IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.7552 of 2023 (O&M)
Pronounced on: 16.10.2024

Ankur Goyal HUF through its Karta Shri Ankur Goyal .... Petitioner

Versus

Corporation Bank through its Branch Manager, Premises No.5, Pakhowal Road, Ludhiana and another.
.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Pawan Kumar Mutneja, Senior Advocate with
Mr. Viranjeet Singh Mahal, Advocate, for the petitioner.

Mr. Chandra Kumar Jha, Advocate and
Ms. Divya Jha, Advocate, for respondent No.1.

GURBIR SINGH, J.

1. Challenge in this revision petition is to the order dated 16.10.2019 (Annexure P-1) passed by learned Civil Judge (Junior Division), Ludhiana whereby the application filed by respondent No.1-Bank under Order 7 Rule 11 CPC was allowed and the plaint was ordered to be rejected. The petitioner has also challenged the order dated 25.04.2023 passed by learned Additional District Judge, Ludhiana, whereby appeal filed against the order dated 16.10.2019 has been dismissed.

1.1 The parties herein are being addressed as per the status before the trial Court. The petitioner herein is the plaintiff and the respondents are the defendants.

2. Brief facts necessary for the disposal of present revision petition are that the plaintiff filed a suit for declaration to the effect that he is the exclusive owner and in legal possession of suit property consisting of 1st floor of the building bearing No.B-XX-2707/1 (2707/1 A) known as Navrang Complex Pakhowal Road, Ludhiana and comprised of one hall, measuring 277.77 square yards, as contained in Khasra No.340/4, Khata No.3000/3415 as per jamabandi for the year 2005-06, as mentioned in the head note of the plaint, on the basis of two separate sale deeds dated 24.01.2014; and for a decree of permanent injunction restraining the defendants from interfering in the peaceful possession over the suit property and for declaration that the mortgage executed by defendant No.2 in favour of defendant No.1-Bank is illegal null and void.

2.1 The plaintiff Ankur Goyal HUF consists of Ankur Goyal, Shweta Goyal, Pranav Goyal and Sidharth Goyal as its members. Ankur Goyal is the karta and is managing the affairs and property of HUF. The suit has been filed by Ankur Goyal through his attorney Ajay Goyal. The plaintiff purchased the property from defendant No.2 vide two separate registered sale deeds bearing vasika Nos.10183 and 10184, dated 24.01.2014 for valuable consideration. The suit property has even been issued the number in the records of Municipal Corporation, Ludhiana and the name of the plaintiff has duly been entered in the TS-1 record maintained by the Municipal Corporation. The plaintiff even got separate electricity connection from the Punjab State Power Corporation Limited with respect to suit property. The plaintiff had rented out the suit property to different tenants from time to time.

2.2 Defendant No.1-Bank moved an application under Order 7 Rule 11 CPC on the ground that Navrang Electro World and others as well as defendant No.2 availed various credit facilities from defendant No.1 by creating equitable mortgage of the suit property, but they failed to adhere to the financial discipline of the Bank and their account was declared NPA. Defendant No.1-Bank had already initiated proceedings for recovery of its dues under the SARFAESI Act but instead of making the payment of the dues, defendant No.2 and others in connivance with each others, filed the suit, which as per defendant No.1 is an abuse of process of law. It was contended that the civil court has no jurisdiction to entertain the suit, it is not maintainable and barred under the SARFAESI Act.

2.3 In reply, the plaintiff pleaded that a fraud was played by the defendants in collusion with each other as the property was purchased by the plaintiff on 24.01.2014 and the alleged document was executed between defendants No.1 and 2 after the date of sale deeds. The proceedings initiated under the SARFAESI Act does not affect the rights of the plaintiff. If there is any liability of defendant No.2 towards defendant No.1 that can be recovered from the assets of defendant No.2 and not from the property of the plaintiff.

2.4 Defendant No.2 filed separate reply that vide letter dated 14.07.2015, defendant No.2 informed defendant No.1-Bank that the suit property had already been sold to the plaintiff before taking loan on it and also before mortgaging the same with defendant No.1 and said facts were duly in the knowledge of defendant No.1.

2.5 Vide impugned orders, the application moved by defendant No.1 was allowed and aggrieved, the plaintiff filed appeal which was dismissed. The plaintiff has challenged said orders by way of present revision petition.

3. Learned senior counsel appearing on behalf of the petitioner-plaintiff has argued that after the sale of suit property, defendant No.2 was left with no right, title or interest over the suit property. Both the defendants in connivance with each other played fraud with the petitioner by advancing credit facilities in favour of defendant No.2. The alleged mortgage is of the year 2016. Defendant No.2 was not having any right in the property, so any mortgage executed by defendant No.2 in favour of defendant No.1 is of no consequence and has no adverse effect on the rights of the plaintiff. In such cases, civil court is fully competent to decide the matter. Civil Court has jurisdiction to try the case and give declaration. It is further argued that the plaintiff is neither the guarantor nor the borrower. Reliance is placed on case ***Mardia Chemicals Limited Versus Union of India and others,***

2004(4) SCC 311; Nahar Industrial Enterprises Limited and others Versus Hong Kong and Shanghai Banking Corporation and others, (2009) 8 SCC 646; Sadanand Properties Private Limited and others Versus Punjab National Bank and others, Manu/DE/0383/2010, 2010/DHC/63; M/s Cambridge Solutions Limited, Bangalore Versus Global Software Limited, AIR 2009 Madras 74; Mohan Lal Versus Dwarka Prasad, AIR 2007 Raj 129; MD Frozen Foods Exports Private Limited Versus Hero Fincorp Limited, AIR 2007 SC 4481; Ujjagar Construction Pvt. Ltd. Versus Nayati Healthcare and Research NCR Pvt. Ltd. and others, Civil Revision No.5837 of 2023, decided on 20.11.2023.

4. Learned appearing on behalf of respondent-defendant No.1 has argued that Section 17 of the SARFAESI Act includes any person whether he is a borrower or a guarantor, he may make his claim before DRT. In the case in hand, the plaintiff can file his claim before the DRT. The Civil Court has no jurisdiction to try the instant suit. The jurisdiction of Civil Court under such matters is specifically barred. Orders passed by courts below are justified.

5. I have heard the submissions of learned counsel for the parties.

6. The specific case of the plaintiff is that he purchased suit property vide two separate sale deeds dated 24.01.2014. After the purchase of the property, the plaintiff let out it to different tenants. The name of the plaintiff is also recorded in the TS-1 register maintained by the Municipal Corporation. The plaintiff is neither borrower nor guarantor of the loan

advanced by defendant No.1 to defendant No.2. Said loan was advanced after the execution and registration of sale deeds in favour of the plaintiff and the property was mortgaged subsequently. The question arises if a person mortgaged a property, belonging to others, as collateral security for advancement of loan, whether the original owner has only remedy to invoke the jurisdiction of the DRT or he has independent right to approach the Civil Court to get declaration. Section 34 of the SARFAESI Act is as under:-

> "**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)."

6.1 In case ***Mardia Chemicals Limited (supra),*** the Hon'ble Supreme Court held that to a limited extent, the jurisdiction of the civil court can also be invoked. Para 51 of said judgment reads as under:-

> "**51.** 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. We find such a scope having been recognized in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely V.Narasimhachariar (supra) p.135 at p.141 and 144, a

judgment of the learned single Judge where it is observed as follows in para 22:

> "The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the Court before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee must clearly disclose a fraud or irregularity on the basis of which relief is sought: 'Adams v. Scott, (1859) 7 WR (Eng.) 213 (Z49). I need not point out that this restraint on the exercise of the power of sale will be exercised by Courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely. (See Rashbehary Ghose Law of Mortgages, Vol. II, Fourth Edn., page 784)."

6.2 In case ***Nahar Industrial Enterprises Limited and others*** **(supra),** the Hon'ble Supreme Court held that DRT has limited jurisdiction. It has no power to entertain a claim of set off or counter claim. No independent proceedings can be initiated before it by a debtor. Jurisdiction of a civil court is barred only in respect of the matters which strictly come within the purview of Section 17 of SARFAESI Act and not beyond the same. The relevant extract of said judgment reads as under:-

> "117. The Tribunal was constituted with a specific purpose as is evident from its statement of objects. The preamble of the Act also is a pointer to that too. We have also noticed the scheme of the Act. It has a limited jurisdiction. Under the Act, as it originally stood, did not even have any power to entertain

a claim of set off or counter-claim. No independent proceedings can be initiated before it by a debtor. A debtor under the common law of contract as also in terms of the loan agreement may have an independent right. No forum has been created for endorsement of that right. Jurisdiction of a civil court as noticed hereinbefore is barred only in respect of the matters which strictly come within the purview of Section 17 thereof and not beyond the same. The Civil Court, therefore, will continue to have jurisdiction. Even in respect of set off or counter-claim, having regard to the provisions of sub-sections (6) to (11) of Section 19 of the Act, it is evident :-

a) That the proceedings must be initiated by the bank
b) Some species of the remedy as provided therein would be available therefor.
c) In terms of sub-section (11) of Section 19, the bank or the financial institution is at liberty to send a borrower out of the forum.
d) In terms of the provisions of the Act, thus, the claim of the borrower is excluded and not included.
e) In the event the bank withdraws his claim the counter-claim would not survive which may be contrasted with Rule 6 of Order VIII of the Code.
f) Sub-section (9) of Section 19 of the Act in relation thereto has a limited application.
g) The claim petition by the bank or the financial institution must relate to a lending/borrowing transaction between a bank or the financial institution and the borrower.
h) The banks or the financial institutions, thus, have a primacy in respect of the proceedings before the Tribunal.
i) An order of injunction, attachment or appointment of a receiver can be initiated only at the instance of the bank or the financial institution. We, however, do not mean to suggest that a Tribunal having a plenary power, even otherwise would not be entitled to pass an order of injunction or an interim order, although ordinarily expressly it had no statutory power in relation thereto.
j) It can issue a certificate only for recovery of its dues. It cannot pass a decree.

k) Although an appeal can be filed against the judgment of the Tribunal, pre-deposit to the extent of 75 % of the demand is imperative in character.

l) Even cross-examination of the witnesses need not be found to be necessary.

m) Subject to compliance of the principle of natural justice it may evolve its own procedure.

n) It is not bound by the procedure laid down under the Code. It may however be noticed in this regard that just because the Tribunal is not bound by the Code, it does not mean that it would not have jurisdiction to exercise powers of a court as contained in the Code. `Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice. (See Industrial Credit and Investment Corpn. of India Ltd. v. Grapco Industries Ltd., (1999) 4 SCC 710). The Tribunal, therefore, would not be a Civil Court."

6.3 In case ***Mohan Lal Versus Dwarka Prasad (supra),*** the Hon'ble Supreme Court has issued guidelines and directions. The extract of said judgment reads as under:-

"**27**. The upshot of the above discussions is that following guidelines and directions emerge:

(i) That while Civil Courts still remain appropriate forums and can continue to decide inter-party civil rights in the cases involving civil rights of the parties like in the cases of partition, cancellation of sale deed, gift deed, right of pre-emption, redemption of mortgage etc. and the bar contained in Section 34 of the Securitization Act is not absolute and does not debar Civil Courts to entertain such suits, however, no suit or injunction in any Civil Court can be allowed to prohibit and debar the measures taken by banks and financial institutions under Securitization Act, 2002 or under R.D.B. Act, 1993, except as specified below in para (ii).

(ii) In cases of partition suits of ancestral property owned by a Hindu Undivided Family which has been mortgaged by one or more of the coparceners, without other coparceners being guarantors or borrowers of the bank or financial institution, the Bank, financial institution or Debt Recovery Tribunal cannot proceed to take over and sell, transfer or otherwise alienate the said ancestral undivided property unless and until the share of the particular borrower-coparcener is determined at the instance of such borrower-coparcener or the bank itself.

(iii) That the cut-off date excluding the jurisdiction of the Civil Court in respect of measures specified Under Section 13(4) of the Securitization Act is the date when such measures are taken after expiry of notice period Under Section 13(2) of the Act and after such cut-off date no civil suit or injunction barring or prohibiting the right of the banks and financial institutions with respect to measures Under Section 13(4) of the Act can adversely affect the bank nor such injunction would be binding on the bank or financial institution, except the cases of exception specified in para (ii) above.

(iv) From the said cut-off date if any such third party has a pending claim or intends to claim his right, title or interest over the property, which is security of the bank or financial institution, the remedy opens for him before the Debt Recovery Tribunal Under Section 17(1) of the R.D.B. Act and he can raise his objection or bring it to the notice of the Tribunal the fact of pendency of such civil suit and thereafter the Tribunal shall decide such objection within 60 days, as stipulated in Section 13(5) of the Act and hold either way as to whether a note to the effect of pending litigation has to be made by the bank or financial institution concerned in the notification, advertisement for sale and conveyance deed, if any, executed in exercise of their powers Under Section 13(4) of the Act in favour of any third party, and also whether to allow the Bank or financial institution to proceed further under these special enactments against the security or mortgaged property at all or not.

(v) In case upon adjudication of right, title or interest of any third party in a civil suit is decreed in his favour, such party upon such decree becoming final, shall be entitled to follow the whole or the part of the property, which formed security of the bank or the financial institution concerned and claim back either the suit property from the successor-in-title or to claim damages in the alternative for the same.

(vi) If in such civil suits filed for determination of civil rights between the parties including the borrower, who

> has mortgaged the suit property in whole or in part with the bank or financial institution, who have initiated steps Under Section 13(4) of the Act, the banks and financial institutions would be free to apply to the competent Civil Court and upon such application the bank or financial institution shall be deleted from the array of defendants and no injunction granted by the Civil Court would bind the bank or financial institution in respect of measures taken Under Section 13(4) of the Act, except in the cases relating to partition of Joint Hindu Undivided Family ancestral property."

6.4 Based upon the catena of judgments, it can be concluded that the jurisdiction of Civil Court is not completely barred under the SARFAESI Act, 2002. When civil right of party is involved and the same cannot be adjudicated by the Tribunal, the Civil Court has jurisdiction.

6.5 In the case in hand, plaintiff is claiming ownership of property on the basis of registered sale deeds in favour of plaintiff and after sale of the property, the vendor was left with no right, title or interest in the property. The vendor could not mortgage the property subsequently by way of collateral security in the year 2016 since the same was already sold in the year 2014. So, the question whether the suit property mortgaged is the result of collusion between the defendants or the result of fraud, can only be determined by the Civil Court after recording of the evidence and not by the DRT.

7. In view of discussion above, the Civil Court has jurisdiction to try the present suit and the orders passed by the courts below rejecting the plaint, are against law and hereby set aside. The present petition is allowed accordingly. The trial Court to proceed further in accordance with the law.

8. The parties are directed to appear before the trial Court on 20.11.2024

9. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

October 16, 2024
sanjeev

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