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

229 **CR No. 2624 of 2016**
DATE OF DECISION :- 05.03.2025

State Bank of Patiala **...Petitioner**

Versus

M/s Shri Balaji Contractor & Suppliers and another
...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. R.S. Bhatia, Advocate for the petitioner.

Mr. Nandan Jindal, Advocate for respondent No. 2.

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ANIL KSHETARPAL, J. (ORAL)

1. In this revision petition, State Bank of Patiala (defendant) assails the correctness of trial Court's order dismissing its application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (in short 'CPC') for rejection of the plaint on the ground that the Civil Court's jurisdiction is excluded in view of Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the'SARFAESI Act'). Plaintiffs have filed suit as indigent persons for adjustment of value of goods worth Rs.21 lakh or in the alternative recovery of the aforesaid amount. Admittedly, the plaintiff filed proceedings before Debt Recovery Tribunal under Section 17 of the SARFAESI Act, 2002, which was dismissed for non-prosecution.

2. At this stage, it would be appropriate to notice Section 34 of the 2002 Act, which is extracted 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."*

3. It is evident that the Civil Court's jurisdiction is excluded as the borrower, guarantors and any other interested person is entitled to invoke the jurisdiction of Debt Recovery Tribunal.

4. This Court in ***'State Bank of Patiala versus Nalini Sood (since deceased) through her LRs'*** CR-6831-2016 (O&M) decided on 05.05.2022 examined the matter in detail and held as under :-

> *"The judgment passed in **Mardia Chemicals Limtied(supra)** is a three judge Bench judgment and in para 51 of the SCC report, the Court observes that where the action of the secured creditors is alleged to be fraudulent or his claim is so absurd and untenable and requires no probe whatsoever then the Civil Court has the jurisdiction in that matter. Primarily, in **Mardia Chemicals Limited (supra)**, the Supreme Court opined that requirement of pre-deposit of 75% of the amount demanded by the secured credits by notice under Section 13, is bad. It may be noted here that after the judgment, there is an amendment in the language of Section 17 of the 2002 Act by Act no.44 of 2016. Section 17 has been extensively amended. Section 17 (1) starts with a phrase "any person (including the borrower)". Thus it is evident that the application under Section 17 of the 2002 Act can be filed by any person, who is aggrieved of the action.*

*Furthermore, in a recent judgment passed by the Supreme Court in **<u>Electrosteel Castings Ltd. Vs. UV Asset Reconstruction Company Ltd. &Ors., (2022) 2 SCC 573</u>**, it has been held that mere allegations of fraud without supplying material particulars of the fraud as required in terms of Order 6 Rule 4, do not result in ousting the jurisdiction of the Tribunal. The Debt Recovery Tribunal has sufficient jurisdiction under Section 17 to consider whether the respondent was not a secured creditor. Thus, the Court held that the proper forum whose doors should be knocked is the Debt Recovery Tribunal. Similar is the position in **<u>M/S. Sree Anandhakumar Mills Ltd. vs M/S. Indian Overseas Bank And Ors. (2019)14 SCC 788</u>.** Similarly, in Authorised Officer, State Bank Of India vs M/S Allwyn Alloys Pvt. Lt. (2018) 8 SCC 120, the Supreme Court once again explained the scope of section 34 once again. In view of the recent judgment of the Supreme Court, it is evident that the judgment passed in **<u>Mardia Chemicals Limtied(supra)</u>** is to be understood in the aforesaid context. The facts of the case clearly indicate that the plaintiff has taken the plea of fraud only to confer jurisdiction on the civil court. It is also evident that the application for getting loan and the documents required to be signed by the guarantors are different. In any case, when the plaintiff-respondent has the jurisdiction before the Debt Recovery Tribunal which has sufficient jurisdiction under Section 17 to consider and decide the matter, it will not be appropriate to entertain the civil suit."*

5. The trial Court has dismissed the Bank's application on the ground that it was filed at a late stage. In the opinion of the Court, the trial Court erred in dismissing the application as the question was of jurisdiction of the Civil Court. The plaintiff though alleges excess use of power by the bank while taking over the goods, however, the plaintiff does not allege any fraud on the part of the bank at the time when the loan was borrowed.

6. Additionally, the trial Court has erred in side-stepping the pivotal issue with respect to jurisdiction of the Civil Court while observing that the subject matter in proceedings before Debt Recovery Tribunal is different from civil suit.

7. Consequently, the impugned order passed by the trial Court is set aside and plaintiff's plaint shall stands rejected.

8. With the these observations, the petition is allowed.

(ANIL KSHETARPAL)
JUDGE

05.03.2025
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No