

\$~27.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11543/2016 and CM APPL. 45446/2016

ANEETA VARMA & ORS.

..... Petitioners

Through: Mr. Sandeep Thakur, Advocate

versus

PNB & ORS.

..... Respondents

Through: Mr. Hashmat Nabi, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

07.12.2016

%

1. The present petition is listed in Court subject to an office objection with regard to its maintainability.
2. The petitioners herein seek a writ of mandamus against the respondents/Bank, restraining them from evicting them from a part of the premises No.16, Bhargava Lane, Civil Lines, Delhi.
3. Counsel for the respondents/Bank, who appears on advance notice, relies on the provisions of Section 17(4-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') to state that in view of the recent amendment to Section 17 by incorporation of Section 4-A, inserted by Act 44 of 2016 and given effect from 01.09.2016, the remedy of the petitioners lies before the Debt Recovery Tribunal.

4. Sub-section 17(4-A) of the SARFAESI Act is reproduced hereinbelow for ready reference:-

“(4-A) Where (i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purpose of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy, -

(a) has expired or stood determined; or

(b) is contrary to section 65-A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and

(ii) The Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.”

5. A bare reading of the aforesaid provision makes it clear that persons like the petitioners herein, who claim any tenancy or leasehold rights on the secured asset, are entitled to file an application before the Debt Recovery Tribunal for appropriate relief.

6. Counsel for the petitioners states that he may be permitted to withdraw the present petition while reserving the right of his clients to file an application before the Debt Recovery Tribunal under Section 17(1) of the SARFAESI Act.

7. The petition is disposed of alongwith the pending application, with liberty granted to the petitioners as prayed for.

DECEMBER 07, 2016
rkb

HIMA KOHLI, J

