IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1249 of 2020(O&M)
Reserved On: 30.11.2023
Pronounced On:08.01.2024

Puja Jain and another

...Petitioners

Versus

Kotak Mahindra Bank Ltd. and others

...Respondents

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present: Mr. Rupinder S. Khosla, Sr. Advocate, with
Mr. Dinesh Arora, Advocate,
for the petitioners.

Mr. Hemant Saini, Advocate
for respondent no.1.

Mr. J.S.Pannu, AAG, Haryana
for respondent no.3.

ANIL KSHETARPAL, J.

1. In this revision petition, filed under article 227 of the Constitution of India, the plaintiffs assail the correctness of the concurrent orders passed by the courts below while allowing the respondent-bank's application for rejection of the plaint on an application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC) read with Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the 2002 Act').

2. The plaintiffs, namely, Smt. Puja Jain wife of Sh. Anil Jain and Sh. Anil Jain son of Sh. Satish Kumar Jain filed a suit for declaration with consequential relief of permanent injunction and mandatory injunction against respondent no.1-Bank and others. They challenged the correctness

of notice issued under Section 13(2), 13(4) and proceedings under Section 14 of the 2002 Act. In substance, the plaintiffs are the Directors of M/s Acropolymers Private Limited. M/s Apra Auto (India) Private Limited availed various credit facilities from respondent no.1-bank. M/s Acropolymers Private Limited signed a corporate guarantee and mortgaged three different properties with the bank in order to secure the re-payment of loan to defendant no.2-M/s Apra Auto (India) Private Limited. Since there was a default in the re-payment of the loan amount, a notice under Section 13(2) of the 2002 Act was issued by the Bank on 26.04.2017. However, neither any reply was filed nor payment was made. Ultimately, a notice under Section 13(4) of the 2002 Act was issued by the Bank on 13.07.2017 and the symbolic possession of the property was taken which was also published in the newspapers. Thereafter, the bank filed an application under Section 14 of the 2002 Act before the District Magistrate. At this stage, the plaintiffs filed the civil suit. It may be noted here that in the beginning Sh. Satish Kumar Jain, father-in-law of plaintiff no.1 and father of plaintiff no.1 along with Sh. Sandeep Jain, brother of plaintiff no.2 filed SA No.239 of 2017 in Debt Recovery Tribunal, Delhi, which was dismissed on 21.09.2017. Thereafter, M/s Acropolymers Private Limited through. Sh. Anil Jain (Plaintiff no.2) filed an application under Section 17 of the 2002 Act i.e. SA No.764 of 2017, which was dismissed on 02.11.2017, by the Debt Recovery Tribunal, Chandigarh.

3. The plaintiffs allege that their digital signatures have been misused and the bank record has been tampered with. Thus, the plaintiffs have tried to make out a case that the bank has committed fraud against them. An application under Order VII Rule 11 CPC read with 34 of the

2002 Act was filed which has been allowed. It has been disclosed in the application that another SA No.6843 of 2017 has also been filed.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

5. The learned counsel representing the petitioner while relying upon para 51 of the judgment passed in ***Mardia Chemicals Limited Etc. Etc. vs. Union of India and others Etc. Etc., 2004(4) SCC 311*** and ***Gurdeep Singh vs. Punjab and Sind Bank and others, 2015 (9) RCR Crl. 101***, contends that the courts below have erred in rejecting the plaint. He submits that a fraud has been alleged in accordance with Order VI Rule 4 CPC and therefore, the Civil Court has the jurisdiction.

6. On the other hand, the learned counsel representing the respondent while contesting the revision petition has submitted that both the courts have correctly held that the plaint is liable to be rejected.

7. This court has examined the various judgments passed by the Supreme Court on the aforesaid issue.

8. In ***Mardia Chemicals case (supra)***, it was held that under Section 17 of the 2002 Act, the Tribunal has a wider jurisdiction. However, in para 51 of the judgment, a small window was left for the civil court to examine the matter if the action of the secured creditor is alleged to be fraudulent or their claim is so absurd and untenable that it does not require any proof. Thereafter, Section 17 of the 2002 Act was amended by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill,2016. The scope of Section 17 of the 2002 Act was further enlarged after the said amendment. Again the matter came up for consideration before the Supreme court in ***The***

Authorized Officer State Bank of India vs. M/s Allwyn Alloys Pvt. Limited and others (2018) 8 SCC 210. The Supreme Court held that the jurisdiction of the civil court is barred particularly when Section 17 provides for a sufficient opportunity to anyone to file petition before the Debt Recovery Tribunal. The aforesaid view was reiterated in ***M/s Sree Anandhakumar Mills Ltd. vs. Indian overseas Bank. (2019) 4 SCC 758***. Recently, in ***Electro Steel casting Ltd. vs. UV Asset Reconstruction Company, (2022)2 SCC 573,*** the Supreme Court has held that the jurisdiction of the civil court is barred under Section 34 of the 2002 Act. The same view was reiterated in ***Charu Kishor Mahte, 2022 SCC Online SC 1962.*** Very recently in ***Punjab & Sind Bank vs. Frontline Corp. Ltd. (2023) SCC Online SC 1209***, the Supreme Court held that the jurisdiction of the civil court is barred under the provisions of the 2002 Act.

9. This court has also carefully examined the copy of the plaint from the record which was requisitioned. It is evident that in substance, the plaintiffs while claiming to be Directors of M/s Acropolymers Private Limited alleged that their digital signatures have been forged and the property of the company was never mortgaged against the loan and there is some manipulation in the amount which was extended as the credit facility that can be examined by the Debt Recovery Tribunal which is also normally presided over by officer of the rank of District Judge. This court has also carefully read the judgment passed in ***Gurdeep Singh's case (supra)***. The Division Bench of Delhi High Court in a petition filed under Section 226 of the Constitution of India restrained the Debt Recovery Tribunal from proceeding further in a matter where a civil court is at the advance stage and the court also held that it will not be appropriate to permit the continuation

of proceedings under Section 19 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993. Hence, the aforesaid judgment passed by the Division Bench in ***Gurdeep Singh's case(supra)*** is not applicable to the present case.

10. Keeping in view the aforesaid facts and discussion, finding no merits, the revision petition is dismissed.

11. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

08th January, 2024
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Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO