

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2859 of 2017**

M/s Stargaze Entertainment Pvt. Limited A Company Registered Under The Provisions Of Companies Act, 1956 Registrerd Officer At : 503 , 504 And 507 , 5th Floor Mercantile House 15 K G Marg New Delhi 110001, Through Authorised Signatory Namely Domnic F Dsouza (Cinema Manager) S / O Shri Francis Dsouza , Aged About 36 Years, R/o Plot No. 278 , Hanuman Nagar Near Trikoni Maidan Medical Square, Nagpur (Maharashtra) 440013

---- Petitioner

Versus

1. Punjab National Bank Recovery Department Katora Talab Office Karota Talab Raipur District Raipur (C.G.) 492001
2. M / S City Mall Vikash P Limited , Mangla Chowk, Opposite Minocha Colony Bilaspur District Bilaspur (C.G.)
3. Collector, Bilaspur, District Bilaspur (C.G.)

---- Respondents

And**WPC No. 2874 Of 2017**

M/s Akshita Enterprises Westside A Partnership Firm , Through Its Partner Namely Anil Kumar Tomar, S/o Shri Ajab Singh Tomar , Aged About 49 Years, R/o D / 10 , Minocha Colony, Bilaspur District Bilaspur Chhattisgarh. 495001

---- Petitioner

Vs

1. Punjab National Bank Recovery Department , Katora Talab Office, Karota Talab Raipur District Raipur Chhattisgarh. 492001 Through Its Authorised Officer
2. M / S City Mall Vikash P Limited, Mangla Chowk, Opposite Minocha Colony Bilaspur District Bilaspur Chhattisgarh.
3. Collector Bilaspur, District Bilaspur Chhattisgarh.

---- Respondents

For Petitioners	: Shri Manoj Parnajpe, Advocate.
For Respondents	: Shri Sachin Singh Rajput, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/11/2017

(1) Since common question of law & fact is involved in both the writ petitions, they are being disposed of by this common order.

(2) Learned counsel appearing for the petitioners would submit that the petitioners' application for setting aside the order dated 12.05.2017 passed by the District Magistrate/Collector has been rejected by the Debts Recovery Tribunal on 29.08.2017, which is bad and unsustainable in law. He further submits that the petitioners have filed an application for setting aside *ex parte* order and the DRT has committed illegality in rejecting the petitioner's application on the ground that petitioner has not lost possession of the subject property whereas the petitioner has lost the possession of the subject property.

(3) On the other hand, counsel for the Bank would support the impugned order and submit that the petitioners are the tenants and they have alternative remedy of preferring appeal/application before the Debts Recovery Tribunal under Section 17 (4-A) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short "Act, 2002").

(4) I have heard learned counsel for the parties and considered their rival submissions made herein-above and gone through the record with utmost circumspection.

(5) The Supreme Court in the matter of **Vishal N. Kalasaria V. Bank of India & others**¹ has clearly held that Debts Recovery Tribunal have no power to decide tenancy right claimed by third party in respect

¹ (2016) 3 SCC 762

of property mortgaged to Bank and tenancy rights and relationship between land lord and tenant is a State subject under the Constitution and the Debts Recovery Tribunal established under a central law is not empowered to decide tenancy rights in respect of tenants enjoying protected tenancies under the State rent control laws.

(6) Thereafter, the joint parliamentary committee took note of the judgement of the Supreme Court in above stated judgment **Vishal N. Kalasaria** (supra) and recommended amendment to Section 17 of the principal Act of 2002 to empower Debts Recovery Tribunals to decide the claims to tenancy or any other right of third parties over the secured assets.

(7) Thereafter, the Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provision (Amendment) Act, 2016 has been brought into force on 01.09.2016 inserting Section 17(4-A) of Act which provides as under:-

“17. Right to Appeal

(4A) 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 purposes 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 65A of the Transfer of Property Act, 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."

(8) Thus, Section 17(4-A)(ii) has the effect of empowering the DRTs to determine whether the tenancy was created against the provisions of mortgage deed or whether the tenancy has expired. Thus, the amendment in Section 17 in shape of Section 17(4-A) of Act 2002 *w.e.f.* 01.09.2016 has been made to overcome the jurisdictional limitation of Debts Recovery Tribunal which was noticed by the Supreme Court in the matter of **Harshad Govardhan Sondagar** (supra) and **Vishal N. Kalasaria** (supra) and specific remedy has been provided to the lessee of secured creditor in possession.

(9) The Rajasthan High Court in **Samtel Color Ltd. v. State Bank of India & others**² repelling the similar contention held as under:-

"10. I am afraid, there is no force in the contention of Mr. Kamlakar Sharma. For one, resort to the jurisdiction of this Court under its equitable extraordinary jurisdiction under Article 226 of the Constitution of India cannot be equated with a right to appeal. In the aforesaid context, the mere laying of writ petition against public notice dated 11-7-2016, does not entitle the petitioner to claim that the sub-sequent amendment to Section 17 of the Act of 2002 effective 1-9-2016 if operated against it would entail denial of a vested legal right. In the instant case in the event the petitioner company is required to avail the alternative remedy now obtaining under Section 17 of the Act of 2002 against the public notice dated 11-7-2016 it would not thus entail denial of a vested right. The expansion of the jurisdiction of the Debt Recovery Tribunal jurisdiction by way of the amendments to Section 17 of the Act of 2002 effective 1-9-2016 does not create any disability for the petitioner company nor burdens it with a new duty in respect of a transaction completed. Contrarily it confers a right to avail a statutory remedy removing a lacunae. Under Section 17 of the Act of 2002 as existing prior to 1-9-2016 which even while the petitioner company aggrieved of the public notice dated

2 S.B. Civil Writ Petition No. 11302/2016 decided on 17.10.2016

11-7-2016 could have taken proceedings under the then extant law as an aggrieved person, it could not have been granted the relief of being put back in possession even if the Debt Recovery Tribunal had theoretically found its rights unlawfully contravened by the secured creditors in dispossessing it from the land on sub-lease with it. This was so held in the case of *Harshad Goverdhan Sondagar v. International Assets Reconstruction Company Limited* (2014) 6 SCC 1 observing that a person other than a borrower if aggrieved of being dispossessed by the secured creditor under the Act of 2002 could not be put back in possession by the Debt Recovery Tribunal in view of the limitation of the language of Section 17(3) of the Act of 2002 then obtaining. The amendment to Section 17 of the Act of 2002 effective 1-9-2016 sought to overcome the said jurisdictional limitation of the Debt Recovery Tribunal. It is thus plainly curative in nature as would appear from the background facts herein below detailed."

(10) Yet in another judgment, the Rajasthan High Court in the matter of

M/s. Alpha Beta Shiksha Samiti (Regd.), Jaipur v. State of

Rajasthan³ has struck a similar proposition as under:-

"7. Even though this Court has taken note of the arguments advanced by both the sides at extenso, but, this Court is not inclined to enter into the same and decide the case on merits, as it is of the opinion that specific remedy has been provided to a tenant by insertion of sub-section (4A) vide Act No. 44 of 2016 w.e.f. 01.09.2016 and sub-section (i) of Section 17(4A) of the SARFAESI Act inter alia provides that 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 purposes of enforcement of security interest, have the jurisdiction to examine whether the lease or tenancy (a) has expired or stood determined; or (b) is contrary to Section 65A of the Transfer of Property Act, 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. Contention of learned Senior Counsel appearing on behalf of the petitioner that such remedy would not be available to the petitioner as aforesaid provision would apply prospectively only and pending cases would not be affected thereby is noted to be rejected. In the present case, dispossession notice has been issued on 23.07.2016 whereas amendment in Section 17 of the SARFAESI Act introducing Section

17(4A) came into force w.e.f. 01.09.2016, but there is no warrant on any of the said provisions to take a view that remedy is provided to a person, who in an application under sub-section (1) claims any tenancy or leasehold rights upon the secured asset. In the present case, the petitioner is claiming tenancy rights and filed writ petition before this Court on 29.07.2016, at a time when the aforesaid remedy was not provided by the statute to the petitioner-tenant, but now when sub-section (4A) has been inserted in Section 13 (sic 17) to specifically provide remedy to the persons, who claims any tenancy or leasehold rights upon the secured asset, the petitioner has to first approach the Debts Recovery Tribunal.”

(11) In view of the above-stated statutory provisions and settled legal principle noticed herein-above, I am of the considered opinion that the petitioner has now a remedy of filing securitisation application under Section 17 read with Section 17(4-A) of Act of 2002 for redressal of his grievances before the jurisdictional Debts Recovery Tribunal. Accordingly, this writ petition is disposed of with reserving liberty to the petitioner to avail such remedy in accordance with law. All the contentions are kept open to be raised and decided by Debts Recovery Tribunal without being prejudiced by its earlier order dated 29.8.2017.

(12) The writ petitions stand disposed of finally leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

D/-