

**(2013) 4 AD 804**

**Delhi High Court**

**Case No:** CS (OS) 813 of 2007

Nirmal Contracts Pvt.  
Ltd.

**APPELLANT**

**Vs**

M/s. Jai Deva  
Garments and Others

**RESPONDENT**

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**Date of Decision:** April 30, 2013

**Citation:** (2013) 4 AD 804

**Hon'ble Judges:** Manmohan, J

**Bench:** Single Bench

**Advocate:** Savita Malhotra and S.N. Relan, PNB Bank, for the Appellant; Shantanu Singh, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Manmohan, J.

IA. 16544/2012 in CS(OS) 813/2007

1. Present application has been filed by Punjab National Bank under Order VII Rule 11 and Section 151 CPC and Section 34 of the

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act, 2002") for

dismissal of contempt application being I.A. 15318/2012 filed by the plaintiff qua the Punjab National Bank. Learned counsel for Punjab National

Bank contends that the Bank is not a party to the present recovery suit filed by the plaintiff and is thus not bound by the injunction order dated 09th

March 2010. He states that the property bearing No. 443, EPIP Kundli, District Sonapat, Haryana was mortgaged with the Punjab National Bank

on 9th February, 2000 i.e. much prior to the filing of the present suit. He states that on 09th March 2010 this Court has passed an injunction order

restraining only the defendants from mortgaging parting with possession or in any manner creating third party rights in respect of property in

question i.e. 443, EPIP, Kundli, District Sonapat, Haryana till final decision in the present suit.

2. Learned counsel for Punjab National Bank points out that after merger of the defendants partnership firm with M/s. G.N.B. Bros. Pvt. Ltd. The

defendants account was classified as a Non-Performing Assets on 30th June, 2011 and the Bank subsequently issued a notice u/s 1392) of the

SARFAESI Act, 2002. He submits that Bank's action under the SARFAESI Act, 2002 cannot be impugned before this Court by way of a civil

suit

3. Learned counsel for Punjab National Bank also points out that on 27th March, 2012 the defendants No. 2 and 3 has themselves prayed before

the DRT that the bank should proceed for sale of the aforesaid property. The relevant portion of the order dated 27th March 2012 passed by

DRT is reproduced herein below:-

5 The learned counsel for the applicant further submits that the respondent-bank may proceed under the SARFAESI Act, 2002 in respect of other

two properties i.e. (i) Industrial Property bearing No. 417, Kundli, Sonapat, Haryana measuring 900 sq. mtrs. And (ii) Industrial Property bearing

no. 443, Kundli, Sonapat, Haryana, measuring 1800 sq mtrs.

4. Consequently, he submits that the present contempt application against the Punjab National Bank is not maintainable.

5. On the other hand, learned counsel for plaintiff states that charge was actually created under the Companies Act by the defendants on 30th

October, 2009 i.e. much after filling of the present suit. She further states that the Bank has colluded with the defendants to sell the Kundli property

even when over properties of the defendants were available for sale with the Bank.

6. Having heard the learned counsel for parties this Court is of the view that as the Punjab National Bank is not a party to the present proceedings,

it cannot be said that this Court on 09th March, 2010 had immunized the Bank from taking any action under the SARFAESI Act, 2002.

7. Further, even if the date of charge as suggested by the counsel for plaintiff is accepted then also the creation of the mortgage in Bank's favour is

prior to the injunction order dated 09th March, 2010 passed by this Court.

8. This Court also finds substance in the argument of learned counsel for Punjab National Bank that no registration of charge was required in the

year 2000 as on that date the defendants was partnership firm and it merged only on 01st September, 2005 with M/s. G.N.B. Bros. Pvt. Ltd.

9. As far as the argument that the Bank could not have selected the Kundli property over other securities offered by the defendants, this court is of

the view that it is open to the Bank as secured creditor to select any property that it would like to auction. In any event, in the present case, the

admitted position is that sale of the only other security of the of the defendants available with the Bank had been injected by the DRT. Further this

Court is in agreement with the submission of learned counsel for the Bank that under the SARFAESI Act, 2002 only DRT has exclusive

jurisdiction to decide all disputes including those raised by the third parties.

10. Consequently, this Court is of the view that the present application needs to be allowed.

11. Accordingly, present application is allowed and Punjab National Bank is deleted from I.A. No. 15318/2012.

12. The undertaking given by the Punjab National Bank on 11th September 2012 is also vacated.

13. However, the plaintiff is given liberty to apply for injunction with regard to any other assets of the defendants that may be available.

I.A. 15318/2012 in CS(OS) 813/2007

14. Present application has been filed under Order XXXIX Rule 2-A and Section 151 CPC read with Sections 10 & 12 of Contempt of Court

Act.

15. This Court has Perused the order dated 09th March, 2010 as well as the order dated 27th March 2012 as well as the order dated 27th

March 2012 passed by Debt Recovery Tribunal.

16. This Court is prime facie of the view that defendants No. 2 and 3 are playing ducks and drakes with the Court.

17. Consequently, defendants No. 2 and 3 are directed to be personally present in Court on the next date of hearing.

18. List on 27th September, 2013.

I.A.S. 3424/2012 & 14733/2012 in CS(OS) 813/2007

19. While I.A. 14733/2012 has been filed by the defendants for decreeing the counter claim. I.A. 3434/2012 has been filed by the plaintiff seeking

extension of time in filing the written statement to counter claim.

20. Learned counsel for plaintiff states that counter claim has till date not been served upon her.

21. This Court has perused that paper book and is of the opinion that plaintiff has till dated not been served with a copy of the written statement

cum counter claim.

22. Accordingly, the delay in filing the written statement to counter claim is condoned and plaintiff is granted liberty to file a written statement to the

counter claim within a period of four weeks of receipt of counter claim. With the aforesaid observations. I.A. 3434/2012 is allowed and I.A.

14733/2012 is dismissed.

CS(OS) 813/2007 & CC 195/2008

List the matter on 27th September, 2013.