

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4652 of 2018

Date of Decision: 27.07.2018

Karan Arora

.....Petitioner

Vs.

Ashwani Mehta and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Maninder Singh Dhindsa, Advocate, for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

On 24.07.2018, the following order had been passed by this Court:-

*“Though prima-facie I am of the opinion that the impugned order does not suffer from any infirmity, however learned counsel for the petitioner has referred to a judgment of the Supreme Court rendered in **Vishal N.Kalsaira vs. Bank of India & Ors.** (Criminal appeal no.52 of 2016 decided on January 22, 2016) and an order of a co-ordinate Bench of this Court dated 10.03.2017 passed in CR no.1782 of 2017, by which dispossession of the petitioner in that case had been stayed by way of an interim order.*

*It is to be noticed that the judgment in **Vishal N.Kalsaira's** case is prior to the amendment of Section 17 of the SARFAESI Act 2002, by which amendment sub section 4-A was added, giving the tenant / lessee a right to move an application before the Debt Recovery Tribunal with regard to any tenancy/lease right he may have over and above that of the bank in recovery proceedings.*

Hence how that judgment would be applicable, with Section 4- A having come into existence only with effect from 01.09.2016, is not understood.

*Learned counsel has also relied upon a judgment of a Division Bench of the Allahabad High Court, in **M/s N.C.M.L. Industries Ltd. vs. Debt Recovery Tribunal, Lucknow**, again in which he has not pointed to any part of the lengthy judgment wherein the amended provision has been discussed.*

He however wishes to further address arguments on the ground that the bank itself which seeks to take over the property, has perpetuated a fraud (as contended) as regards the property and the loan in question, in respect of which an FIR is also contended to have been registered at Police Station Civil Lines, Karnal, a copy of which has been annexed as Annexure P-14.

Despite sub section 4-A of Section 17 postulating that an application can be moved by a lessee / tenant before the DRT in respect of any grievance he may have, learned counsel still insists that the petitioner is without remedy.

*He would further arguments to substantiate that contention, also taking into account the judgments of the Supreme Court and of this Court, cited by the appellate Court, in **M/s Sree Anandhakumar Mills Limited vs. M/s Indian Overseas Bank and others, Civil Appeal nos.7214- 7216 of 2012, decided on 03.05.2018 and Shakti Trading Company vs. Kailashwanti and another, RSA no.6184 of 2017 decided on 18.01.2018, respectively.***

Adjourned to 25.07.2018.”

Thereafter, on 25.07.2018, learned counsel for the petitioner had been asked to (though not recorded in the order of that date), to distinguish the judgment of the Supreme Court passed in **Jagdish Singh vs. Heeralal and others** AIR 2014 SC 371, wherein while considering the issue of jurisdiction of a civil Court with regard to any property that was subject matter of proceedings under the SARFAESI Act, 2002, it was held that with Section 34 of the Act of 2002 specifically barring jurisdiction of a civil Court, as regards 'measures' taken by a secured creditor in terms of Section 13 (4) of the said Act, it would only be the

Debt Recovery Tribunal that had jurisdiction to consider the grievance of any person against proceedings pending/concluded under the Act of 2002, such remedy being available under Section 17 of the said Act.

As already noticed in the aforesaid order of this Court dated 24.07.2018, the judgment of the Supreme Court cited by learned counsel in Vishal N.Kalsaira (supra), would have no application especially after amendment in the Act of 2002 whereby sub-Section 4 (A) was added in Section 17, which reads as follows:-

“17 [Application against measures to recover secured debts].

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[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 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 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) of 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.]”

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Section 34 of the Act reads as follows:-

“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 (51 of 1993).”

Thus, the petitioner claiming to be a tenant on the property that has been ordered to be taken possession of, vide the impugned order passed by the District Magistrate, Karnal, (pursuant to jurisdiction conferred under Section 14 of the Act of 2002), the remedy of the petitioner would, in the opinion of this Court, be before the Debt Recovery Tribunal under Section 17 (4-A).

Learned counsel for the petitioner has however submitted that he would be now barred to even approach that forum as limitation has possibly run out for him to do so.

Naturally, the petitioner having availed of a remedy before the Civil Court erroneously, on any application made before the Tribunal, an application for condonation of delay (if maintainable), would be dealt with on its own merits.

Learned counsel further submits that the petitioner would file an application before the learned Tribunal within one week from today, i.e. 03.08.2018 positively.

Consequently, till 03.08.2018 only and specifically, subject to further orders to be passed by the Tribunal, the petitioner be not dispossessed.

It is made clear that if the stay application is not filed by 03.08.2018 and if no further orders are passed by the Tribunal, granting a stay to the petitioner, this order would be deemed to have been vacated on 04.08.2018.

With the aforesaid observation, this petition is dismissed.

July 27, 2018
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes