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(2012) 12 P&H CK 0195

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 5295 of 2012 (O and M)

Sachin		APPELLANT
	Vs	
M/s. Punjab National Bank		RESPONDENT

Date of Decision: Dec. 21, 2012

Acts Referred:

- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13(3), 34

Hon'ble Judges: L. N. Mittal, J

Bench: Single Bench

Advocate: Mohit Malik, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

CM No. 14862-C of 2012

1. Allowed as prayed for.

Main Case

This is second appeal by Sachin-plaintiff having been non-suited by both the Courts below on the ground of bar of jurisdiction of Civil Court. Plaintiff-appellant has filed suit against defendant-respondent Punjab National Bank, challenging the action of the defendant, initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, Security Act)

2. Case of the plaintiff is that he along with Yash Pal Jindal had taken house loan from the defendant and had mortgaged the disputed house for the said loan with the another branch of the defendant. The plaintiff and Yash Pal Jindal repaid the said house loan. However, the said branch of defendant-bank has now transferred the

title deed of the disputed house of plaintiff and Yash Pal Jindal to the branch of the defendant arrayed as defendant. The plaintiff has alleged that the defendant has no right to recover any other loan from the disputed house and has no right to interfere in possession of the plaintiff thereon. Plaintiff sough permanent injunction in this regard.

3. The defendant alleged that besides the house loan taken by plaintiff and Yash Pal Jindal, M/s. Haryana Bricks Traders through its partners Yash Pal Jindal and Parveen Kumar had also taken loan by way of cash credit limit and term loan facility from the defendant for which plaintiff also stood guarantor and plaintiff and Yash Pal Jindal mortgaged the disputed property with defendant for the said loan. The defendant pleaded that jurisdiction of Civil Court is barred by Section 34 of the Security Act because the plaintiff has already served notice on the aforesaid borrower firm and its partners and the guarantors u/s 13(3) of the Security Act.

4. Both the Courts below have held that jurisdiction of Civil Court is barred by Section 34 of the Security Act and consequently the suit has been dismissed. Feeling aggrieved, plaintiff has filed this second appeal.

5. I have heard learned counsel for the appellant and perused the case file.

6. Counsel for the appellant vehemently contended that jurisdiction of the Civil Court is not barred because the defendant has committed fraud regarding alleged mortgage of the disputed property for the loan of M/s. Haryana Bricks Traders. The contention is completely misconceived and meritless. Even if the defendant has allegedly committed fraud with the plaintiff, the forum for redressal of the said grievance of the plaintiff is not the Civil Court but the Debt Recovery Tribunal. Jurisdiction of Civil Court is barred by Section 34 of the Security Act. In the suit, the plaintiff is challenging the proceedings initiated by the defendant under the Security Act. Consequently, Civil Court has no jurisdiction to entertain the suit in view of Section 34 of the Security Act.

7. If plea of fraud taken by the plaintiff is assumed to confer jurisdiction on the Civil Court, notwithstanding the bar created by Section 34 of the Security Act, then in every case, debtor or guarantor would take the plea of fraud to confer jurisdiction on the Civil Court and thereby not only Section 34 of the Security Act but the entire Security Act would be rendered redundant and infructuous.

8. For the reasons aforesaid, I find that jurisdiction of Civil Court to entertain the suit in question is clearly barred by Section 34 of the Security Act. Concurrent finding recorded by the Courts below in this regard does not suffer from any perversity or illegality. No substantial question of law arises for adjudication in this second appeal. The appeal is completely meritless and is accordingly dismissed in limine. However, it is expressly made clear that since the Courts below have not adjudicated the case on merits, nothing in the judgments of the Courts below or in this judgment shall have any bearing on merits of the claim of the plaintiff before the

appropriate forum.