135 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7631-2023(O&M)
Date of decision : 10.05.2024

Allahabad Bank(Now Indian Bank) and another ...Petitioners

Vs.

M/s Ishan Textiles Mills Ltd. and another ...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akhilesh Vyas, Advocate
for the petitioners.

Ms. Neha Anand Mahajan, Advocate
for respondent No.1.

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ANIL KSHETARPAL, J. (Oral)

1. The petitioner-Bank assails the correctness of the order dated 07.08.2023, passed by the trial Court while dismissing their applications under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC, 1908') 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. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The respondents (plaintiffs before the trial Court) admit that they had borrowed the amount from the defendants (petitioner) herein, while mortgaging their property. The proceedings under the 2002 Act were initiated

for recovery of debt from the secured property. The plaintiff filed a civil suit for grant of permanent injunction restraining the defendants from taking further steps against the plaintiff's company and to restrain them from declaring the account of the plaintiffs as a Non Performing Asset.

4. On receipt of notice, the Bank filed an application under Order VII Rule 11 of the CPC, 1908 read with Section 34 of the 2002 Act, for the rejection of the plaint as the jurisdiction of the Civil Court is barred under Section 34 of the 2002 Act. The trial Court has dismissed the application on the ground that the notice under Section 13(4) of the 2002 Act, has not been issued. The correctness of such order is challenged before this Court.

5. Learned counsel representing the petitioner submits that an initial demand notice under Section 13(2) of the 2002 Act was issued on 30.12.2016. Thereafter, a possession notice under Section 13(4) of the 2002 Act was issued, and subsequently, on 03.03.2017, possession was taken over. He submits that under the 2002 Act, the appropriate remedy for the debtor is to file proceedings before the Debt Recovery Tribunal. He submits that the trial Court has overlooked that notice under Section 13(4) of the 2002 Act and that the possession of the property has been taken over. In the meantime, the plaintiff has already transferred the property and the talks of one time settlement are going on.

6. Be that as it may, at this stage, the learned counsel representing the Bank has submitted that the plaintiff No.1, its Director, namely, Sh. R.K. Sharma and his wife have been indulging in multiple litigations in order to stop

the Bank from enforcing its rights under the 2002 Act. He has supplied a list of the cases, which reads as under:-

1.	CWP-12368-2022	M/s Ishan Textiles and another vs. Union of India, fixed for 23.07.2024.
2.	RSA-2576-2023	Manju Sharma Vs. Indian Bank, fixed for 23.09.2024
3.	CS/CJ/2187/2016	Pending at District Court Chandigarh. M/s Ishan Textiles Vs. Allahabad Bank, fixed for 24.05.2024.
4.	CS/CJ/197/2023	M/s Ishan Textiles Vs. Indian Bank
5.	CC/212/2023	Manju Sharma Vs. Indian Bank. Filed at District Consumer Forum, Chandigarh.

7. This Court has considered the submissions made by the learned counsel for the parties.

8. The jurisdiction of the Civil Court to entertain and decide such suits is excluded in view of the effective alternative remedy available to the debtors under Section 17 of the 2002 Act. In CR-1249-2020 titled as ***'Puja Jain and another vs. Kotak Mahindra Bank Ltd. and others'***, it has been held as under:-

> *"8. In **Mardia Chemicals Limited 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**, 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 Anandha kumar 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."*

09. Moreover, the trial Court was factually incorrect in overlooking the fact that possession was taken by the Bank on 03.03.2017, whereas, the impugned order was passed on 07.08.2023.

10. With these observations, the revision petition stands allowed.

(ANIL KSHETARPAL)
JUDGE

10.05.2024
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No