

(2022-3)207 PLR 390, PLRonline 401573

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PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Anil Kshetarpal.

M/S. GOYAL FOOD STUFF INDUSTRIES – Petitioner,

Versus

UNION BANK OF INDIA and others – Respondents.

Civil Revision No. 5773 of 2019 (O&M)

1. **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) Section 31(b) – Not only the movables were pledged, but the petitioner also availed the term loan facility – Thus, it is obvious that Section 31(b) of the 2002 Act cannot be said to be wholly applicable. [Para 11]**
2. **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) Section 31(b) – Pledge – Section 172 of the [Contract Act, 1872](#) defines the term “pledge” as the bailment of goods as security for payment of debt or performance of a promise – Provisions of the said Act are not applicable if the credit facility has been availed on pledging of movables – Contract Act, 1872, Section 172. [Para 9]**
3. **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) Section 34 – Petitioner prays for grant of injunction restraining the respondent-Bank from taking physical possession of the properties and selling them – Such a relief would fall within the scope of Section 34 of the 2002 Act and therefore, the Civil Court lacks the jurisdiction to entertain the same. [Para 14]**

Cases referred to:-

1. (2022)2 SCC 573, *Electrosteel Castings Limited v. UV Asset Reconstruction Company Limited*.

Mr. Nikhil Chopra, for the petitioner(s). *Mr. Shailender Kashyap*, for the respondent-Bank.

Anil Kshetarpal, J. – (2nd April, 2022) –

1. The petitioner is a plaintiff in the suit for grant of decree of permanent injunction, filed on 20.01.2016. The caption of the suit reads as under:-

“Suit for permanent injunction whereby restraining the defendants from taking any punitive action i.e. taking physical possession of properties primarily mortgaged or collateral securities given by the plaintiff to avail credit facilities and from alienating these properties and from selling the pledged rice matter investigated/enquired from any independent agency”.

2. The petitioner assails the correctness of the order passed by the Civil Court under Order VII Rule 11 [CPC](#) while rejecting the plaint vide order dated 30.04.2019 on the ground of lack of jurisdiction. The application filed by the respondent-Bank under Order VII Rule 11 CPC alleging that the jurisdiction of the Civil Court is barred under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “the 2002 Act”) has been allowed.

3. Though, the order, under challenge, falls under the definition of a “deemed decree”, therefore, an appeal is maintainable before the District Judge. However, keeping in view the fact that the revision petition was entertained and has remained pending for a period of more than 2½ years, it is not considered appropriate to relegate the petitioner to the alternative remedy.

4. It is the case of the respondent-Bank that the petitioner has availed the following credit facilities:-

(i) Cash Credit (Hyp.) Rs. 9.00 Crores

(ii) Term Loans Rs. 5.87 Crores

(iii) Cash Credit (Warehouse receipts) Rs. 6.00 Crores

5. The respondent-Bank sent a notice under Section 13(2) of the 2002 Act on 13.01.2016. Thereafter, the respondent-Bank made a complaint to the Central Bureau of Investigation (hereinafter referred to as “the CBI”) as the petitioner is alleged to have siphoned off the food stock in an illegal manner. The CBI, after completing the investigation, has presented the final report in the Court with a request to prosecute the management of the petitioner-industry. The respondent-Bank has also filed an O.A. before the Debt Recovery Tribunal at Chandigarh.

6. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

7. The learned counsel representing the petitioner contends that the suit in question was filed before issuance of notice under Section 13(2) of the 2002 Act. In view of Section 31(b) of the 2002 Act, a pledge of movables falls within the ambit of Section 172 of the Indian Contract Act, 1872 (hereinafter referred to as “the 1872 Act”). The learned counsel further contends that the provisions of the 2002 Act are not applicable, if the credit facility has been taken on a pledge of movables within the meaning of Section 172 of the 1872 Act. He refers to Section 31 of the 2002 Act in support of his arguments.

8. At this stage, it would be appropriate to extract Section 31 and 34 of the 2002 Act. Section 31 and 34 of the 2002 Act read as under:-

“31. Provisions of this Act not to apply in certain cases.—

The provisions of this Act shall not apply to—

- (a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 (9 of 1872) or the Sale of Goods Act, 1930 (3 of 1930) or any other law for the time being in force;*
- (b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872 (9 of 1872);*
- (c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934 (24 of 1934);*
- (d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958)*
- (e) XXX XXX XXX (Omitted by Act 44 of 2016, s.22 (w.e.f. 1-9-2016).*
- (f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);*
- (g) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act) or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (5 of 1908);*
- (h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;*
- (i) any security interest created in agricultural land;*
- (j) any case in which the amount due is less than twenty per cent. of the principal amount and interest thereon.*

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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)”.

9. From a careful reading of Section 31 of the 2002 Act, it evident that the provisions of the said Act are not applicable if the credit facility has been availed on pledging of movables. Section 172 of the 1872 Act defines the term “pledge” as the bailment of goods as security

for payment of debt or performance of a promise.

10. On the other hand, it is the case of the respondent-Bank that not only the movables were pledged, but the petitioner also availed the term loan facility.

11. Thus, it is obvious that Section 31(b) of the 2002 Act cannot be said to be wholly applicable.

12. The second argument of the learned counsel is factually incorrect as the notice under Section 13(2) of the 2002 Act was issued by the respondent-Bank on 13.01.2016, whereas the petitioner filed the suit on 20.01.2016.

13. Further, Section 34 of the 2002 Act bars the jurisdiction of the Civil Court. In other words, Section 34 of the 2002 Act prohibits the Civil Court to entertain any suit or proceeding in respect of any matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered by or authorized under this Act to determine. It has further been provided that 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 the 2002 Act.

14. From a perusal of the caption of the suit as extracted above, it is evident that the petitioner prays for grant of injunction restraining the respondent-Bank from taking physical possession of the properties and selling them. Such a relief would fall within the scope of Section 34 of the 2002 Act and therefore, the Civil Court lacks the jurisdiction to entertain the same. Reliance in this regard can be placed on a recent judgment of the Supreme Court in *Electrosteel Castings Limited v. UV Asset Reconstruction Company Limited and Others*¹ (2022) 2 SCC 573.

15. In view of the foregoing discussion, there is no scope for interference. Hence, the revision petition is dismissed.

16. The miscellaneous application(s) pending, if any, shall stand disposed of.

R.M.S. – Petition dismissed.