

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 16580 of 2016

Date of Decision: 16.8.2016

Suresh Kumar

....Petitioner.

Versus

District Magistrate, Faridkot and others

...Respondents.

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

PRESENT: Mr. Saleem Ahmed, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. The petitioner seeks quashing of the order dated 28.7.2016 (Annexure P-4) passed by respondent No.1 vide which the application filed by respondent No.2 under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short “the Act”) had been allowed and the objections filed by the petitioner had been dismissed.

2. Briefly stated, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner is a tenant at the rate of ₹ 4200/- per month in the premises of respondent No.3 consisting of two rooms, one latrine bathroom, kitchen and open yard located at the first floor of the building since 12.10.2010. There was a written agreement between the petitioner and respondent No.3. In April, 2016, respondent No.3 started threatening the petitioner to dispossess him from the house.

The petitioner filed a suit for permanent injunction restraining respondent No.3 from interfering in the peaceful, lawful and exclusive possession of the house as tenant. Along with the suit, the petitioner also filed interim injunction application under Order 39 Rules 1 and 2 of the Code of Civil Procedure. The Civil Court vide order dated 21.5.2016 (Annexure P-1) allowed the said application and restrained respondent No.3 from interfering and dispossessing the petitioner from the suit land till the decision of the suit. The petitioner came to know that respondents No.3 and 4 had availed loan from respondent No.2 by mortgaging the house in question and failed to repay the same due to which respondent No.2 had started recovery proceedings under the Act and had taken symbolic possession of the property. Further, in order to take physical possession of the house, respondent No.2 had filed an application dated 25.4.2016 (Annexure P-2) before respondent No.1 under Section 14 of the Act. The petitioner appeared before respondent No.1 and filed objections dated 21.5.2016 (Annexure P-3). However, respondent No.1 vide order dated 28.7.2016 (Annexure P-4) allowed the application filed by respondent No.2 and dismissed the objection filed by the petitioner. Hence, the present writ petition.

3. The petitioner claims himself to be a tenant in the mortgaged property. According to the learned counsel, the petitioner is occupying the first floor and was tenant in the demised premises prior to the mortgage of the property by the landlord. Relying upon the judgment of the Apex Court in **Vishal N. Kalsaria v. Bank of India and others AIR 2016 SC 530**, it was urged that in such circumstances, the order, Annexure P-4, passed under Section 14 of the Act was illegal.

4. We have heard the learned counsel for the petitioner and do not find any merit in the writ petition.

5. The petitioner has claimed himself to be a tenant in the mortgaged property. He has not produced any material to show that he was tenant in the premises in question prior to the mortgage of the property by the landlord. In the absence of any legal and valid document produced by him to conclusively establish that the petitioner was tenant in the demised premises prior to the mortgage, no substantive relief can be granted to him. Moreover, the petitioner had already filed a civil suit against the landlord in which the bank had not been impleaded as a party. Respondent No.1 had noticed that since the civil court had not passed any orders against the bank, the order was not applicable on the bank and ordered for taking possession of the mortgaged property by taking police assistance.

6. In view of the above, no illegality or perversity could be found in the order, Annexure P-4, passed by respondent No.1 warranting interference by this Court. Further, referring to the judgment in **Vishal N. Kalsaria's case (supra)** relied upon by the learned counsel for the petitioner, suffice it to notice that the said pronouncement was on the basis of factual matrix involved therein whereas the facts herein are different and, therefore, it does not advance the case of the petitioner. Accordingly, finding no merit in the instant writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 16, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes