was also sought for issuing directions to defendants prepare proper accounts of the plaintiffs and regularize these accounts after calculating the interest accrued upon the amount since 15.12.2018. Notice of aforesaid suit was issued to the respondents and the respondents appeared and filed an application under Order 7 Rule 11(a) and (d) CPC for rejection of plaint on the ground that as per Section 34 of the SARFAESI Act Civil Court has no jurisdiction to entertain any suit or proceeding in respect of any matter regarding which a Debt Recovery Tribunal or the Appellate Tribunal is empowered. Vide order dated 11.08.2023, the trial Court allowed the said application under Order 7 Rule 11(a) and (d) CPC filed by the respondents and rejected the plaint of the petitioners/plaintiffs. An appeal was preferred by the plaintiffs against the said order before the District Judge, Hisar, which was also dismissed, vide order dated 06.11.2023. Hence the petitioners have knocked the doors of this Court by way of filing the present revision petition.

4. Learned counsel for the petitioners has contended that the plaintiffs/ petitioners obtained financial assistance from defendant No.2 which could not be repaid, due to which their account was declared NPA and thereafter, the defendants took various steps under SARFAESI Act. Then the plaintiffs approached the Debt Recovery Tribunal, Chandigarh where they came to know that the defendants had sold the house, which had been mortgaged with the bank as security, without taking the possession. Then a compromise was effected by the defendants and a demand draft dated 15.01.2018 of Rs.17,00,000/- was issued in favour of defendant No.2. He has further contended that on 11.08.2022, the impugned notice/ letter was issued by the defendants which is a result of fraud and cheating and as per compromise, no amount was due against the plaintiffs but the defendants have shown only Rs.13,00,000/- as having been deposited in the account and the bank has grabbed Rs.4,00,000/- of the plaintiffs and wrongly issued the notice dated 11.08.2022. He has also contended that even amount of Rs.13,00,000/- was credited in their loan account only on 25.01.2018, whereas the demand draft was handed over to the bank officials on 16.01.2018. He has argued that it is amply clear that bank officials of the respondent bank in collusion with the higher authorities are playing fraud with the petitioners/ plaintiffs and want to extract more money from them and they are trying to cause wrongful gain to themselves by causing wrongful loss to the petitioners/ plaintiffs. He has contended that notice issued under Section 13(2) of SARFAESI Act dated 11.08.2022 is a blatant fraud by the respondents and its officials in collusion with each other, to

fraudulently extract money from the petitioners/ plaintiffs. He has placed reliance upon the judgment of Hon'ble Supreme Court in ***Mardia Chyemicals Ltd etc. Vs. Union of India nad others, 2004 (2) R.C.R. (Civil) 665.*** and has contended that the Civil Court has a limited jurisdiction only if there is cheating and forgery. He has further argued that the jurisdiction of Civil Court is not barred under the provisions of SARFAESI Act where the fraud has been committed. The respondents instead of taking action against their officials for playing fraud with the petitioners tried to save them by raising demands from the petitioners. He has submitted that the impugned orders of Court below are based on conjectures and surmises and the same are liable to be set aside.

5. I have heard learned counsel for the petitioner and have gone through the relevant record.

6. In the present case, the petitioners/ plaintiffs have challenged the notice dated 11.08.2022 issued by defendant No.1 under Section 13(2) of the SARFAESI Act on the ground of fraud and cheating. From the perusal of the pleadings as mentioned in the plaint, it transpires that the respondents/defendants have taken various steps under the SARFAESI Act and the plaintiffs have also approached the Debt Recovery Tribunal against the steps taken by the defendants. The defendants/ respondents have relied upon the possession notice dated 29.12.2017, which shows that the bank had taken possession of the property of the plaintiffs. The petitioners/plaintiffs were well aware that the proceedings under the SARFAESI Act had already been initiated against them by the bank as per

law. Section 34 of the SARFAESI Act bars jurisdiction of Civil Court to entertain any suit or proceedings in respect of the matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered and in such cases, no injunction is to be granted by the Court and the appropriate remedy available to the respondents/plaintiffs was to approach the Debt Recovery Tribunal for their grievances.

7. The case law cited by learned counsel for the petitioners is of no help to him not being applicable to the facts of the present case. In Mardia Chyemicals' case (supra) it was held that:

> "*however, to a very limited extent jurisdiction of the civil Court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe, whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil Court in the cases of English mortgages.*"

8. But in the instant case, though the petitioners have alleged that the fraud was played by the defendants but they have not disclosed that how they were cheated by the bank officials/ defendants and under the garb of the alleged fraud, the plaintiffs cannot be allowed to invoke the jurisdiction of the Civil Court. The plaint is also silent regarding the fact that when cause of action had accrued to them.

9. Thus, there being no illegality or infirmity in the impugned order and no interference therewith is called for while exercising the

revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

10. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

05.02.2024.
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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No