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

\+ W.P.(C) 5693/2016 & C.M. No.23542/2016

GOPI RAM

..... Petitioner

Through Mr.R.L. Kohli, Adv.

versus

SYNDICATE BANK & ANR.

..... Respondents

Through Mr.V. Sudeer, Adv for R-1.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% **02.11.2017**

1 The petitioner claims himself to be the tenant of respondent No.2. Respondent No.2 is a proprietorship firm of Mr. Rakesh Kumar. The petitioner is the father of respondent No.2. The property of respondent No.2 i.e. property bearing No. 919/1-B, Ward No. VII, Mehrauli had been mortgaged with respondent No.1 (Syndicate Bank) pursuant to a loan which had been advanced to respondent No.2. The loan account of respondent No.2 had become a Non Performing Asset (NPA). Proceedings under Section 13 (2) followed by proceedings under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) had been initiated against respondent No.2.

2 The petitioner filed a suit i.e. CS (OS) No.2118/2013 seeking a

declaration and perpetual injunction; contention was that the petitioner being a tenant in the aforenoted property, he could not be dispossessed. This Court notes that the petitioner had approached the Civil Court pursuant to the notice under Section 13 (2) of the SARFAESI which had been issued against him. He had placed reliance upon a judgment of the Apex Court in Criminal Appeal No.736/2004 titled *Harshad Govardhan Sondagar Vs. International Assets Reconstruction Co. Ltd. & Ors.* to substantiate his argument that if a person claiming himself to be as a tenant is prima-facie admitted, he cannot be thrown out without due process of law; this judgment had been noted by the Court while disposing of the said suit on 25.08.2014. The stand of the respondent bank was that the plaintiff is not admitted to be a tenant in the aforenoted property; nevertheless, if any resistance is offered, the bank would follow the due process of law by making an application to the Metropolitan Magistrate under Section 14 of the SARFAESI Act and take action as available in accordance with law and as per the dictate of the aforenoted judgment. Learned counsel for the petitioner (Mr. R.L. Kohli Advocate who is representing the petitioner even today) had made a corresponding statement that if the bank is bound by the said statement, he would have no objection to the suit being disposed of. The judgment disposing the suit had also noted that the learned MM while dealing with an application under Section 14 of the SARFAESI Act will follow the principles of natural justice as laid down in para 21 of the judgment of *Harshad Goverdhan* (supra).

3 The impugned order came to be passed on 03.06.2016 on a petition filed by the respondent bank under Section 14 of the SARFAESI. The contention of the petitioner that he was a tenant had been examined. The ratio of judgment of *Harshad Goverdhan* had also been argued before the learned MM. Contention of the petitioner before the learned MM as also before this Court is that he is a tenant at a monthly rent of Rs.1,500/- per month and he cannot be dispossessed without taking resort to the provisions under the Delhi Rent Control Act (DRCA). This Court notes that this objection raised before the learned MM was in the teeth of the order passed by the Bench of this Court who had disposed of CS (OS) No.2118/2013 on 25.08.2014. On that date, the statement made by the respondent bank that they would follow the procedure under the SARFAESI Act and would file an application under Section 14 of the SARFAESI Act in case any resistance is offered by the petitioner tenant had been noted and the petitioner had made a corresponding statement that if the bank is bound by such statement, he would have no objection to the suit being disposed of. Before the learned MM, the statement made that the provisions of the DRCA should have been followed was never a contention raised in the Court which had decided the aforenoted suit. The documents relied upon by the petitioner which included the rent receipts had been examined by the learned M.M. all of which find mention in the impugned order and particularly in para 24. Prima-facie, the learned MM was of the view that these documents did not appear to be correct. The benefit of the judgment of *Harshad*

Goverdhan would thus not accrue in favour of the petitioner as the finding returned in para 21 of the aforenoted judgment is clearly to the effect that only if the learned MM is satisfied that there is a valid lease created before the mortgage or there is a valid lease created after the mortgage in accordance with the provisions of Section 65-A of the Transfer of Property Act, then he may not pass an order for delivering possession of the secured asset to the secured creditor. This is not so in the instant case.

4 The petitioner has already assailed the proceedings under Section 13 (2) of the SARFAESI Act by filing CS (OS) No.2118/2013. Section 13 (2) is an SARFAESI enactment always followed by proceedings under Section 13 (4) and where the resistance is offered by a person who is in possession of the secured asset of the Bank, provisions of Section 14 may be resorted to. This is only one more step in the ladder before the entire process of taking possession of the mortgaged property is completed.

5 The Debt Recovery Tribunal (DRT) which is the appropriate forum dealing with objections and counter objections has adequate powers to examine all these provisions. Writ petition in the present form seeking a prayer that the tenant cannot be dispossessed from the mortgage property (created in favour of the bank) is a prayer which cannot be acceded to before this Court.

6 In the judgment of the Apex Court reported as 2014 (2) SCJ 460 _Jagdish Singh Vs. Heeralal and Others_, the scope of Section 13 (4) and ouster of the jurisdiction of the Civil Court qua proceedings

which can be taken care up by the DRT had been examined. This judgment was delivered on 30.10.2013.

7 This Court notes that on 01.09.2016, there has been an amendment in the SARFAESI Act and Section 17 (4A) has been inserted. The aforenoted Section reads herein as under:-

"(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 It has been put to the learned counsel for the petitioner that he may take recourse of Section 17 (4A), he is not in agreement. His submission is that this Court should adjudicate upon his petition on merits. This Court is of the view that this amendment inserted by the Act of 44 of 2016 (w.e.f. 01.09.2016) can very well adequately take care of the interest of the petitioner (who claims to be a tenant in the aforenoted property). The present petition being pursued before this Court is nothing but malafide. Presuming that the petitioner is a tenant in his own right (although learned MM has discarded this contention after examination of the documents of the petitioner), it would be well within the domain of the DRT to examine the case of the petitioner in view of the newly inserted Section 17 (4A).

9 This petition is nothing but an abuse of the process of the Court. Dismissed with costs quantified at Rs.25,000/-.

INDERMEET KAUR, J

NOVEMBER 02, 2017
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