

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 6691 of 2015 (O&M)

Date of decision : 28.04.2015

M/s Padam Motors Pvt. Ltd.

...Petitioner

versus

District Magistrate-cum-Deputy Commissioner and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. A.S. Talwar, Advocate and
Mr. Gurmohan Singh Bedi, Advocate
for the petitioner.

Mr. Pavan Malik, Advocate for respondent No.2.

Mr. Rakesh Gupta, Advocate for respondent No. 3.

Hemant Gupta, J.

The petitioner has invoked writ jurisdiction of this Court on the ground that it is lessee of area measuring 412 x 17 feet on the ground floor of plot No. 185, Industrial Area Phase I, Chandigarh measuring 28000 square feet on the basis of lease dated 01.03.2011 for a period of five years. The petitioner is said to have been inducted as lessee by respondents No. 4 and 5 claiming to be the owners and in exclusive use and possession of said part.

Borrower, the owner, had taken financial assistance from the consortium of banks and since they were not regular in making payment, the proceedings under The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') were initiated against the borrowers. The bank also initiated proceedings under Section 14 of the Act so as to seek possession of the secured assets with the assistance of the District Magistrate.

The District Magistrate passed an order, which was challenged by the petitioner before the Debt Recovery Tribunal by way of application under Section 17 of the act. Said application was dismissed on 30.01.2015. An appeal filed before the Debt Recovery Appellate Tribunal also remained unsuccessful when the appeal was dismissed on 24.03.2015. Still aggrieved, the petitioner is before this Court.

The sole argument raised by learned counsel for the petitioner is that the petitioner as a lessee cannot be evicted without determination of lease in terms of Section 111 of the Transfer of Property Act as laid down by the Hon'ble Supreme Court in **Harshad Govardhan Sondagar versus International Assets Reconstruction Company Limited and others** (2014) 6 S.C.C 1, therefore, the action of the respondent-banks in taking physical possession with the assistance of District Magistrate is not sustainable.

Admittedly, the petitioner was inducted as a lessee after mortgage was created in favour of the bank. It may be noticed that provisions of Transfer of Property Act except those which has been notified specifically are not applicable to Punjab as held by Full Bench of this Court

in a judgment reported as Bhaiya Ram Hargo Lal versus Mahavir Parshad Murari Lal Mahajan AIR 1969 Punjab and Haryana 110.

The rights of the mortgagor to create lease has been examined by two Division Benches of this Court. Firstly, in judgment reported as M/s Delhi Punjab Goods Carrier Pvt. Ltd. versus Bank of Baroda AIR 2008 Punjab and Haryana 107 and another judgment reported as State Bank of Patiala versus The Debts Recovery Appellate Tribunal, New Delhi and others 2013 (2) R.C.R. (Rent). It has been held in M/s Delhi Punjab Goods Carrier's case (supra), to the following effect:-

“From the above principles of law it is evident that tenancy has to be proved by a document or otherwise prior to the date of creation of charge of equitable mortgage. It is well settled that a mortgagee or mortgagor cannot induct a tenant without mutual agreement and confer upon a tenant any right to the prejudice of either of the parties. In the instant case, the relationship of the petitioner as a tenant with the borrower as a landlord admittedly came into existence after the creation of charge by the borrower on the property which is under the tenancy of the petitioner and therefore no protection in law would be available to such a tenant and above principles laid down by Hon'ble the Supreme Court would fully apply to the facts of the instant case and it has to be held that the petitioner in his capacity as tenant does not enjoy any right qua the charge holder-respondent bank. The writ petition is wholly misconceived and is thus liable to be dismissed.”

In State Bank of Patiala's case (supra), Considering Section

65A of the Act in respect of inducting rent in the urban area, the Bench held

as under:-

“10. Even in terms of Section 65A of Act, the lease granted by a mortgagor is against clause (e) of Section 65A(2) of the Act as a tenant in an urban area enjoys the protection of the East Punjab Urban Rent Restriction Act, 1949. Such tenancy contravenes the Central Act i.e the Act, which only permits tenancy for a period of three years which terms alone has been considered reasonable. Since, the protection of the Local Act would confer statutory protection; therefore, such tenancy is not permissible in terms of Section 65A(2)(e), which contemplates the duration of lease by a mortgagor shall not exceed three years.

11. The mortgage is a transfer of an interest in specific immoveable property in terms of clause (a) of Section 58 of the Act. Having transferred the interest, the mortgagor is not free to deal with the property in the manner, he considers appropriate. His rights are subject to the consent of the mortgagee.”

The Court also considered the judgment of the Hon'ble Supreme Court in Mangru Mahto versus Thakur Taraknathji Tarkeshwar, AIR 1967 SC 1390 and earlier judgment of Calcutta High Court reported as Gobinda Chandra Saha versus Sasadhar Mandal, AIR 1947 Calcutta Bench 73, Kerala State Financial versus Meenachil Co-operative, AIR 2005 Kerala 76. The Court concluded as under:-

“ In view of the above, we do not find any merit in the arguments raised by Mr. Chopra. The due process of law as observed by the Civil Court or by the Debt Recovery Appellate Tribunal is applicable to a tenant, who was inducted prior to mortgage. Since respondent's No. 2 to 4 have been inducted as a tenant after mortgage, therefore, the rights of the mortgagee to proceed against his security cannot be defeated in this manner.”

In view of the aforesaid judgment, the petitioner inducted as a lessee for a period of five years after mortgage in an urban area, Urban Rent could not be inducted without express consent of the mortgagee. It does not affect the rights of the mortgagee.

Consequently, we do not find any merit in the writ petition and the same is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

April 28, 2015
rts