IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.3799 of 2015 (O&M)
Date of Decision.29.05.2015

Tinku Verma ....Petitioner

Versus

Rajinder Mehta and others ......Respondents

Present: Mr. A.K. Kalsy, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

-.-

K. KANNAN J. (ORAL)

1. A person claiming to be a lessee of property which was sought to be proceeded against by a financial institution, namely a nationalized bank by resort to proceedings under Section 13(4) of the SARFAESI Act had an objection to make that his own rights as a tenant cannot be interfered with and the counsel would rely on the decision of Full Bench of the Kerala High Court in ***Pushpangadan Vs. Federal Bank Ltd. 2011(4) KLT 134*** and would also make a reference to Section 31 (e) of the SARFAESI Act. The said provision makes clear that the provisions of the Act would not apply to, inter alia, Clause (e) “any conditional sale, hire purchase or lease or other contract in which no security interest has been created.” According to him, since lease was earlier in point of time to the mortgage created by the borrower/owner, the provisions of the Act will stand excluded.

2. I am afraid that the law is not correctly placed before me,

for, Section 31(e) does not refer to a situation of any lease as being saved against enforcement of security interest. Such of that property over which there is no secured interest alone can be saved. If there is a creation of secured interest which is leased, Section 31 cannot operate at all. The complete answer to the issue arises in the judgment in ***Jagdish Singh Vs. Heeralal and others 2014(1) SCC 479*** that dealt with the jurisdiction of Civil Court to entertain any suit brought at the instance of person who is aggrieved by the action of a financial institution from proceeding against a secured interest. The Court was holding by making reference to Section 13(4) that "measure taken" by a secured creditor under the Act will only allow for an aggrieved person a right of appeal before the DRT or the Appellate Tribunal to determine as to whether there has been any illegality in the "measure taken" under Securitization Act. The Court was holding that the High Court whose decision was the subject of civil appeal had taken a wrong decision in holding that the civil suit is the only remedy available. Making reference to Section 35 of the Securitization Act, the Supreme Court held that the provisions of the Act over-rides other laws which are inconsistent with the provisions of the Act and which the Supreme Court explained would also take into its wings Section 9 CPC as well.

3. This position of whether a lessee will obtain the benefit irrespective of the action taken by the financial institution that enforces the secured interest is also no longer *res integra*. The matter has been directly dealt with in decision of the Supreme Court in ***M/s Transcore Vs. Union of India AIR 2007 SC 712*** as subsequently explained in ***Harshad Goverdhan Saudagar Vs. International Assets***

Reconstruction Co. Ltd. (2014) 6 SCC 1. The remedy for a lessee also shall be only under the SARFAESI Act and not by a suit. There is no scope available for a person to make an intervention. I do no think it necessary for me to refer to the judgment of the Kerala High Court in the light of the clear rulings in respect of the same subject matter covered through the above said two decisions of the Supreme Court.

4. The revision petition is dismissed. The petitioner will have liberty to approach the appropriate authorities constituted under the Securitization Act for his redressal.

(K. KANNAN)
JUDGE

May 29, 2015
Pankaj*