

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-17-2020 (O&M)  
Reserved on: 20.01.2024  
Date of decision: 25.01.2024

HOUSING DEVELOPMENT AND FINANCE  
CORPORATION LTD.

..Petitioner

Versus

JASPREET SINGH AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shekhar Verma, Advocate  
& Mr. Aneesh Chopra, Advocate  
for the petitioner.

Mr. Ashok Bhardwaj, Advocate  
for respondent No.1 and 2.

Ms. Madhu Dayal, Advocate  
for respondent No.5.

**ANIL KSHETARPAL, J.**

1. Defendant No.1 (mortgagee and financier) assails the correctness of order passed by the Civil Court on 01.11.2019, while dismissing the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') read with Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the '2002 Act') and allowing application filed by the plaintiffs for grant of temporary injunction restraining defendant No.1 and 2 (the mortgagee) from taking steps to sell the property in accordance with the provisions of 2002 Act.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. The plaintiffs Sh. Jaspreet Singh and Sh. Harpreet Singh sons of Sh. Sarwan Singh sold the property vide sale deed dated 16.07.2015 for a total sale consideration of Rs.24,00,000/- in favour of Smt. Pooja Sharma (defendant No.4 in the suit). Thereafter, Smt. Pooja Sharma (vendee) and her husband (defendant No.3) availed three loans from the petitioner by mortgaging the property (residential house) in the year 2016. There was default in repayment of the loan and consequently, it was as a declared non-performing asset. On 23.09.2019, the petitioner issued a demand notice under Section 13(2) of the 2002 Act to defendants No.3 and 4, which was subsequently published in the newspaper on 14.04.2019. On 26.06.2019, notice to take possession of the secured assets was issued by the petitioner while exercising powers under 2002 Act. On 03.07.2019, civil suit for grant of decree of permanent injunction was filed by the vendors (the plaintiff) against the petitioner as well as the vendee and her husband. As already noticed, the application filed by the petitioner under Order VII Rule 11 of the CPC read with Section 34 and 35 of the 2002 Act has been dismissed by the impugned order. The petitioner has also registered an FIR against the borrowers.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the various judgments which have been relied upon by the learned counsel in support of their submissions.

5. On the one hand, the learned counsel representing the petitioner contends that the jurisdiction of the Civil Court is excluded in view of Section 34 of the 2002 Act, whereas, under Section 35, the 2002 Act has been placed at a higher pedestal when compared with other laws.

6. On the other hand while contending that the plaintiffs (the vendors) are neither borrowers nor guarantors, the learned counsel representing the respondent submits the sale deed can be challenged only in the Civil Court because the plaintiffs are alleging fraud at the hands of the vendee. He also relies upon the judgments passed in **Housing Development Finance Corporation and another Vs. Triloki Nath Grover, (2013) 26 RCR (Civil) 375** and **Punjab National Bank Vs. Ram Kishan, 2014 (1) PLJ 225,** which is equivalent to **(2014) 30 RCR (Civil) 115.**

7. This Court has considered the submissions of the learned counsel representing the parties.

8. Before analyzing the arguments of the learned counsel representing the parties, it would be appropriate to take note of Section 17, 34 and 35 of the 2002 Act, which are extracted as under:-

*“17. [Application against measures to recover secured debts].—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:*

*[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]*

*[Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the*

*secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]*

*[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—*

*(a) the cause of action, wholly or in part, arises;*

*(b) where the secured asset is located; or*

*(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]*

*[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.*

*[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—*

*(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and*

*(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and*

*(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]*

*(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.*

*[(4A) Where —*

*(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured*

*asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—*

*(a) has expired or stood determined; or*

*(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or*

*(c) is contrary to terms of mortgage; or*

*(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and*

*(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]*

*(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:*

*Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).*

*(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.*

*(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]*

**34. Civil court not to have jurisdiction.**—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal

*or the Appellate Tribunal is empowered by or under this Act 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 conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).*

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

9. It may be noted here that with effect from 01.09.2016 by Act 44 of 2016, major amendments in 2002 Act were carried out in order to enable any person including the borrower or the guarantor to file petition under Section 17 of the 2002 Act before the Debt Recovery Tribunal in order to give forum to all concerned who were likely to be affected by the notices and consequential steps taken by the creditor to recover the defaulted amount under 2002 Act.

10. The Hon'ble Supreme Court has repeatedly and consistently interpreted the provisions of 2002 Act to hold that ouster of jurisdiction of the Civil Court is complete and the expression 'any person' used in Section 17 of the 2002 Act is of wide import and takes within its hold not only borrower but also guarantor or any other person, who may be affected by measures taken under Section 13 (4) of the 2002 Act. Reference in this regard can be made to the judgment passed by the Supreme Court in **Jagdish Singh Vs. Heeralal and others, (2014) 1 SCC 479**. In **Mardia Chemical Ltd. etc. Vs. Union of India and others, (2004) 4 SCC 311**, the Supreme Court while interpreting unamended Section 17, left a small window for the Civil Court to examine the matter, if the action of the secured creditor is alleged to be fraudulent and their claim is so absurd and untenable that it

does not require any proof. Subsequently, while interpreting the scope of ouster of Civil Court jurisdiction, in **The Authorized Officer State Bank of India Vs. M/s Allwyn Alloys Pvt. Ltd. and others, (2018) 8 SCC 210**, **M/s Sree Anadhakumar Mills Vs. Indian Overseas Bank and others, (2019) 14 SCC 788**, **Electro Steel Casting Ltd. Vs. UV Asset Reconstruction Company, (2022) 2 SCC 573**, **Charu Kishor Mahte, 2022 SCC Online SC 1962** and **Punjab & Sind Bank Vs. Frontline Corporation Ltd., (2023) SCC Online SC 1209**, the Supreme Court held that mere allegation of fraud is not sufficient to confer jurisdiction on the Civil Court. Still further, Section 35 of the 2002 Act starts with a 'non obstante' provision. In other words, this provision has been given over riding effect and placed at higher pedestal over any other law for the time being in force. It is provided that notwithstanding anything inconsistent therewith contained in any other law for the time being in force, the provisions of 2002 Act shall be preferred. This has been explained by the Supreme Court in **Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Ltd., 2014 (2) SCC 1**.

11. On the other hand, the judgment relied upon the trial Court in **Triloki Nath Grover's case (supra)** is not applicable and is no longer good law in view of subsequent amendment as well as subsequent judgments passed by the Supreme Court. In the aforesaid case, a suit for specific performance of the agreement to sell was filed and the Court held that only the Civil Court can pass a decree and Section 17 is applicable between the financier and the borrower. In view of the subsequent amendment by Act 44 of 2016, the aforesaid judgment is no longer a good law. Similarly, the

judgment passed in **Ram Kishan's case (supra)** is also with respect to the period when Act 44 of 2016 was not notified. Thus, the Court interpreted the existing provision, which has undergone substantial change with effect from 01.09.2016.

12. Moreover, it is evident that the plaintiffs have resorted to “forum shopping”. In para 14 of the plaint, the plaintiffs have alleged that they have filed another suit titled as ‘Jaspreet Singh and another Vs. Pooja Sharma’, which is pending before the Court of Additional Civil Judge, Sangrur, for 02.08.2019. Smt. Pooja Sharma is the vendee, whereas, the plaintiffs are two vendors of the sale deed dated 16.07.2015. It has not been explained by the plaintiffs as to what was the necessity of filing separate suit for grant of decree of permanent injunction, particularly when a previous suit was pending. In this suit, the plaintiffs are not seeking annulment of the sale deed. They have only sought decree of permanent injunction. Thus, the plaintiffs have chosen to file another suit without any justification during the pendency of the previous suit filed by them. The Courts are expected to be aware of the aforesaid fact before granting injunction. The 2002 Act has been enacted in order to provide remedies to financial creditors to sell the mortgaged property and recover the amount. This has been brought in with an object to save the financial institutions, who are facing a lot of difficulties in recovery of the defaulted amount. It was for this reason, the jurisdiction of the Civil Court was excluded while conferring jurisdiction on Debt Recovery Tribunal. The scheme of the act provides that without intervention of the Courts or Tribunal, the secured creditor should be able to recover some part of their loan by selling mortgaged property. It is not appropriate

for the Civil Court to grant injunction while side stepping or overlooking the mandatory provisions of the act.

13. An injunction can be granted only after applying three well known tests:-

- i. Prima facie case;
- ii. Balance of convenience in favour of the plaintiffs; and
- iii. Irreparable loss and injury, which the party is likely to suffer.

14. Without applying these three tests, the Courts are not expected to grant injunction, particularly against financial creditors, who are already facing lot of difficulties in recovery of the defaulted amount.

15. Keeping in view the aforesaid facts and discussion, this Court is left with no choice but to set aside the order passed by the trial Court on 01.11.2019. Consequently, the plaint Annexure P-1 shall stand rejected while relegating the plaintiffs to the remedy under Section 17 of the 2002 Act before Debt Recovery Tribunal.

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

January 25<sup>th</sup>, 2024

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(ANIL KSHETARPAL)  
JUDGE

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