IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

CR-3242-2021 (O&M)
Date of decision: 21.01.2025

PIRAMAL CAPITAL AND HOUSING FINANCE LTD. ..Petitioner

Versus

BUTA SINGH ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Varun Katyal, Advocate (through v.c.)
for the petitioner.

Mr. Umesh Kanwar, Advocate
for respondent.

<u>ANIL KSHETARPAL, J(Oral)</u>

1. The respondent herein has borrowed a loan while mortgaging his property from the petitioner herein namely Dewan Housing Finance Corporation Ltd. There was default in re-payment of the loan forcing the petitioner herein (Dewan Housing Finance Corporation Ltd.) to initiate proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short '2002 Act'). The respondent filed a suit for grant of decree of permanent injunction against the petitioner herein (creditor). During the pendency of the suit, the petitioner filed application under Order VII Rule 11 of the Code of Civil Procedure, 1908, for rejection of the plaint on the ground that Civil Court has no jurisdiction as per Section 34 of the '2002 Act'. The application has been rejected by the trial Court on the ground that notices have not been issued by any Tribunal and copy of the proceedings of the Tribunal have not been placed on file. The Court has also observed that the documents are to be proved by leading evidence.

2. This Bench has heard learned counsel representing the parties and with the able assistance perused the paperbook.

3. Learned counsel representing the petitioner submits that the petitioner is a Non-banking Finance Company and is authorized to take action under '2002 Act'. He submits that jurisdiction of the Civil Courts under Section 34 of the '2002 Act' is explicitly barred. He submits that notice under Section 13(2) of the 2002 Act was issued on 30.04.2019, whereas, the suit was filed on 28.09.2020.

4. Per contra, learned counsel representing the respondent submits that the respondent cannot be dispossessed except in due course of law.

5. This Court has considered the submissions of learned counsel for the parties.

6. Section 34 of '2002 Act' being a relevant provision for determination is extracted hereunder:-

> *"**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)."*

7. Section 13 of '2002 Act' authorizes secured creditor to proceed against the charged property in case the borrower makes any default in repayment of secured debt. At that stage, intervention of the Tribunal is not required. After initially serving notice under Section 13(2) of the '2002 Act' and considering the reply/objections, if any, filed by the borrower, the

creditor is required to proceed in accordance with Section 13(4) of the 2002 Act, which enables the secured creditor to take possession of secured assets of the borrower. Thus, the petitioner is proceeding in accordance with provisions of '2002 Act'. In any case, the respondent being borrower is entitled to file proceedings under Section 17 of the 2002 Act before the Debt Recovery Tribunal. Once, the jurisdiction of the Civil Court is explicitly barred, it would not be appropriate for the trial Court to reject the petitioner's application. It appears that the trial Court has failed to comprehend the enabling power of the secured creditor to recover the amount by selling secured property without the intervention of the Court.

8. Hence, the present petition is allowed. The impugned order is set aside and the plaint filed by the respondent (plaintiff before the trial Court) shall stand rejected, however, the respondent shall have liberty to seek remedy before the Debt Recovery Tribunal.

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

January 21st, 2025 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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