IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.2058 of 2013
Date of decision: 14.05.2015

Union Bank of India ... Petitioner

versus

Anil Yadav .... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Aalok Jagga, Advocate,
for the petitioner.

Ms. Tanya Malik, Advocate,
for Mr. S.N. Gaur, Advocate,
for the respondent.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. *(Oral)*

1. The revision is against an order dismissing an application filed by the defendant for rejection of a plaint. The suit had been filed by a person claiming to be a tenant of the property which was a subject of a secured interest created in favour of the Bank. Action had been initiated by the Bank for taking delivery of the property under the provisions of SARFAESI Act. The delivery was sought to be obstructed through the suit by a person claiming to be a tenant and the objection to the maintainability of the suit by the

Bank was that any person claiming a right to secure assets which was being proceeded against under the terms of SARFAESI Act could be raised only before the magistrate who exercised the power to deliver possession under Section 13(4) of the SARFAESI Act and a suit would not be competent.

2. The legal position has now been explained by the Supreme Court in ***Harsiiad Govardhan Sondatrar Versus International Assets Reconstruction Co. Ltd. (SC)-2014(6) SCC 1*** where the Supreme Court has held as follows:-

> "....... 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 Act. Thus, when action is sought to be taken by the secured creditor under Section 13 of the SARFAESI Act or by the Chief Metropolitan Magistrate or the District Magistrate under Section 14 of the SARFAESI Act, the Court or the authority mentioned in Section 33 of the Maharashtra Rent Control Act cannot grant the injunction to prevent such action by the secured creditor or by the Chief Metropolitan Magistrate or the District Magistrate. Even otherwise, Section 33 of the Maharashtra Rent Control Act vests jurisdiction in the courts named therein to decide disputes between the

> landlord and the tenant and not disputes between the secured creditor and the tenant under landlord who is a borrower of the secured assets.”

The Supreme Court has also paraphrased in para 28 the nature of action that could be taken and it contains, inter alia, the following observations:-

> “(iv) In all these appeals, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, will pass final orders under Section 14 of the SARFAESI Act within four months from the date of filing of certified copy of this judgment by either the lessee/tenant or the secured creditor.”

3. The order passed by the court below is set aside and the plaint is ordered to be rejected. The plaintiff is at liberty to approach the District Magistrate to work out the right in the manner observed by the Supreme Court in the above judgment and secure his redressal, if tenable, in the manner set forth in the judgment.

4. The civil revision is allowed but with liberty to the respondent to adopt such a procedure.

(K.KANNAN)
JUDGE

14.05.2015
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