IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.8144 of 2017 (O&M)
Date of Decision:20.02.2018

Maan Mohan

...Petitioner

Versus

Kamal Parkash Goyal and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Puneet Jindal, Sr. Advocate with
Mr.Amandeep Singh Meho, Advocate for the petitioner.
Mr.R.S.Bhatia, Advocate for the respondents.

ANIL KSHETARPAL, J.

Plaintiff-petitioner is in the revision petition against the order passed by the learned trial court, rejecting the plaint under Order 7 Rule 11 of the Code of Civil Procedure (`CPC' for short), affirmed in the appeal by the learned Additional District Judge.

Issue which arises for consideration is whether the civil court has jurisdiction to entertain a suit for permanent injunction filed by alleged tenant of a borrower against whom proceedings under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (`the Act of 2002' for short) have been initiated.

Both the courts have held that jurisdiction of the civil court to entertain the suit and to grant any injunction is barred under Section 34 of the Act of 2002.

Counsel for the plaintiff-petitioner contends that the jurisdiction of the civil court in a suit filed by the tenant who is neither the borrower nor the granter is maintainable.

In the present case, the plaintiff claims tenancy since 2005. The mortgage is in favour of the bank is in the year 2011. Registered lease deed has been executed only on 8.8.2016, whereas notice under Section 13 (2) of the Act of 2002 is dated 19.8.2016. However, petitioner could not produce any unimpeachable document to prove that he is in possession of the property as a tenant since the year 2005. Before proceeding further, it would be significant to note that the Act of 2002 has been amended by the Act No.44 of 2016 w.e.f. 1.9.2016. The legislature has added sub section 4-A to Section 17 in the Act. Section 17 of the Act of 2002 as it exists is extracted as under:-

> ***"17. Application against measures to recover secured debts*** *—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:*
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> *Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.*
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> *Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the*

borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

(1-A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(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 65A 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 subsection (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.

Sections 34 and 35 of the Act of 2002 read 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 (51 of 1993).*

35. ***The provisions of this Act to override other laws.****—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

A reading of sub-section 4-A of Section 17 of the Act of 2002 would show that any person, who claims any tenancy or leasehold rights upon the secured asset, can file an application before the Debt Recovery Tribunal which has the jurisdiction to examine what is the effect of lease or tenancy. Clause (ii) of sub section 4-A of Section 17 of the Act of 2002 provides that the Debt Recovery Tribunal, if satisfies that the tenancy right or leasehold rights claimed in secured asset falls within sub-clause (a) (b) (c) and (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 has the power to pass such order as it deems fit.

Obvious purpose to amend and add sub section 4-A in Section 17 of the Act of 2002 is to confer the jurisdiction upon the Debt Recovery Tribunal to examine the claim made by a tenant who claims tenancy or leasehold rights upon the secured asset. Once the legislature has made a special provision enabling any person claiming tenancy rights on the secured asset to file an application before the Debt Recovery Tribunal then in such circumstances in view of the special provision conferring jurisdiction on the Debt Recovery Tribunal, the jurisdiction of the civil court to entertain a suit for injunction shall stand barred.

Section 17 of the Act of 2002 as it exists after the amendment w.e.f. 1.9.2016 when read in conjunction with Sections 34 and 35 of the Act of 2002 clearly proves that the legislature never intended that the tenants be permitted to file the civil suit.

Learned senior counsel for the petitioner has very strongly relied upon a judgment of the Hon'ble Supreme Court in the case of ***Vishal N. Kalsaria Vs. Bank of India and others, 2016 (3) SCC 762***, to contend that the Hon'ble Supreme Court has clearly laid down that the provisions of the Act of 2002 cannot be used to override the provisions of the Rent Control Act. He has further drawn attention of the Court to the observations made by the Hon'ble Supreme Court in para 30 of the judgment to contend that while considering the provisions of Section 35 of the Act of 2002, the Hon'ble Supreme Court has held that the protection available to the tenants under the Rent Control laws cannot be overridden by the operation of a non obstante clause in Section 35 of the Act of 2002. He submitted that Hon'ble Supreme Court has observed that a non obstante clause cannot be used to bulldoze the statutory rights vested on the tenants under the Rent Control Act.

It is noticed that the judgment in ***Vishal N. Kalsaria's*** case (supra) was delivered on 20.1.2016, whereas sub section 4-A in Section 17 of the Act of 2002 has been added w.e.f. 1.9.2016. Thus, on the day, the Hon'ble Supreme Court delivered the judgment in ***Vishal N. Kalsaria's*** case (supra), sub section 4-A of Section 17 of the Act of 2002 was not part of the statute.

Still further, learned senior counsel for the petitioner has also referred to the judgment of this Court in ***Rakesh Kumar Vs. Canara Bank through Manager/Chief Manager and others, 2017 (4) PLR 266***. Even in the aforesaid judgment, this Court has not noticed sub section 4-A of Section 17 of the Act of 2002.

Once the legislature has made a provision in the special statute, giving right to any person who claims any tenancy or leasehold rights upon secured asset to file an application under Section 17 of the Act of 2002 before the Debt Recovery Tribunal, the tenant cannot be permitted to file a suit for injunction in the civil court. The legislature has been making effort to recover losses which having become non performing asset (NPA). The Act of 2002 was enacted to enable the secured creditors to recover the amount without the intervention of the court.

Learned senior counsel for the petitioner has also submitted that since the Rent Control Legislation falls in the State List-List-II of Seventh Schedule of The Constitution, therefore, clause (ii) of sub section 4-A of Section 17 of the Act of 2002 must be read in the manner to exclude the protection available to the tenants under State Rent Control Legislation. He submits that since the Parliament does not have power to control the rights of the landlord and tenants by enacting the Rent Control Legislation, therefore, the court should read down clause (ii) of sub section 4-A of Section 17 of the Act of 2002,

This Court has considered the submission. By adding sub section 4-A in Section 17 of the Act of 2002, the Parliament has not intervened in the Rent Control Legislations enacted by the respective State Government. The rights available to the tenants under the Rent Control

Legislation do not get adversely affected by this amendment, but at the same time the legislature has specifically enabled the Debt Recovery Tribunals to examine whether the tenancy rights as are being sought to be claimed, have any substance in it or not. Hence argument of the learned senior counsel cannot be accepted.

In this considered opinion, the jurisdiction of the civil court to entertain a suit for permanent injunction at the behest of the tenant on the secured assets against whom proceedings under the Act of 2002 have been initiated shall stand barred. Petitioner would be at liberty to move an application before the Debt Recovery Tribunal to establish his right to occupy the premises as a tenant.

In view of what has been discussed hereinabove, this Court does not find any good ground to interfere in the impugned order passed by the learned trial court. Civil Revision petition is dismissed.

Petitioner has filed two miscellaneous applications, one for directing the borrower to produce the income tax records and second for producing rent receipts and an application under The Right to Information Act. Applications are disposed off granting liberty to the petitioner as indicated in the main judgment.

20.02.2018 **(ANIL KSHETARPAL)**
mks **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No