2025:PHHC:131828-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-36862 of 2018(O&M)
Date of decision: 23.09.2025

PUNJAB AND SIND BANK.

....Petitioner

V/S

CENTRAL BANK OF INDIA AND OTHERS.

... Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV BERRY, JUDGE

Present:- Mr. Ravi Kumar, Advocate for the petitioner (through V.C.).

Mr. Naren Pratap Singh, Advocate, for respondent no. 1.

Mr. Mayur Singla, Advocate,
for applicant in CM-1790 of 2024.

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SHEEL NAGU, CHIEF JUSTICE (Oral)

1. The Punjab and Sind Bank and the Central Bank of India are at loggerheads in this petition, wherein the assail is to the possession notice dated 26.10.2018 (Annexure P-1) issued by the Central Bank of India. Further, prayer is for a writ of prohibition, restraining the respondent-Bank from proceedings to take recourse u/s 13(4) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act for brevity).

2. Learned counsel for the petitioner submits that an unpartitioned property, which was a shop, situated in Civil Hospital Road, District Karnal, was mortgaged in favour of petitioner-Bank in March 2013. Subsequently, the shop was mortgaged in favour of respondent no.1-Bank in October, 2014.

3. After hearing the learned counsel for rival parties, it is obvious that at the time of mortgage, the same property was used by the owner, namely, Sh. Multan Singh-respondent no.3. Thus, it *prima facie* appears to be a case where fraud was exercised while executing mortgage with respondent no.3.

4. In view of the above and the law laid down by the Apex Court in the case of ***Mardia Chemicals Ltd Versus Union of India, (2004) 4 SCC 311***, where it is *inter aila* held that the bar contained in Section 34 of the SARFAESI Act would not apply in cases of property, where the ground of fraud is taken. The relevant portion of the said Apex Court's decision is reproduced below for ready reference and convenience:-

> 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, AIR at pp. 141 and 144, a judgment of the learned single Judge where it is observed as follows in para 22: (AIR p.143)*
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> > *"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,. 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, 4th Edn., p. 784.)"

80.5 *As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court.*

5. The petitioner-Bank, thus, has an alternative and efficacious remedy of approaching the Civil Court, especially when large number of disputed questions of fact are involved, which ought not to be gone into while exercising writ jurisdiction under Article 226 of Constitution of India.

6. Accordingly, with the aforesaid liberty, the present petition stands disposed of without commenting upon the merits.

7. The interim relief granted by this Court on 21.12.2018, which is subsisting till date, shall be continued for a period of 30 days, to enable the petitioner to avail its remedy before the Civil Court. The Civil Court shall be free to take its own view on the issue of interim injunction, without being influenced by the fact of petitioner having approached this Court or this Court having continued an interim order.

8. Since main case itself has been disposed of, no order are required to be passed in CM-1790 of 2024.

(SHEEL NAGU)
CHIEF JUSTICE

(SANJIV BERRY)
JUDGE

23.09.2025
Kamal Gandhi

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