

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

**CWP No. 26351 of 2016
Date of decision: 19.12.2016**

Dil Bahadur Singh

.....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. Harish Kumar Sharma, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. By way of present petition under Articles 226/227 of the Constitution of India, the petitioner prays for quashing the order dated 19.8.2016, Annexure P.4 passed by respondent No.2 – Additional District Magistrate, Ludhiana whereby the Commissioner of Police, Ludhiana has been directed to provide necessary police help to Tehsildar, Ludhiana (West) to facilitate respondent No.1 – Bank to take possession of House No.250-C, Village, Dugri, Model Town Extension II, Tehsil and District Ludhiana on an application filed by it under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, “the SARFAESI Act”). Further prayer has been made for a direction to respondent Nos. 1 and 3 not to illegally dispossess the petitioner from the property in question in which he is a tenant since April 2008.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner entered as a tenant in the portion consisting of two rooms, one kitchen and bathroom forming part of H.No.250-C, Village Dugri, Model Town Extension II, Tehsil and District Ludhiana owned by respondent No.3-Smt.Ramesh Kumari Sharma in the month of April 2008 vide rent deed dated 23.4.2008, Annexure P.1 and since then he has been living peacefully in the said house. In the month of November 2016, some persons started interfering in the peaceful possession of the petitioner in the house on the pretext of increasing the monthly rent. Assuming the said persons to be agents of the landlady, the petitioner filed a civil suit for permanent injunction before the Civil Court at Ludhiana against respondent No.3 and her husband. The civil court passed interim restraint order dated 23.11.2016, Annexure P.2 against respondent No.3 and her husband. The petitioner served the said order on respondent No.3 who informed him that she or any of her agents had not interfered in his possession and rather the prospective buyers of the house had caused interference as respondent No.1 Bank was trying to sell the house after taking possession of the same under the SARFAESI Act. It was further disclosed by respondent No.3 that she had availed financial loan from the Bank which was granted against equitable mortgage of several properties including the one in which the petitioner was a tenant. Respondent No.3 failed to pay the dues within the stipulated time and thus, in terms of the SARFAESI Act, her account became a non performing asset. Thereafter, the Bank served on her notice under Section 13(2) of the SARFAESI Act. On failure of respondent No.3 to clear the dues from the loan amount within the stipulated period of 60 days, the bank issued notice under

Section 13(4) of the SARFAESI Act on 10.12.2015 and had taken possession of her other properties mortgaged with the Bank. The Bank had now filed an application before the District Magistrate, Ludhiana under Section 14 of the SARFAESI Act for seeking possession of the house which was in actual possession of the petitioner and was also mortgaged with the Bank. Vide order dated 19.8.2016, Annexure P.4, the District Magistrate allowed the application filed by the Bank and the Commissioner of Police, Ludhiana was directed to provide necessary police help to Tehsildar Ludhiana (West) to facilitate respondent No.1 Bank to take possession of the house in question. Hence the instant petition by the petitioner-tenant.

3. We have heard learned counsel for the petitioner.

4. The matter is no longer *res integra*. In a recent decision of this Court in CWP No.16193 of 2016 (**Anand Sagar vs. State Bank of India and others**), decided on 11.8.2016, the issue has been concluded against the petitioner after examining the legal position with regard to the rights of a tenant in respect of mortgage property. It was recorded as under:-

“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.

5. In the present case, the petitioner took the premises in dispute on monthly rent in April, 2008. 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 alleged rent deed dated 23.04.2008 (Annexure P.1), which has not been shown to be a valid document being 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 under Articles 226/227 of the Constitution of India, is made out with the impugned order dated 19.08.2016, Annexure P.4. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

December 19, 2016
'gs'

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether referred to reporter or not

Yes/No
Yes