(1993) 04 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1673 of 1992 (O and M) and Civil Miscellaneous No. 4045-CII of 1992

Balkar Singh APPELLANT

Vs

Oriental Bank of Commerce RESPONDENT

Date of Decision : 21-04-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 115
Haryana Agriculture Credit Operations and Miscellaneous Provisions (Banks) Act, 1973 — Section 8(1) , 8(2)

Citation : (1993) 104 PLR 389

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : L.N. Verma, for the Appellant; A.K. Chopra, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—Learned counsel for the parties agree that revision petition be decided on merits

2. Petitioner is an agriculturist. He took loan for a sum of Rs. 52,000/- from the Oriental Bank of Commerce (in short/the Bank'') in order to purchase a tractor. He mortgaged his land measuring 85 Kanals 11 marlas by mortgage deed with the Bank on 3-10 1980. The loan was disbursed on 6-10-1980. The Petitioner did not pay the amount according to the terms of the mortgage. The Bank instead of filing a rugular civil suit under Order 34, Rule 1, of the Code of Civil Procedure, filed an application under Sub-section (1) of Section 8 of the Haryany Agricultural Credit Operations and Miscellaneous Previsions (Banks) Act, 1973, (in short, ''the Act'') before the prescribed Authority. The Prescribed Authority allowed the application of the Bank. The operative part of the order dated 16.7.1984 reads as under : --

"I have heard the ex-parte arguments and have perused the file. It is proved from Ex-P-1 that a sum of Rs. 78527-87 is due against the respondent. From Ex-

P-2 it is proved that the respondent took the loan from the Bank and his land was mortgaged in favour of the Bank. There is no rebuttal of documents produced on behalf of the Bank and hence, a decree for a sum of Rs. 78527-87 is passed in favour of the Bank and against the respondent. The Bank would be entitled to recover this amount with interest and expenses by putting to auction the land of the petitioner under mortgage."

Despite the passing of this order, the petitioner did not make the payment The Bank filed an execution application in order to recover the amounts by putting to auction the land of the petitioner which was under mortgage Before the land could be auctioned the petitioner appeared before the prescribed Authority on 27.5.1986 and undertook to pay the entire decretal amount by way of four instalments. The first instalment of Rs. 15,008/-was paid in time The petitioner again'' defaulted and the Bank became entitled to recover the decretal amount. However, the petitioner continued to pay some amount from time to time to the Bank and upto 25.6.1990 as per both the counsel, a sum of Rs. 63,000/. which includes Rs. 15,000/- paid as first instalment, stood paid to the Bank. Thereafter, the Bank instead of resorting to the provisions of the Act for the realisation of the amount, filed a civil suit under Order 34 of the Code of Civil Procedure, for recovery of the amount An objection was raised by the petitioner that the civil suit is not competent in view of the order passed by the prescribed Authority on an application filed by the Bank under Sub-section (1) of Section 8 of the Act. The, trial Court relying on the judgment of the Kerala High Court reported at Canara Bank v. Thankappan 1990 L. S. J. 76 declined to entertain the objections of the petitioner and held that the civil suit is competent. This order is being impugned toy the petitioner in the present revision petition.

3. At the time when the revision petition came up for motion hearing, a direction was given to the Prescribed Authority to sell the property of the petitioner (judgment debtor) mortgaged with the Bank. After passing of this order, a miscellaneous application was filed by the petitioner for modification of the said order on the ground that a part of the property may be sold as the same would be sufficient to meet the entire decretal amount. This prayer was accepted and the petitioner was permitted to sell a part of the property for payment to the Bank. The petitioner also undertook to bring the amount on the next date of hearing. Subsequently, a sum of Rs. 50,000/- was paid by the petitioner to the counsel for the Bank in this Court. In all, a sum of Rs. 1,13,000/- has been paid for a loan of Rs. 52,000/- which the petitioner took for purchasing a tractor. Learned counsel for the petitioner has contended that once an order as passed by the Prescribed Authority, Civil Suit for the same relief is not competent. In reply to this, Mr. Ashwini Kumar Chopra, Advocate, for the Bank has vohomently argued that provisions of the Act do not bar the filing of a civil suit.'' He also made a reference to Order 7, Rule 11 of the Code of Civil Procedure, to contend that the plaint does not contain any averment to show that the suit barred by law.

4. After hearing learned counsel for the parties at length, I am of the considered

view that this revision petition deserves to succeed. The petitioner under the terms of the mortgage, was required to pay the amount of loan in certain instalments. He having defaulted, the Bank became entitled to recover the amount. The Bank had two options with it, (i) to file a civil suit under Order 34 of the Code of Civil Procedure, or (ii) to proceed to recover the amount under the Act. The Bank chose to proceed under the Act. Sub section (1) of Section 8 of the Act provides that the Prescribed Authority on the application of the Bank, should make an order against any agriculturist or his heir or legal representative, directing the payment of any sum due to the Bank on account of financial assistance availed of by the agriculturist by the sale of any land or any interest therein upon which the payment of such money is charged or mortgaged. Proviso to sub-section (1) of Section 8 of the Act has to be passed only after giving notice to the agriculturist, as the case may be, and after calling upon him to pay the amount due. Once an order under sub-section (1) of Section 8 of the Act is passed, then under Sub-section (2), the same becomes executable in the same manner as a decree of a civil Court. For the facility of reference, sub-section (2) of Section 8 of the Act is reproduced as under:

"8. (2) Every order passed by the prescribed authority under sub-section (1) shall be deemed to be a decree of civil court and shall be executed in the same manner as a decree of such court."

5. A combined reading of sub-sections (1) and (2) of Section 8 of the Act makes it clear that once an application is filed u/s 8 of the Act, then after calling upon the agriculturist, the Prescribed Authority is required to pass an order for the payment of the money due. This order then takes the shape of a Civil Court decree, and can be executed in the same manner as a decree of such Court. There is no provision under the Act, empowering the Prescribed Authority to dismiss the claim of the Bank Learned counsel for the respondent has not been able to satisfy me as to how the suit under Order 34 of the Code of Civil Procedure, would be maintainable, His only contention is that neither the CPC nor the provisions of the Act, bar the filing of such a suit I fail to understand that when a decree has already beeu obtained by the Bank and the same is in terms of the decree which a Civil Court could pass, then how a suit could be filed under Order 34 of the Code of Civil Procedure. It is not" the case of the respondent that the decree cannot be executed, rather at one stage an execution application was filed for the realisation of the decretal amount and some amount was paid by the petitioner. Till date, a sum of Rs. 1,13,000/- has been paid to the Bank. The filing of a civil suit would certainly be of no purpose as the decree already stands in favour of the Bank and the amount under the same can be realised by putting to auction the property which was mortgaged with the Bank The judgment of Kerala High Court relied upon by the trial Court has no application to the facts of the present case as in that case, the suit was held to be competent because no recovery could be effected under the notification issued under the Revenue Recovery Act. The notification referred to in that Act did not contain provision like sub-section (2) of Section 8 of the Act, where a decree could be executed like a

civil court decree. To my mind, it would be an exercise in futility if the civil suit is allowed to proceed, as the very purpose for which the Bank filed the present suit, has already been achieved by it by obtaining a decree under the Act. A party cannot be vaxed twice for the same cause.

6. I also find no merit in the contention of learned counsel for the respondent that the plaint cannot be rejected because the averments made therein do not show that the suit is barred by any law. Under Order 7, Rule 11 (a) of the Code of Civil Procedure, the Court is empowered to rejected the plaint if the same does not disclose the cause of action. When a suit is filed, the Court is to see whether the same contains necessary allegations, disclosing the cause of action, and if there is nothing, then the Court can reject the plaint. In the present case, the Bank has not spelled out the cause of action accrued to it after the passing of the decree under the Act. In this view of the matter, the plaint is liable to be rejected on the ground that the same does not disclose the cause of action.

7. Consequently, the revision petition is allowed and the impugned order is set aside The trial Court shall pass an order rejecting the plaint. It shall be open to the Bank to recover the decretal amount under the provisions of the Act. The Prescribed Authority while executing the decree, shall take into consideration the amount already paid by the petitioner to the Bank.

8. There shall be no order as to costs.