**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CWP No. 12029 of 2017**
**Date of decision: 30.5.2017**

**Tinku Verma**

**……Petitioner**

**Vs.**

**M/s Indian Overses Bank and others**

**…..Respondents**

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**
**HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Abhimanyu Kalsi, Advocate for the petitioner.

**Ajay Kumar Mittal,J.**

1. By way of present petition under Article 226 of the Constitution of India, the petitioner prays for quashing the order dated 25.7.2016, Annexure P.9 passed by Debts Recovery Tribunal II, Chandigarh (DRT) whereby the Securitization Application filed by him has been dismissed and order dated 24.3.2017, Annexure P.10 passed by the Debts Recovery Appellate Tribunal, Delhi (in short, "the Appellate Tribunal") dismissing the appeal filed against the order dated 25.7.2016. Further prayer has been made for restraining the respondents from dispossessing the petitioner from the property consisting of one room, kitchen, bathroom, office, court yard and hall on first floor and second floor situated in Street No., Sardar Nagar, also known as Farid Nagar, Sekhewal Road, Ludhiana as a tenant.

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 a portion of the property consisting of one room, kitchen, bathroom, office, court yard and hall on first floor and second floor situated in Street No.1, Sardar Nagar, also known as Farid Nagar, Sekhewal Road, Ludhiana vide rent deed dated 1.7.2011 under respondent No.3 i.e. the owner/landlord of the property on a monthly rent of ₹ 5000/- apart from electricity, water, sewerage, house tax and other statutory levies. According to the petitioner, the rent stands paid upto April 2017 at the agreed rate of rent. The electricity bills are also being paid by the petitioner though the connection is in the name of the owner i.e. respondent No.3. The Municipal Corporation, Ludhiana also granted the petitioner a licence to run hosiery business in the property under the tenancy. The petitioner is residing and also doing his hosiery business i.e. manufacturing of jackets on job work in the said property. Thus, there exists a relationship of the landlord and the tenant between the petitioner and respondent No.3. The petitioner asserts that Respondent No.3 in connivance with respondent No. 1 and 2 wants to evict him from the tenanted premises and is trying to eject him forcibly by getting issued notice by the Bank under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, “the SARFAESI Act”). Some persons alleging themselves from respondent No.1 Bank came to the tenanted premises and asked the petitioner to vacate the premises on the ground that the property was mortgaged by respondent No.3 with the respondent Bank. The petitioner requested respondent Nos. 1 and 2 that he is a tenant in the suit property since 1.7.2011 so they should not ask him to vacate the suit property since his rights are protected under the East Punjab Urban Rent Restriction Act, 1949. According to the petitioner, the property was mortgaged on 1.4.2012. The petitioner being a tenant filed a civil suit. The plaint was rejected by the civil court under Order 7 Rule 11 CPC. Thereafter, the petitioner filed Securitization Application before the DRT which was also dismissed. Still not satisfied, the petitioner filed an appeal before the Debts Recovery Appellate Tribunal which was also dismissed on the ground of being time barred. Hence the instant petition by the petitioner-tenant.

3. We have heard learned counsel for the petitioner.

4. The primary issue that arises for consideration in this petition is whether the petitioner who allegedly claims himself to be a tenant in the demised premises can be dispossessed by the Bank-respondents No.1 and 2 under the SARFAESI Act for the recovery of dues of respondent No.3 under whom he is a tenant. The matter is no longer *res integra.* The issue has been concluded by this Court after examining the legal position with regard to the rights of a tenant in respect of mortgage property in CWP No.16193 of 2016 ***(Anand Sagar vs. State Bank of India and others)***, decided on 11.8.2016. 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:-
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> > "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;
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> > (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.
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> 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, as per case of the petitioner, he took the premises in dispute on monthly rent of ₹ 5000/- on 1.7.2011. 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 1.7.2011, which has not been shown to be a valid document being enforceable in law. The DRT on appreciation of material on record had concluded that the alleged tenancy was a sham transaction. The Appellate Tribunal had dismissed the appeal holding the petition filed by the petitioner before the DRT to be time barred.

6. Adverting to the judgment relied upon by the learned counsel for the petitioner in ***Vishal N.Kalsaria vs. Bank of India and others,*** (2016) 3 SCC 762, it may be noticed that the principle of law enunciated therein is well recognized. However, the alleged tenant as noticed hereinabove is required to establish by leading unimpeachable evidence that the tenancy in his favour was created prior to the mortgage of the property and is genuine which he had failed to do. The facts in the relied upon case and the present case being different, the petitioner cannot derive any advantage from the said decision. Even the order of the Appellate Tribunal could not be demonstrated to be suffering from any illegality or perversity.

7. In view of the above, no ground for interference under Article 226 of the Constitution of India, is made out with the impugned orders dated 25.7.2016 and 24.3.2017, Annexures P.9 and P.10 respectively. Consequently, finding no merit in the petition, the same is hereby dismissed.

**(Ajay Kumar Mittal)**
**Judge**

**May 30, 2017**
**'gs'**

**(Harinder Singh Sidhu)**
**Judge**

Whether speaking/reasoned Yes/No
Whether referred to reporter or not Yes/No