

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4754 of 2017

Date of Order:25.07.2017

Rakesh Kumar

..Petitioner

Versus

Canara Bank Through Manager/Chief Manager
and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aditya Dassaur, Advocate,
for the petitioner.

ANIL KSHETARPAL, J.

Plaintiff has filed the present revision petition under Article 227 of the Constitution of India, for setting aside order dated 20.04.2017, confirmed in appeal vide order dated 31.05.2017, while deciding application for temporary injunction under Order 39 Rules 1 and 2.

Plaintiff-petitioner had filed a suit for permanent injunction restraining defendants no.1 and 2, their agents, attorneys, servants, employees, associates etc. from interfering or dispossessing the plaintiff from the portion consisting of two rooms adjoining bath room, one room, one hall room, one store, kitchen, common stairs case situated on the first floor and common entrance on the ground floor of property unit No.BXVIII/3318, Gurcharan Park, Gandhi Colony, Near New Model Town, Ludhiana.

Plaintiff claims that he is tenant under defendant no.3 since 02.01.2011 on payment of certain rent. He further claims that tenancy was reduced into writing on 02.02.2011.

Defendants appeared and contested the suit. Defendants no.1 and 2 are Canara Bank and its official. It was stated that the plaintiff has

filed a suit in connivance with defendant no.3-Suman Bala. It was stated that defendant no.1-bank is proceeding against the property for recovery, which is mortgaged with the bank. It was claimed that the defendant-bank has already served notice to the defendants under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act'). The suit is collusive as plaintiff and defendants both are residing under the same roof. The maintainability of the suit was also objected to.

Learned trial court as well as first appellate court dismissed the application filed under Order 39 Rules 1 and 2.

Learned counsel for the petitioner has submitted that the possession of tenants are protected by the Rent Act and it cannot be taken from a tenant in exercise of powers under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It is further submitted that rights of tenants cannot be jeopardize in this manner. Counsel has further submitted that the protection under the Rent Control Act cannot be defeated by a creditor while exercising powers under the Act of 2002.

I have considered the submissions of learned counsel for the petitioner and have gone through the impugned orders passed by the Courts below.

Learned first appellate court has dismissed the appeal apart from other reasons on the ground that Section 34 of the Act bars the jurisdiction of Civil Court. Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, no doubt bars the jurisdiction of a civil Court. However, such

bar would not apply to a tenant, seeking to protect his possession, who has nothing to do with the transaction of taking loan as he is neither borrower nor guarantor. Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, is reproduced as under:-

“34. Civil court not to have jurisdiction.-No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.”

A reading of Section 34 of the Act establish that the jurisdiction of the civil Court is barred in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine. The dispute between land owner or tenant is not subject matter of adjudication by Debts Recovery Tribunal. Therefore, it is not correct to say that the jurisdiction of civil Court is barred while Court adjudicating upon the rights of a tenant who is trying to protect his possession.

Counsel for the petitioner has relied upon judgment reported as AIR 2016(SC), 530 titled **Vishal N. Kalsaria v. Bank of India and others** and judgment reported as 2016(3) JT, 46, titled **Indian Bank v. M/s Nippon Enterprises South and others** in support of his submission.

It has been contended by counsel for the petitioner that the reasoning of the Court that civil Court does not have jurisdiction is wrong and tenant is entitled to seek protection of his possession.

To that extent there is substance in the submission of learned counsel for the petitioner.

However, for entirely different reasons, I do not find that the plaintiff is entitled to injunction. It is not in dispute that the plaintiff and defendant no.3 are residing under the same roof. Address of the plaintiff and defendant no.3 is one. Even a photocopy of the rent deed, which is not registered shows that plaintiff and defendant no.3 are residing under one roof.

Plaintiff has not been able to establish and produce any unimpeachable evidence to show payment of rent before the date of mortgage i.e. 08.04.2007. Plaintiff has not been able to even establish any payment of rent by any impeachable evidence prior to the date the notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was served on defendant no.3. Prima facie it appears that once the proceedings under the Act were initiated, with a view to save a property, defendant no.3 devised the anti dated un-registered lease deed, so as to protect her possession.

For the reasons stated above, I do not find any ground to interfere with the orders passed by the courts below. Hence, the present revision petition is ordered to be dismissed.

July 25, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No