

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

**CWP No.16193 of 2016
Date of decision: 11.08.2016**

Anand Sagar

.....Petitioner

Vs.

State Bank of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr.Vishal Aggarwal, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner through the present writ petition under Articles 226/227 of the Constitution of India prays for a direction to the respondent Bank to restore the possession of premises i.e. property bearing MC No.B-XXIII-2588, situated at Sherpur Khurd, Link Road, Ludhiana to him being a bonafide tenant. Further prayer has been made for setting aside the possession notice dated 22.1.2016, Annexure P.4 whereby the respondent Bank has taken illegal possession of the premises in question.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. According to the petitioner, he took on rent property in question measuring 675 square yards from respondent No.3 on a monthly rent of ₹ 4500/- per month in the month of November 2012. The tenancy was to commence with effect from 10.11.2012 and rent was also payable from that date. The petitioner is doing his business in the premises whereas earlier it was being used as a godown for storage of paints and other material. Now for the last sometime, a proper shop had been opened by the name of Alliance Paints Pvt. Limited. The

petitioner had been paying rent regularly to the landlord. After sometime, respondent Nos. 3 and 4 asked the petitioner to increase rent of the portion under his tenancy. The petitioner showed his inability to increase rent as he was not in a position to afford more rent. The landlord respondent wanted to forcibly evict the petitioner. Apprehending, the petitioner approached the civil court by filing a civil suit for permanent injunction restraining respondent No.3 from dispossessing him forcibly from the tenanted premises. The Civil court restrained the respondent from evicting the petitioner except in due course of law. Respondent Nos. 3 and 4 having failed to achieve their object in evicting the petitioner, managed to get a notice issued from respondent Nos. 1 and 2 purported to be a notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, “the Act”) wherein the borrower and guarantors were asked to pay the outstanding amount against them with further interest till payment in full within a period of 60 days from the date of issue of the said notice. The officials of the Bank asked the petitioner to vacate the premises voluntarily otherwise he was threatened of dispossession forcibly by the Bank authorities. The petitioner told the authorities that he was a tenant in the premises and could not be dispossessed except in due course of law by resorting to eviction proceedings. He also showed copy of the order dated 8.6.2015 passed by the civil court but the bank officials stated that the said order could only bind the landlord and not the bank as it was not a party to those proceedings. Accordingly, respondent Nos. 1 and 2 took possession of the property in question. According to the petitioner, possession of only one property i.e. the instant property had been taken while seven other properties had been mortgaged with the bank. The mortgage on the property was created in 2013

i.e. much after the tenancy which was created in favour of the petitioner in November 2012. The petitioner is not a debtor of the respondent bank and no notice had been issued to him. The petitioner submitted a representation to the bank but the Bank refused to hand over the possession of the said premises. He submitted another representation. Having received no response, the petitioner is before this court through the present writ petition.

3. We have heard learned counsel for the petitioner.

4. The question that arises for consideration in this petition relates to the rights of a tenant in the property mortgaged with the Bank by the borrower.

5. A Full Bench of this Court in *Jagan Nath vs. Mittar Sain*, AIR 1970 P and H 104 had crystallized the legal position with regard to rights of a tenant in respect of mortgage property in the under quoted words:-

“16.....(1) A tenant of a mortgagor, after the mortgage, necessarily attorns to the mortgagee and thereby becomes a tenant of the mortgagee, unless his tenancy has been put to an end to by the mortgagor at the time of effecting the mortgage. On the redemption of the mortgage, he again is relegated to his position of a tenant of the mortgagor;

(2) The mere execution of a rent note by the tenant of the mortgagor, in favour of the mortgagee after the mortgage has been effected, does not create a fresh tenancy in favour of the mortgagee. But there is nothing to prevent the tenant to surrender his earlier tenancy and enter into a fresh contract of tenancy with the mortgagee; and in each case, it will have to be determined on evidence whether a tenant of the mortgagor did surrender his tenancy and obtained a fresh tenancy from the mortgagee after the mortgage came into being;

(3) That a tenant inducted by the mortgagee remains a tenant

during the continuance of the mortgage and on the redemption of the mortgage, the tenancy comes to an end;

(4) That in the case of agricultural tenancies proposition No.(3) does not absolutely hold good. There is an exception to it, namely that the tenant of a mortgagee of agricultural land will continue to be its tenant even after redemption provided he has been inducted bonafide and in the like manner as a prudent owner would have done for the proper management of the land. Even in such a case, the operation of the lease cannot extend beyond the period for which it was granted. No lease can be granted if there is an express prohibition in the mortgage deed.

The onus to prove the exception is on the tenant and unless a clear case is made out in favour of the exception, the general rule will prevail.

(5) That it is open to a mortgagor to permit the mortgagee to induct tenants even beyond the terms of the mortgage; and if the mortgagee does so, on redemption, they will continue to be the tenants of the mortgagor.”

6. From the above, inter alia, it emerges that wherever a tenant is inducted by a mortgagor prior to the mortgage of the property, a tenant of the mortgagor attorns in favour of the mortgagee on execution of the mortgage. He becomes tenant of the mortgagee unless the mortgagor had determined the tenancy at the time of effecting the mortgage. On redemption of the mortgage, he regains his status of a tenant of the mortgagor. Further, the tenant who had been inducted as a tenant by the mortgagee continues to enjoy that status of a tenant till the redemption of the mortgage when his tenancy comes to an end. However, exception is carved out to this where agricultural tenancies are in question. In other words, tenant of a mortgagee of agricultural land will continue to be its tenant even after redemption

provided he has been inducted bonafide and in the like manner as a prudent owner would have done for the proper management of the land. The term of the lease here extends only till the period for which it was executed by the mortgagee. Prohibition in the mortgage deed would not entitle the mortgagee to act contrary thereto.

7. It is essentially to be noticed that numerous cases are coming to the fore where civil suits are being filed against the mortgagor-landlord by the alleged tenant depicting that the tenancy in his favour was created before the mortgage of the property without impleading the mortgagee-Bank. Ordinarily, where the mortgagor has mortgaged the property to the Bank, no occasion arises for him to initiate action against the alleged tenant for taking possession from him during the subsistence of the mortgage more so by not following due process of law. The said suits prima facie appear to be filed in connivance with the landlord-borrower by creating the third person to protect the physical possession of the mortgagor and, therefore, the alleged tenant in such cases, is required to establish through cogent, convincing and conclusive evidence that the alleged tenancy was created before the mortgage of the property with the Bank. The courts are required to ensure that such types of frauds are not only deprecated but discouraged.

8. The petitioner claims to have taken the premises in dispute on monthly rent in the month of November 2012 at the rate of ₹ 4500/- per month. Nothing has been produced on record to establish conclusively that there existed legal, valid and genuine tenancy in favour of the petitioner except to rely upon copy of the alleged rent deed dated 10.11.2012, (Annexure P1) appended alongwith the petition. The alleged tenancy is claimed to be for 15 years but it is not shown that it has been created through a valid document which is enforceable in law. The petitioner can approach

appropriate forum for adjudication of disputed questions of fact regarding legal and valid tenancy in his favour, wherein the bank who is a proper and necessary party is also impleaded. Thus, no ground for interference in writ jurisdiction under Articles 226/227 of the Constitution of India is made out.

9. Reliance of learned counsel for the petitioner on the judgment in *Vishal N.Kalsaria vs. Bank of India and others*, AIR 2016 SC 530, is unexceptionable. The principle of law enunciated therein is well recognized. However, the alleged tenant as noticed herein above, is required to establish by leading unimpeachable evidence that the tenancy in his favour was created prior to the mortgage of the property and is genuine. The facts in the relied upon case and the present case being different, the petitioner cannot derive any advantage from the said decision.

10. In view of the above, we do not find any merit in the petition and consequently, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

August 11, 2016	(Ramendra Jain)
‘gs’	Judge
Whether speaking/reasoned	Yes/No
Whether reportable	Yes