

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

**CR No. 8286 of 2018 (O&M)
DECIDED ON: DECEMBER 05, 2018**

DIL BAHADUR

.....PETITIONER

VERSUS

VIJAY KAPOOR AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. V.K. Sandhir, Advocate
 for the petitioner.

AVNEESH JHINGAN, J (ORAL)

The present civil revision petition has been filed being aggrieved of the order dated 11.10.2018 passed by Civil Judge (Jr. Division) Amritsar (hereinafter referred to as 'trial Court') allowing the application under Order VII Rule 11 of the Code of Civil Procedure 1908 (for short 'CPC') and thus, rejecting the plaint of the petitioner.

The facts in brief are that the petitioner filed a suit for permanent injunction restraining respondent No.3-bank from forcibly dispossessing him from one room set of first floor of Kothi No. 164-B, Anand Avenue, Amritsar, in which the petitioner is a tenant. It was pleaded that the tenancy is since long. The owner of the property had taken a loan from Punjab National Bank, Amritsar for which the said property was mortgaged. The borrower defaulted in repayment of loan and account was classified as non-performing asset.

Proceedings were initiated by the Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'). Aggrieved of the proceedings initiated under the Act, petitioner filed civil suit.

During the pendency of the civil suit, an application was moved by the Bank under Order VII Rule 11 of the CPC seeking dismissal of the suit, as the jurisdiction of the civil court is barred under the Act. The said application was allowed vide impugned order dated 11.10.2018. Hence the present petition.

Learned counsel for the petitioner argues that the petitioner is a tenant in the mortgaged property and cannot be evicted without following due process of law under the Rent Act.

The grievance raised by learned counsel for the petitioner does not arise out of the impugned order. The petitioner is not remedy less. The remedy available to the petitioner is before the Debts Recovery Tribunal (for brevity 'DRT') under Section 17 (4-A) of the Act. Moreover, the jurisdiction of the civil court is barred by Section 34 of the Act.

For ready reference, Sections 17 (4-A) and 34 of the Act are quoted below.

(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) 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”

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.”*

Under Section 17 (4-A) of the Act, DRT is empowered to examine the facts and evidence produced in order to examine the tenancy. It is only after that tenancy is proved as per clause (i) of section 17 (4-A) of the Act, DRT may pass appropriate order under clause (ii) of Section 17 (4-A).

The learned trial Court has considered the application in right perspective and allowed the same holding that the jurisdiction of the civil court is barred under Section 34 of the Act.

In view of above discussion, this Court does not find any merit in the present revision petition. As such, the same is dismissed.

DECEMBER 05, 2018
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(AVNEESH JHINGAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>