

2025:PHHC:153028



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-2285-2025(O&M)

Reserved on: 17.09.2025

Pronounced on: 06.11.2025

M/s Cholamandalam Investment and Finance Company Ltd.

.....Petitioner

Versus

Rajender Kaur

....Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Sidharth Chopra, Advocate, and
Mr. Manav Bajaj, Advocate, for the petitioner.

Mr. R.S. Mamli, Advocate, for the respondent.

VIKRAM AGGARWAL, J

The instant petition, preferred under Article 227 of the Constitution of India, assails the order dated 03.03.2025 (Annexure P.1) passed by the Court of Civil Judge (Junior Division), Faridabad vide which the defence of the petitioner was struck off and the operation of notice dated 11.02.2025 regarding possession proceedings initiated qua suit house, was stayed.

2. Shorn of unnecessary details, the facts as emanating from the revision petition are that one Kuljeet Singh and Jasbir Kaur (since deceased), availed a loan of Rs.45,86,854/- from the petitioner and the requisite loan agreement was executed.

Property bearing No. 1/727 measuring 100 square yards

situated in Block-C, Raja Garden Colony, Faridabad (hereinafter referred to as 'the suit property') was mortgaged with the petitioner at the time of availing the aforesaid loan.

3. For, the borrowers failed to adhere to the repayment plan and started making default, the account was classified as a Non Performing Asset (NPA) on 24.03.2021. The borrowers namely Jasbir Kaur expired on 22.01.2017 and Kuljeet Singh expired on 11.09.2020.

4. A sum of Rs.29,83,105/- was received by the petitioner on 24.06.2021 from the insurance amount of Kuljeet Singh. After adjusting the said amount, a sum of Rs.33,45,705.29, was outstanding as on 30.06.2021.

5. Proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short 'the SARFAESI Act') were initiated. A demand notice dated 12.06.2021 under Section 13(2) of the SARFAESI Act was initially issued, which was subsequently recalled and a fresh demand notice dated 10.03.2023 (Annexure P.2) was issued to the legal heirs of Jasbir Kaur and Kuljeet Singh, calling upon them to pay the outstanding amount of Rs.41,99,030.44 within a period of 60 days.

6. No objections are stated to have been received against the said demand notice. Symbolic possession of the property in dispute was taken on 30.05.2023 (Annexure P.3).

7. A sale notice dated 23.06.2023 with regard to the property in dispute was issued which did not evoke any response. Pursuant to that, another sale notice dated

17.01.2024 (Annexure P.4) was issued. The property in dispute was sold by way of auction for Rs.50,50,000/- in favour of the auction purchaser.

8. An application under Section 14 of the SARFAESI Act, was filed pursuant to which order dated 07.11.2024 (Annexure P.5) was passed by the Court of the Chief Judicial Magistrate, Faridabad. Possession notice dated 22.11.2024 (Annexure P.6) was, therefore, issued.

9. CWP-937-2025 was instituted by the respondent (Rajender Kaur). In the said writ petition, a stand was taken that a relinquishment deed dated 17.09.2010 had been executed by Rajender Kaur, Jasbir Kaur and Rajwant Kaur, out of their own free will in favour of Kuljeet Singh, as a result of which he had become absolute owner of the property in dispute. The writ petition was withdrawn on 16.01.2025 (Annexure P.8). Liberty was, however, granted to the respondent to take recourse to the alternative remedies, in accordance with law.

10. When efforts were made to obtain physical possession of the property in dispute, hindrance was created by the respondent, as a result of which, an application was again filed by the petitioner in the Court of Chief Judicial Magistrate, Faridabad and vide order dated 28.01.2025 (Annexure P.9), a direction was issued to the DCP, Central, Faridabad, to ensure compliance of the order.

11. The respondent preferred Civil Suit No. 678-2025 titled as Rajender Kaur Vs. M/s Cholamandalam Investment and Finance Company Limited, wherein a new stand was taken

totally in contradiction to the stand taken in CWP-937-2025 stating that the relinquishment deed dated 17.09.2010 was the result of fraud.

12. The suit was instituted on 27.02.2025 and the notice was issued for 03.03.2025. It has been averred that though a copy of the summons was received, no copy of the plaint was received. On 03.03.2025, the petitioner was proceeded against *ex-parte* and stay order restraining the petitioner from taking physical possession of the suit property, was passed. Aggrieved by the same, the instant revision petition has been preferred.

13. Learned counsel for the parties were heard.

14. It was submitted by learned counsel for the petitioner that the trial Court erred in proceeding *ex-parte* against the petitioner without verifying the genuineness of the service report. It was submitted that a copy of the plaint had not been received by the petitioner-defendant and only summons had been received and in view of the same, the trial Court should not have proceeded *ex-parte* against the petitioner-defendant.

15. It was further submitted that the trial Court, while granting *ex-parte* injunction to the respondent-plaintiff, lost sight of the fact that in view of the provisions of Section 34 of the SARFAESI Act, the jurisdiction of the Civil Court was barred and that no injunction could have been granted. Learned counsel submitted that the trial Court did not discuss any circumstance, which led it to grant injunction to the respondent-plaintiff despite the bar of Section 34 of the SARFAESI Act. Learned counsel also submitted that merely because fraud was pleaded

would not mean that the Civil Court had got the jurisdiction to deal with the matter and in the absence of the details of any fraud, the jurisdiction of the Civil Court would continue to be barred.

16. It was submitted by learned counsel for the petitioner-defendant that while instituting CWP-937-2025 (Annexure P.7), the respondent-defendant Rajender Kaur, who was the petitioner in the said writ petition, had duly averred that the relinquishment deed, which had been executed on 17.09.2010 in favour of Kuljeet Singh was on account of a voluntary act of Jasbir Kaur, Rajwant Kaur and Rajender Kaur, whereas in the suit, it was averred that the relinquishment deed was the result of a fraud. Learned counsel submitted that these facts were required to be brought to the notice of the trial Court.

17. It was submitted that while exercising powers under Article 227 of the Constitution of India, this Court can reject the plaint on account of the civil suit not being maintainable before the Civil Court in view of the bar as contained in Section 34 of the SARFASEI Act. Learned counsel submitted that though the petitioner-defendant could have approached the trial Court by way of an application for setting aside the order vide which the petitioner-defendant had been proceeded *ex-parte*, it chose to invoke the jurisdiction of this Court under Article 227 of the Constitution of India since the order passed by the trial Court is palpably illegal and without jurisdiction.

18. Learned counsel submitted that in many cases, the High Court, while exercising powers under Article 227 of the

Constitution of India, had straightaway rejected a plaint on this ground. In support of his contention, learned counsel for the petitioner relied upon an order dated 25.04.2022 passed by a Division Bench of the Delhi High Court in LPA-570-2019 titled as **Shyam Goel and others Vs. Punjab National Bank and another;** a Single Bench judgment of the Delhi High Court in CM(M) 1706 of 2023 titled as **Cholamandalam Investment and Finance Compny Ltd. Vs. Rishi Pal Sharma and others,** decided on 19.10.2023; a Single Bench judgment of the High Court of Meghalaya in CRP-35-2022 titled as **Asset Reconstruction Company (India) Limited (ARCIL) Vs. J.U.D Cements Ltd. and others,** decided on 16.02.2023 and an order 10.04.2023 passed by the Hon'ble Apex Court whereby SLP against the aforesaid judgment of the High Court of Meghalaya, has been dismissed.

19. Per contra, learned counsel for the respondent submitted that there is no illegality in the impugned order. It was submitted that despite valid service, the petitioner did not put in appearance before the trial Court and, therefore, the trial Court had rightly proceeded *ex-parte* against the petitioner. It was submitted that in so far as the question of maintainability of the civil suit is concerned, the same would not be barred because it had duly been alleged in the civil suit that the relinquishment deed alleged to have been executed in favour of Kuljeet Singh, was the result of a fraud. Learned counsel submitted that fraud could only be proved by leading evidence before the Civil Court and the Debt Recovery Tribunal (for short

`DRT') would not have the jurisdiction under Section 17 of the SARFAESI Act, to deal with such issue. Learned counsel submitted that instead of moving an application for setting aside the order vide which the petitioner had been proceeded against *ex-parte*, the petitioner had chosen to institute the present petition under Article 227 of the Constitution of India. Learned counsel submitted that the correct remedy for the petitioner was to invoke the jurisdiction of the trial court by moving the requisite application and not to invoke the jurisdiction of this Court under Article 227 of the Constitution of India.

20. I have considered the submissions made by learned counsel for the parties.

21. Coming first to the impugned order, the same duly records that the notice issued to the petitioner-defendant had been received back served through its clerk and despite the case having been called several times, no one had put in appearance on its behalf and accordingly, the trial Court proceeded *ex-parte* against the petitioner-defendant. In the considered opinion of this Court, there is no illegality in the said course adopted by the trial Court. Once the petitioner-defendant had been served and it chose not to appear, the trial Court rightly proceeded *ex-parte* against it.

22. Now coming to the issue of grant of injunction, this Court is of the considered opinion that the trial Court did not consider the matter from the correct perspective. Section 34 of the SARFAESI Act, stipulates 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).”

23. It is well settled that normally the jurisdiction of the Civil Court in such matters is barred and the correct remedy for a party is to knock the doors of the DRT under Section 17 of the SARFAESI Act. In certain cases, where fraud is pleaded and the same cannot be proved in the proceedings before the DRT, the Civil Court does have the jurisdiction to deal with the issue. The Hon’ble Supreme Court of India; this High Court and various other High Courts have been dealing with this issue time and again. Without going into the details of the cases, which are too well known and the law is well settled, reference can be made to the judgments of the Hon’ble Supreme Court in the cases of **Mardia Chemicals Ltd. & Others. Vs. Union of India**, (2004)4 SCC 311; **Electrosteel Castings Limited Vs. UV Asset Reconstruction Company Limited & Ors.**, (2022)2 SCC 573; **Jagdish Singh Vs. Heeralal and others**, (2014)1 SCC 479; **Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation**, (2009)8 SCC 646 and **Central Bank of India and others Vs. Smt. Prabha Jain and others**, (2025)4 SCC 38.

24. In the considered opinion of this Court, before exercising jurisdiction, the trial Court should have considered the aforesaid judgments and the law on the subject as regards the jurisdiction of the Civil Court and in case, after referring to the said judgments, it had come to the conclusion that the Civil Court, *prima-facie* had the jurisdiction to deal with the issue, it could have proceeded ahead. However, no such exercise was undertaken and in fact, there is not even a reference to the provisions of Section 34 of the SARFAESI Act or the law on the subject. In the considered opinion of this Court here, the trial Court erred.

25. Now coming to the issue as to whether this Court should exercise jurisdiction under Article 227 of the Constitution of India and deal with the issue as to whether the Civil Court does have the jurisdiction or not. Though this Court does have the power to delve into the said issue yet in the considered opinion of this court, the parties should be relegated to the trial Court where they should project their respective cases and then the trial Court should arrive at a specific conclusion. The petitioner, in the considered opinion of this court, should have first approached the trial Court by way of an appropriate application since it had been proceeded against *ex-parte* and then it should have agitated about the grant of *ex-parte* stay. However, the petitioner chose to straightaway come to this Court rather than filing an application before the trial Court.

26. No doubt, in **Shyam Goel's** and **Kaushalya Devi's** (supra), the Delhi High Court exercised jurisdiction to reject the complaints. However, keeping in view that there are certain overlapping issues and previous litigation, this Court, as already observed, would not delve into the said issue at this stage and would instead relegate the parties to the trial Court.

27. One thing which has come out is that the respondent-plaintiff has been taking contradictory stands in the civil suit and in the previous writ petition instituted by the respondent-plaintiff as regards the relinquishment deed. The said fact, shall have to be considered by the trial Court before arriving at any *prima-facie* conclusion.

28. In view thereof, the impugned order is set aside. Parties are relegated to the trial Court. The petitioner-defendant, if so advised, may move the requisite application before the trial Court, which if so moved, shall be dealt with by the trial Court, in accordance with law. Parties may then agitate their claims as regards the grant or non grant of injunction in view of the averments made in the civil suit; the provisions of Section 34 of the SARFAESI Act and the law on the subject, as referred to in the preceding paragraphs.

29. For the aforesaid purpose, the parties may appear before the trial Court on 07.12.2025. It is expected that the trial Court would expeditiously deal with the issue so that the rights of none of the parties are affected. However, it is further directed that after 07.12.2025, the trial Court shall, in case an

application is moved by the petitioner-defendant, give adequate opportunity to the other side to respond to the said application and then decide the same and the issue of stay within two weeks and in any case before 24.12.2025.

30. The petition stands disposed of in the above terms.

31. Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

06.11.2025
ds

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