IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3257-2021
Pronounced on:16.01.2024

Central Bank of India ... Petitioner

Versus

Parveen Jain and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. C.S. Pasricha, Advocate, for the petitioner.

Mr. G.S. Madaan, Advocate, for respondent No.1.

GURBIR SINGH, J

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 20.07.2020 (Annexure P-4) passed by learned Civil Judge (Junior Division), Ludhiana vide which respondent No.2-defendant has been directed that in case of alienation of suit property, make recital in the deed itself about the pendency of suit and the Registrar was also directed to make red entry in this regard in the revenue record; and order dated 19.11.2020 (Annexure P-6) passed by learned Additional Civil Judge (Senior Division), Ludhiana whereby application moved by the petitioner-Bank under Section 151 CPC for clarification of order dated 20.07.2020, has been disposed of.

2. The brief facts of the case are that the petitioner is a body corporate constituted under the Banking Companies (Acquisition and

Transfer of Undertakings) Act, 1970 and is carrying on business as Banker. Respondent No.2 is the Director of M/s Dove Apparels Private Limited, which Company deals with the business of manufacturing of Woolen Kurti, Legging, Cardigans etc. at Ludhiana. Respondent No.2 availed loan facilities from petitioner-Bank. The petitioner Bank is a secured creditor of M/s Dove Apparels Private Limited through its Directors respondent No.2-Manisha Jain and Neeraj Kumar Jain as borrower. Respondent No.2 is also the guarantor. To secure the interest of the Bank, various immovable/movable properties were mortgaged by respondent No.2 which includes (i) the property i.e. factory land and building located at B-32, E-14/1674, Karabara Bahadur Ke Road, Ludhiana, measuring 1315 square yards in the name of M/s Dove Apparel Private Limited; (ii) equitable mortgage of residential property bearing plot No.11, Abadi Sharman Ji Vatika near Raja Garden, Barewall Awana, Ludhiana bearing MC No.B-XIX-1405/50/11 measuring 463 square yards registered in the name of respondent No.2-Manisha Jain and the movables of M/s Dove Apparels Private Limited were also charged in favour of the petitioner-Bank. Since the mortgagors/guarantors of said Company failed to maintain financial discipline, they were classified as NPA by the petitioner-Bank on 29.09.2019. The petitioner-Bank also issued notice under Section 13(2) of SARFAESI Act on 01.10.2019 (Annexure P-1). The petitioner-Bank also approached Debts Recovery Tribunal-III, Chandigarh for recovery of amount. The petitioner-Bank under the SARFAESI Act took symbolic possession of the mortgaged properties on 01.01.2020 and thereafter, physical possession in January, 2021.

2.1 It is further pleaded that during the pendency of recovery process of the Bank, respondent No.1-Parveen Jain in connivance with respondent No.2-Manisha Jain filed a Civil Suit No.2870 of 2020 on 13.07.2020 (Annexure P-2) before the learned trial Court at Ludhiana for recovery of Rs.46 lacs including interest from respondent No.2. Along with said suit, respondent No.1-plaintiff also filed an application dated 13.07.2020 (Annexure P-3) under Order 38 Rule 5 CPC for attachment of property of respondent No.2-defendant which are secured assets with the petitioner Bank. Vide order dated 20.07.2020 (Annexure P-4), said application was allowed and respondent No.2-defendant was directed that in the event of alienation of properties, mentioned above, she would specifically recite in the deed of alienation itself about the pendency of suit so that the alienee becomes aware of the pendency of suit.

2.2 The petitioner-Bank, on coming to know about the order dated 20.07.2020, immediately moved an application dated 09.11.2020 (Annexure P-5) under Section 151 CPC seeking clarification of order dated 20.07.2020 that the attachment order on the mortgaged property is a clog on the recovery action of the Bank. The contention raised by the petitioner-Bank that it being mortgagee is having priority to the secured creditor under Section 26 of SARFAESI Act and the purpose of Order 38

Rule 5 CPC is not to bring an unsecured debt under the category of secured debt, but the trial Court, vide order dated 19.11.2020 (Annexure P-6) disposed of the said application with the observation that the order dated 20.07.2020, sought to be clarified, is itself self speaking and said order shall not cause any restraint upon the petitioner-Bank to proceed against the property under SARFAESI Act. Only a single rider has been imposed upon the property that in case of its alienation, the factum of pendency of suit to be disclosed to the alienee and further revenue officials were directed to make red entry in the revenue record regarding said order. Thereafter, one of the mortgaged properties i.e. plot No.11, Abadi Sharman Ji Vatika near Raja Garden, Barewall Awana, Ludhiana bearing MC No.B-XIX-1405/50/11 measuring 463 square yards has been sold by the Bank on 30.10.2021 by way of e-auction and the purchaser had deposited the upfront amount. He had written to the Bank that after removing charge marked on the property, he would deposit the balance sale consideration, but the bank had extended the period to deposit the balance sale consideration.

3. Aggrieved against the aforesaid orders dated 20.07.2020 and 19.11.2020, petitioner-Bank has approached this Court by way of present revision petition.

4. Learned counsel for the petitioner-Bank would contend that the order of attachment of mortgaged assets and the red entry in the revenue record are coming in the way of recovery process of the Bank. It

is submitted that the dues of the Bank are not being realized from the sale of the property and there is still a shortfall. Thus, it has been prayed for setting aside the orders impugned.

5. Learned counsel for respondent No.1 has argued that the petitioner-Bank was neither a party to the suit nor moved any application for impleading it as a party. So, the application filed by the petitioner-Bank is not maintainable. Respondent No.1 is legally entitled to recover the due amount from respondent No.2. The order dated 20.07.2020 does not affect the right of the petitioner-Bank in any manner.

6. I have heard the submissions of learned counsel for the petitioner and respondent No.1 and have gone through the paper book.

7. Respondent No.1-plaintiff filed a suit against respondent No.2-defendant for recovery of Rs.46 lacs including interest and also moved an application under Order 38 Rule 5 CPC. The learned trial Court passed the order dated 20.07.2020 keeping in view that respondent No.1 has transferred amount of Rs.40 lacs through RTGS. In order to recover the suit amount, respondent No.1 had also brought on record two properties of respondent No.2 for their attachment, one in the name of respondent No.2 and another in the name of M/s Dove Apparels Private Limited, of which, respondent No.2 is the Director. It is further pleaded that in order to discharge her liability, respondent No.2 had issued a cheque of Rs.10 lacs, as part payment, in favour of respondent No.1 which was dishonoured and case regarding the same was pending under

Section 138 of Negotiable Instruments Act in the Court of Judicial Magistrate First Class, Ludhiana. The operative part of the order is as under:-

> *"Today the case was listed for consideration on application under order 38 Rule 5 CPC. Plaintiff has filed the present suit for the relief of recovery of Rs.46 lacs alongwith interest and at this stage the plaintiff is pressing for the attachment of the properties of the defendant as he has apprehension that she is going to sell the same. Although the case is pending for the service of the defendant, however, since the plaintiff has placed on record his statement of account wherein he has made the payment of Rs.40 lacs to the defendant through RTGS, so prima facie it appears that the interest of the plaintiff is required to be protected. Plaintiff has placed on record details of two properties out of which one is situated at village Barewal Awana bearing No.B-19-1405/50/11 measuring 463 sq yards, Hadbast No.157, Abadi Sharman Ji Vatika (Raja Garden), Ludhiana which belongs to defendant and other is property No.B-32-T-14/1674 measuring 1315 sq. yards village Taraf Karabara, Hadbast No.161, Abadi Bahadurke Road, Tehsil and District Ludhiana which is ownership of M/s Dove Apparels Private Limited and defendant is director of the above said company. Plaintiff has further mentioned in his plaint that in order to discharge her liability, the defendant had issued a cheque in his favour which has been dishonoured and a case regarding that is pending in the Court of Sh. Devnoor Singh, Ld. Judicial Magistrate Ist Class, Ludhiana under section 138 Negotiable Instruments Act. As such to save the interest of*

> *the plaintiff, direction is hereby given to the defendant that in event of alienation of above said property situated at village Barewal Awana bearing No.B-19-1405/50/11 measuring 463 sq. yards, Hadbast No.157, Abadi Sharman Ji Vatika (Raja Garden), Ludhiana, during the pendency of the suit, she will specifically recite in the deed of alienation itself about the pendency of the present suit, so that the alienee becomes aware of the pendency of the suit and he may not be able to take the plea of bonafide purchaser without the knowledge of the pendency of the suit. It is further directed that concerned Registrar shall register only those documents which have disclosure about the pendency of the present suit and further he is also directed to make red entry in the revenue record."*

Thereafter, petitioner-Bank moved an application under Section 151 CPC for clarification of order dated 20.07.2020. The prayer clause of application dated 09.11.2020 reads as under:-

> *"....It is therefore prayed that clarification of order dated 20/07/2020 issued to the plaintiff against defendant no.1 is not binding on the proceedings under SARFAESI Act taken or to be taken by applicant bank against the subject matter property being secured creditor and the necessary orders may be passed to give directions to revenue authorities to get the revenue entry clarified/modified and to pass any other necessary order by this Honourable court as it deem fit."*

The extract of the order dated 19.11.2020 whereby said application was disposed of is as under:-

> *"……..that the order in itself is self speaking and nothing in the said order cause any restraint upon the applicant bank to proceed against the property under SARFAESI Act rather only a single rider has been imposed upon the property that in case of its alienation the fact regarding pendency of the present suit must be disclosed to the alienee so as to prevent him from taking the plea of bonafide purchaser without knowledge of the pendency of the suit on a later stage and revenue officials were directed to make red entry in the revenue record regarding said order This court is of considered opinion that the order in itself does not need any further clarification and has been passed only to protect the interest of plaintiff as well as the interest of future buyer of the property.*
>
> *6. Therefore in view of discussion above, this court is of considered opinion that order dated 20.07.2020 does not need any further clarification and no further directions are required to be given to the revenue authorities in the matter. Accordingly, the present application stands disposed of."*

8. The petitioner-Bank has already taken possession of plot of respondent No.2 situated at Village Barewal Awana, Ludhiana. It has been put on auction and has been sold by way of e-auction. In the case in hand, only order has been passed that in case of alienation of the property, a recital be made with regard to the pendency of the suit in order to avoid multiplicity of the proceedings in future and to give notice to the borrower. Practically said order has no effect on the right of the borrower. The order itself is a speaking one. A third party cannot bring

any application for seeking clarification of the order. No right of the petitioner-Bank is decided. The court has passed the order to give notice to buyer that a civil suit for recovery is pending against the owner of property. Neither property is attached nor any stay is issued against alienation.

9. No ground to invoke the extraordinary jurisdiction of this Court is made out. Revision petition is without any merit and it is dismissed accordingly.

(GURBIR SINGH)
JUDGE

January 16, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No