(2016) 08 SHI CK 0075

In the High Court Of Himachal Pradesh

Case No : C.M.P.M.O. No. 247 of 2016.

Reena and another - Petitioners @HASH State Bank of Patiala and Others

Date of Decision : 02-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2
Enforcement of Security Interest Act, 2002 — Section 34
Specific Relief Act, 1963 — Section 34, Section 37, Section 38, Section 6

Citation : (2016) 4 HimLR 2374 : (2016) LatestHLJ(HP) 1033 : (2016) 3 SimLC 1591

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : Mr. Y.P. Sood, Advocate, for the Petitioner; Mr. G.C. Gupta, Senior Advocate with Ms. Meera Devi, Advocate, for the Respondent Nos. 1 and 2

Final Decision : Dismissed

Judgement

Rajiv Sharma, J. - This petition is directed against the order dated 2.5.2016, rendered by the learned District Judge, Mandi, H.P., in Civil Miscellaneous Appeal No. 8/2016.

2. "Key facts" necessary for the adjudication of this petition are that the petitioners filed a suit for declaration and injunction claiming ownership and possession of land comprised in Khata Khatauni No. 19/23, Kh. No. 797/234, measuring 121.88 sq. meters, having three storyed building situated in Muhal Paddal/366/9, Tehsil Sadar Distt. Mandi, H.P. It was averred that the revenue entries showing respondent No. 4 Raj Kumari as owner-in-possession and respondent No. 1 as mortgagee were wrong and illegal. The petitioner No. 1 is legally wedded wife of respondent No. 3. The petitioner No. 2 was born out of the wed lock. The relations between the parties became strained and the petitioners were neglected by respondent No. 3. Thereafter, an agreement was executed between the parties on 28.3.2008 and the suit property was given to the petitioners in lieu of maintenance. Notices were issued for taking over the property vide order dated 16.11.2015. Respondents No. 1 and 2 came to the spot to know whereabouts of the suit land. Enquiries were made and the

petitioners came to know that respondent No. 4 had created mortgage without possession in favour of respondent No. 1 for grant of loan. The petitioners have also moved an application under Order 39 Rules 1 and 2 CPC for grant of ad-interim injunction. The application was contested by respondents No. 1 and 2. According to the reply, the suit was barred under Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act, 2002). Respondent No. 1 was mortgagee. Respondent No. 3 was sole proprietor of M/S Raj Industries and had availed the financial assistance of Rs. 1,20,00,000/- from the bank. He has failed to repay the loan amount.

The proceedings were initiated against him under the Act and respondents No. 1 and 2 proceeded to take possession of the mortgage property under the SARFAESI Act, 2002. The learned trial Court dismissed the application on 16.3.2016. The petitioners filed an appeal before the learned District Judge, Mandi. The learned District Judge, Mandi, also dismissed the same on 2.5.2016. Hence, this petition.

3. Respondents No. 3 and 4 have executed documents to obtain loan on 4.2.2008. The alleged agreement is dated 28.3.2008. It is not the case of the petitioners that they were paying taxes, water bills etc. qua the building. No tangible evidence has been placed on record that there was matrimonial dispute between petitioner No. 1 and respondent No. 3. The document, as rightly observed by the learned District Judge, Mandi, has been prepared with ulterior motive to defeat the rights of the Bank to recover amount.

4. Their lordships of the Hon''ble Supreme Court in the case of Jagdish Singh v. Heera Lal and others, reported in (2014) 1 SCC 479, have held that Section 34 of the SARFAESI Act, 2002 ousts jurisdiction of the Civil Courts. It has been held as follows:

" 21. Section 34 of the Securitisation Act ousts the civil court jurisdiction. For easy reference, we may extract Section 34 of the Securitisation Act, which is as follow:

"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 (51 of 1993).

23. Section 13, as already indicated, deals with the enforcement of the security interest without the intervention of the court or tribunal but in accordance with the provisions of the Securitisation Act.

24. Statutory interest is being created in favour of the secured creditor on the

secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower''s debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the "measures" referred to in subsection (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17.

The opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression ''in respect of any matter'' referred to in Section 34 would take in the "measures" provided under subsection (4) of Section 13 of the Securitisation Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under subsection (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well."

5. In the instant case, notices were issued to respondents No. 3 and 4 under the SARFAESI Act, 2002. The respondent-Bank has also approached the Debt Recovery Tribunal. The jurisdiction of the Civil Court was barred. There is neither any illegality in the orders passed by the Courts below nor prima-facie case lies in favour of the petitioners. The learned Courts below have correctly appreciated the pleadings and documentary evidence placed on record.

6. Accordingly, the petition is dismissed, so also the pending application(s), if any. No costs.

