

(2019) 09 RAJ CK 0160

In the Rajasthan High Court

Case No : Civil Writ Petition No. 13800 Of 2019

Sushil Gaur

APPELLANT

Vs

Branch Manager, Awas Finaciars Ltd

RESPONDENT

Date of Decision : 17-09-2019

Acts Referred:

Securitizations And Reconstruction Of Financial Assets And Enforcement Of Securities Interest Act, 2002 — Section 13, 13(2), 13(4), 34
Code Of Civil Procedure, 1908 — Order 7 Rule 11, Order 39 Rule 1, Order 39 Rule 2
Constitution Of India, 1950 — Article 227

Citation : (2019) 09 RAJ CK 0160

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Rohitash Singh

Final Decision : Dismissed

Judgement

By way of the present writ petition filed under Article 227 of the Constitution of India, the petitioner has laid challenge to order dated 21.8.2019, passed by the learned Addl. District Judge No.1, Nagaur, whereby the appeal filed by the respondent- bank against the order dated 6.2.2019 passed by the learned Civil Judge, Jayal has been allowed.

Facts succinctly stated are that the petitioner filed a suit for injunction along with an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, and prayed for an order of restraint qua the respondent-bank, which had declared petitioner's account as NPA and initiated proceedings under Section 13(2)/(4) of the Securitizations and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as the Act of 2002).

The learned trial Court vide its order dated 6.2.2019 found a prima facie case in petitioner's favour, while brushing-aside the objection of the respondent-bank that the suit is not maintainable in view of the provisions of Section 34 of the Act of 2002, the trial Court granted an injunction in petitioner's favour.

In an appeal filed there against, the appellate Court, vide its order dated 21.8.2019 held that in the present factual matrix, the civil suit is not maintainable by virtue of Section 34 of the Act of 2002 and allowed the appeal filed by the Bank. The appellate Court set aside the injunction granted by the learned trial Court.

Calling in question, the order dated 21.8.2019, passed by the appellate Court, Mr. Rohitash, learned counsel contended that the appellate Court has erred in allowing the appeal filed by the respondent-bank and in setting aside the order of injunction passed by the learned trial Court. He argued that the application under Order 7 Rule 11 of the Code of Civil Procedure filed by the respondent -bank was still pending before the learned trial Court and until and unless the same is decided, it cannot be said that the suit filed by the petitioner - plaintiff was not maintainable. He argued that since the petitioner's basic case was that petitioner's account has been wrongly declared NPA, proceedings initiated by the respondent-bank were fundamentally without authority of law. Petitioner's further contention has been that the respondent had initiated the proceedings under the provisions of the Act of 2002, without declaring the petitioner's account NPA afresh, particularly when, the petitioner had entered into a compromise with the respondent-bank, when his account was firstly declared NPA.

Having heard learned counsel for the petitioner and upon perusal of the material available on record, this Court is of the considered view that there is no error or infirmity in the order passed by the appellate Court. The appellate Court has rightly held that the petitioner or borrower cannot lay challenge to the proceedings initiated under the provisions of the Act of 2002.

The provisions contained in Section 34 of the Act of 2002 are unequivocal, leaving no room for doubt that a civil suit in the matters governing or laying challenge to the proceedings under Section 13 of the Act of 2002 is not maintainable, as the Debt Recovery Tribunal alone has the jurisdiction and the Civil Court's jurisdiction is inhibited.

This being the position, the writ petition is bereft of substance, for which it is hereby dismissed.

The stay application also stands disposed of accordingly.