

Present: Sh.Ashish Garg, counsel for plaintiff.

Sh.Sanjay Sharma, counsel for defendant.

Shri Sanjay Sharma advocate filed power of attorney on behalf of defendant along with an application under order 7 rule 11 of CPC for rejection of plaint on the ground that the Bank has already proceeded under SARFAESI Act and this Court has no jurisdiction to grant any relief to plaintiff. Learned counsel for plaintiff sought adjournment for filing reply of this application and sought interim injunction against defendant till filing of reply of this application. He submitted that the loan amount was taken by MSME in the name and style of M/S Main Pal Sharma and Company. He further submitted that the present suit has been filed to direct the defendant to constitute designated committee in terms of clause 3.3 of guidelines issued by RBI dated 17.03.2016. He further submitted that the auction of the disputed property shall be stayed till further order. Whereas, learned counsel for defendant submitted that the auction of the property is scheduled for 30.08.2022 from 11:00 A.M. to 1:00 P.M. and the plaintiff failed to pay the debt of defendant, therefore, the bank proceeded under SARFAESI Act. He further submitted that this Court shall decide application under order 7 rule 11 CPC and only then Court may proceed to grant any relief to the plaintiff. Heard. After hearing learned counsel and perusal of case titled as **H.S.Deekshit and another Vs. M/S Metro Poli Overseas Ltd. and Ors.**, Hon'ble Supreme Court held that at the stage of considering application under order 7 rule 11 CPC, the Court has to examine only plaint and no other extraneous factor can be taken into consideration. In the present

case, no committee as per clause no.3.3 of guidelines of RBI was ever constituted by the defendant, which was a mandatory guidelines. In this regard, learned counsel for plaintiff placed reliance on **Allahabad Bank and ors. Vs. Roop Lal & Ors. DOD 12.05.2019**, Hon'ble Punjab and Haryana High Court. Case law referred by learned counsel for plaintiff, this Court is of the view that in case of MSME, it is mandatory for the bank to refer the case to designated committee as per guidelines of RBI dated 17.03.2016, therefore, defendant shall send the case of plaintiff to designated committee as per clause 3.3 and only after decision of designated committee, defendant can proceed further. Auction proceedings are hereby stayed till decision of designated committee. The plaintiff shall file representation before defendant bank within ten days from the date of order, failing which stay granted will be deemed as vacated. Defendant bank shall also be liable to send the case to designated committee within 30 days from the receiving of representation of plaintiff. Further designated committee shall follow the procedure as per guidelines. Case is adjourned for 20.10.2022 for filing reply of application and awaiting report of defendant regarding compliance of clause 3.3 of guidelines dated 17.03.2016.

(Dr. Mukesh Kumar)
CJ(JD), Ambala.
UID Code No.HR-0457

Date of Order: 30.08.2022.
(Rajbir Kaur)
Stenographer Gr.II