

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

124

CR-2195-2021

Date of decision : 12.072022

Punjab National Bank

...Petitioner

Versus

Surender Singh Bedi and others

....Respondents

CORAM : HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.R.S.Bhatia, Advocate
for the petitioner.

Mr. Aman Pal, Advocate
for respondent No.1.

Mr. Anil Chawla, Advocate
for respondent No.3.

ANIL KSHETARPAL, J. (ORAL)

1. The nationalised bank assails the correctness of the order passed by the trial Court on 30.07.2021. It is the stand of the bank that the jurisdiction of a Civil Court is barred under Section 34 of Securitisation and Reconstruction of Financial Assets and enforcement of Security Interest Act, 2002 (in short, 'the 2002 Act'). The Civil Court has rejected the application on the ground that the plaintiff has alleged fraud played on him by the secured creditor i.e. the Bank. The Court has relied upon the judgment passed by the Supreme Court in **Mardia Chemicals Ltd. etc. vs. Union of India and another, AIR 2004 SCC 2371.**

2. The petitioner before this Court is alleged to have stood as a guarantor to the loan amount disbursed to M/s Sapphire Digital Printers

(defendant No.1). On default, the proceeding under the 2002 Act has been initiated against the borrowers as well as guarantors. The respondent (plaintiff) claims to have not only signed the agreement of guarantee but he also deposited the original title deeds with the bank in lieu of the loan amount. In substance, the plaintiff while filing the suit has alleged as under :-

“4. That as a matter of fact, Mr Neeraj Choudhary proprietor of M/s Sapphire Digital Printers was a close friend of the brother of the plaintiff who told the plaintiff that his father was on a very higher rank in a Nationalized Bank and that he could arrange Loan Against Property LAP very easily against the property bearing No 49 Sector-15, Faridabad for which initially he took the photocopies of the title of the property and later on assured the plaintiff that proposal was accepted and that original papers along-with ID proof and certain signed blank and stamp papers were required for further formality which were handed over to him but the plaintiff came to know later on that said Mr. Neeraj mis-utilized the documents and signatures by scanning the same and convened the same to the alleged Guarantee Deed dated 26-02-2016 in the loan account of his Firm known as M/s Sapphire Digital Printers The plaintiff ran from pillar to post to lodge an FIR against said Sh Neeraj and was successful later on when FIR No 260 of 2019 under Section 406/420 IPC was lodged against Mr. Neeraj and Bank Officials (who helped Mr Neeraj in committing fraud with the plaintiff).

X X X X X

8. That It is further submitted that the bank officials of the defendant No 3 in connivance with the defendant No 1 i.e. proprietor of M/s Sapphire Digital Printers 86 Others committed criminal breach of trust with the plaintiff and fraud has been committed to grab the property of the plaintiff whereas the property in question, in view of the opinion of the defendant No 3 i.e. Punjab National Bank's approved Advocate, could never be mortgaged unless and until the permission to mortgage was obtained from HUDA and Memorandum of deposit of title deed was got signed which was never got signed by the plaintiff. The bank official had a connivance with the defendant No.1 i.e. proprietor of M/s Sapphire Digital Printers and as such they did not follow the instructions of Bank's approved lawyer and sanctioned the loan in the name of the defendant No.1."

Section 34 of the 2002 Act is extracted as under :-

“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).”

3. It is evident that the jurisdiction of Civil Court is barred

under the 2002 Act while granting liberty to any person including the borrower, who is aggrieved of any of the measures taken by the secured creditors to file an application before the Debts Recovery Tribunal (hereinafter referred to as 'DRT'). Section 17 of the 2002 Act is extracted as under :-

“Application against measures to recover secured debts.----

(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:—

3 [Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower]

4 [Explanation.—For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.]

**5 [(1A) An application under sub-Section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction____
(a) the cause of action, wholly or in part, arises;**

(b) where the secured asset is located; or
(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being]

6 [(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

7 (3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession of the secured assets to the borrower or other aggrieved person, it may, by order,

(a) declare the recourse to any one or more measures referred to in-sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction

as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

[(4A) Where _____

- (i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement or security interest, have the jurisdiction to examine whether lease or tenancy,___*
- (a) has expired or stood determined; or*
 - (b) is contrary to Section 65A of the Transfer of Property Act, 1882 (4 of 1882); or*
 - (c) is contrary to terms of mortgage; or*
 - (d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of Section*

13 of the Act; and

- (ii) *the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act]*

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery

Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]

4. This Court has carefully read the judgment passed by the Supreme Court in **Mardia Chemicals's case (supra)** which has been relied upon by the Court below. However, after the judgment of **Mardia Chemicals's case (supra)**, Section 17 of the 2002 Act has undergone an amendment. The scope of Section 17 has been enlarged after the said judgment and now any person aggrieved by the measures taken by the secured creditors is entitled to invoke the jurisdiction of DRT. In that particular context, the bar to the jurisdiction of the Civil Court as specified in Section 34 of the Act has to be examined.

5. In the peculiar facts of the case, it is evident that the plaintiff (respondent No.1 herein) claims that he was misrepresented by Sh. Neeraj Chaudhary and his father. The allegations levelled against the secured creditors can always be examined by the DRT which is headed by the Judicial Officer of the same level as the level of a District Judge. In a case where there is an express bar to the jurisdiction of Civil Court, the same cannot be permitted to be avoided merely by alleging fraud played by the secured creditors. The attention of the Court has not been drawn to any statutory provision that empowers the Civil Court to exclusively decide

the allegation of fraud and not DRT. Recently, the Supreme Court has once again, considered the allegations of fraud played on by the secured creditors in the case **Electrosteel Castings Limited vs. UV Asset Reconstruction Com. Ltd. and others, 2022(2) SCC 573.** The Supreme Court has held that the plaintiff can initiate appropriate proceedings before the DRT that is the appropriate forum and is debarred to invoke the jurisdiction of the Civil Court under Section 34. The plaintiff (respondent No.2 herein) cannot be permitted to avoid the bar of civil court merely by alleging fraud played by the secured creditors on him. The relevant discussion is in para 8, which is extracted as under :-

8. Having considered the pleadings and averments in the suit more particularly the use of word 'fraud' even considering the case on behalf of the plaintiff, we find that the allegations of 'fraud' are made without any particulars and only with a view to get out of the bar under Section 34 of the SARFAESI Act and by such a clever drafting the plaintiff intends to bring the suit maintainable despite the bar under Section 34 of the SARFAESI Act, which is not permissible at all and which cannot be approved. Even otherwise it is required to be noted that it is the case on behalf of the plaintiff -appellant herein that in view of the approved resolution plan under IBC and thereafter the original corporate debtor being discharged there shall not be any debt so far as the plaintiff - appellant herein is concerned and therefore the assignment deed can be said to be 'fraudulent'. The aforesaid cannot be accepted. By that itself the assignment deed cannot be said

to be 'fraudulent'. In any case, whether there shall be legally enforceable debt so far as the plaintiff - appellant herein is concerned even after the approved resolution plan against the corporate debtor still there shall be the liability of the plaintiff and/or the assignee can be said to be secured creditor and/or whether any amount is due and payable by the plaintiff, are all questions which are required to be dealt with and considered by the DRT in the proceedings initiated under the SARFAESI Act. It is required to be noted that as such in the present case the assignee has already initiated the proceedings under Section 13 which can be challenged by the plaintiff - appellant herein by way of application under Section 17 of the SARFAESI Act before the DRT on whatever the legally available defences which may be available to it. We are of the firm opinion that the suit filed by the plaintiff - appellant herein was absolutely not maintainable in view of the bar contained under Section 34 of the SARFAESI Act. Therefore, as such the courts below have not committed any error in rejecting the plaint/dismissing the suit in view of the bar under Section 34 of the SARFAESI Act."

6. Though the learned counsel representing the respondents made sincere attempt to persuade this Court to continue with the civil suit, however, in view of the statute i.e. 'the 2002 Act' and the provisions contained therein, this Court expresses its inability to accede to the aforesaid request made by the respondents.

7. With all these observations, the revision is allowed and the order under challenge is set aside. The plaintiff may avail the remedy

before the DRT.

8. Let the plaint be returned to the plaintiff.

12.072022
anju

(ANIL KSHETARPAL)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No

