IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12826 of 2016

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Rajesh Khaitan S/o Sri Gopal Khaitan resident of 54, Strand Road, Kolkata West Bengal Police Station - Jorabagan, District - Kolkata - 7, Presently residing at Flat 703 & 704, Abhishek Plaza, Exhibition Road, P.S. Gandhi Maidan, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Home, Govt. of Bihar, Patna
2. District Magistrate cum Collector, Patna
3. The Sub - Divisional officer, Patna
4. The State Bank of India a Banking Company Created under the State Bank of India Act 1955 having it's Corporate office at State Bank Bhawan, Madam Cama Road, Mumbai through it's Chairman Cum Managing Director
5. The Chairman Cum Managing Director, State Bank Bhawan, Madam Cama Road, Mumbai through it's Chairman Cum Managing Director
6. The State Bank of India, Ballygunje SME Branch at Kolkata through it's Chief Manager
7. The Authorized officer, State Bank of India, Ballygunje SME Branch at Kolkata
8. M/s Jai Shree Balajee Fats & Oils Pvt. Ltd. having its registered office at 2nd Floor, 24A, Shakespeare Sarani, Room No. 6, Kolkata 700 017 through its Managing Director Sri Nawal Kishore Banka

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Bank : Mr. Kaushlendra Kumar Sinha, Advocate
For the State : Mr. Mrigendra Kumar, AC to GP-4.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 31-08-2016

Heard learned counsel for the petitioner and leaned counsel for the State Bank of India as also learned counsel for the State.

The petitioner seeks a direction upon the respondents to restore physical possession of residential flat Nos. 703 and 704 of Abhishek Plaza, Exhibition Road, Patna to the petitioner on the ground that he had been wrongfully evicted under the provisions of the SARFAESI Act, 2002 without following the decisions of the Supreme Court in the case of Vishal N.Kalsaria Vs. Bank of India and ors. : (2016) 2 SCC 762.

The facts of the case are that the Respondent No. 8 had taken a loan from the State Bank of India for which it mortgaged the two flats bearing Nos. 703 and 704 of Abhishek Plaza, Exhibition Road, Patna. The loan Account having become NPA, the Bank took steps under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI Act) and in due course a possession notice under Section 13(4) of the Act was issued on 28.5.2015. The petitioner claiming to be a tenant of the premises sent a registered legal notice to the authorized Officer of the State Bank of India by Speed Post on 25.6.2015 claiming that since the petitioner was in occupation of the premises as a tenant prior to the creation of mortgage in favour of the Bank by the Borrower, therefore, any interference with the possession of the petitioner would be wholly illegal, wrongful and unconstitutional.

The Bank, which has taken stand in its counter affidavit that the said notice could not be located, however proceeded in the matter by filing an application under Section 14 before the District Magistrate, Patna. Pursuant to the same, the District Magistrate, Patna ordered for the recovery of physical possession thereof and the same was recovered and vacant possession handed over to the Bank on 28th July, 2016.

The petitioner, in the meantime, claims to have filed a suit for declaration that he is monthly tenant of the suit premises and the defendant has no right to evict him illegally and forcibly without taking recourse to the legal provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 and further for restraining the landlord from evicting the petitioner illegally and forcibly from the suit premises on 15.1.2015, which was registered as Eviction Suit No. 12 of 2015 and in the application for temporary injunction under Order 39 Rules 1 & 2 read with Section151 of the Code of Civil Procedure while issuing notice on 27.5.2015 the Court of Sub Judge, Patna had directed the defendant landlord to maintain status quo in the matter.

Learned counsel for the petitioner submits that the action of the Bank is contrary to the decision of the Apex Court in the case of Vishal N.Kalsaria Vs. Bank of India & Ors. : (2016) 3 SCC 762, in which it has been held that the provisions of the SARFAESI Act do not override the provisions of the State Rent Control Act and therefore, the Bank should have taken recourse under the provisions of the State Rent Control Act for eviction of any tenant in possession of the mortgaged premises. In paras 40 and 41 of the said decision it has been held as follows:-

> 40. In view of the above legal position, if we accept the legal submissions made on behalf of the Banks to hold that the provisions of the SARFAESI Act override the provisions of the various Rent Control Acts to allow a bank to evict a tenant from the tenanted premises, which has become a secured asset of the bank after the default on loan by the landlord

and dispense with the procedure laid down under the provisions of the various Rent Control Acts and the law laid down by this Court in a catena of cases, then the legislative powers of the State Legislatures are denuded which would amount to subverting the law enacted by the State Legislature. Surely, such a situation was not contemplated by Parliament while enacting the SARFAESI Act and therefore, the interpretation sought to be made by the learned counsel appearing on behalf of the Banks cannot be accepted by this Court as the same is wholly untenable in law.

41. We are unable to agree with the contentions advanced by the learned counsel appearing on behalf of the respondent Banks."

Learned counsel for the Bank, on the other hand, submits that the entire action of the petitioner appears to be a sham and collusive arrangement made with the borrower-Respondent No. 8 and the legal notice allegedly sent by the petitioner not having been located in the Office of the Authorized Officer, the Bank had proceeded in the matter and obtained the possession by following the procedure prescribed under the SARFAESI Act.

In view of the law laid down by the Supreme Court in Vishal N.Kalsaria's case (supra), the contention of learned counsel for the petitioner has to be accepted prima facie, since the petitioner has been able to show that on the basis of a rent agreement he was in possession of the premises and had also sent a legal notice to the Bank pursuant to the possession notice dated 28.5.2015, and therefore I am of the view that the possession taken by the Bank by taking recourse of Section 14 of the SARFAESI Act cannot be considered to be legal, valid and justified.

The writ application is, accordingly, allowed, the impugned action of the respondents dispossessing the petitioner from the premises in question is held to be contrary to law and the respondents are directed to restore the physical possession of the premises in question to the petitioner within a period of a week from the date of receipt/production of a copy of this order.

However, it shall be open to the Respondent-Bank to take recourse in the matter in accordance with law.

(Ramesh Kumar Datta, J)

S.Pandey/-

AFR/NAFR	
CAV DATE	
Uploading Date	27.9.2016
Transmission Date	