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

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**CWP No.22914 of 2018
Date of Decision: 24.07.2019**

Kotak Mahindra Bank Ltd.

Petitioner

Versus

Deputy Commissioner-cum-District Magistrate, Ludhiana and others

Respondents

**CORAM: HON'BLE MR. RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Nitin Ahluwalia, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. D.A.G., Punjab.

Mr. J.S. Jaidka, Advocate
for respondents No.5 to 7.

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RAKESH KUMAR JAIN, J (Oral):

The petitioner-Bank has prayed for the issuance of a writ in the nature of mandamus to direct respondents No.1 to 3 to comply with the order dated 30.04.2018 passed by respondent No.1.

In brief, respondents No.5 and 6 had obtained cash credit facility of ₹27,00,000/- from the petitioner by mortgaging the property in question. Respondent No.7 stood as a Guarantor who is also a Mortgagor. Since the amount of cash credit facility was overdue, it was declared as Non-Performing Asset (NPA) and proceedings under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 [for brevity 'the Act'] were carried out by the petitioner against the borrowers.

The petitioner-bank filed an application dated 30.01.2018 under Section 14(1) of the Act for taking help of the District Magistrate for taking possession of the mortgaged property. The said application was allowed on 30.04.2018. Since possession was not delivered, therefore, the present petition has been filed for implementation of order dated 30.04.2018 passed by respondent No.1.

Notice in the writ petition was issued. Upon notice, respondents have put in appearance and submitted that due to stay granted by the Civil Court, the possession could not be taken.

Learned counsel for the petitioner states that the Civil Suit is just a camouflage in order to escape from the order dated 30.04.2018.

After order was passed under Section 14(1) of the Act, a suit was filed by Neeraj Verma s/o Bal Mukand Verma on 07.03.2018 (respondent No.6 in the writ petition). The said suit was filed seeking permanent injunction on the ground that said Neeraj Verma is a Tenant over the mortgage property in question, since February, 2015 at the rate of ₹1,200/- per month. Although, it is submitted by the petitioner that the said suit has been dismissed for non-prosecution on 26.08.2018. On that date, following order was passed:-

"Present : None for the plaintiff.

Sh. Abhay Ram Sharma, Adv. Counsel for Roshan Lal Verma

File again taken up at 03:00 P.M. Neither the plaintiff nor his counsel came present before the Court. Accordingly, the present suit of the plaintiff is ordered to be dismissed in default for non appearance of plaintiff. File be consigned to the Judicial record room, Ludhiana after due compliance."

Learned counsel for the private respondents has submitted that order dated 20.08.2018 has been recalled and suit has been restored. He has not produced any order to show that order dated 20.08.2018 of the Civil Court has been recalled and suit has been restored.

Even if it is presumed, for the sake of arguments, that the suit has been restored, yet in our considered opinion, the Civil Court does not have jurisdiction to decide the issue about tenancy over the mortgaged property after insertion of Sub-Section (4-A) in Section 17 of the Act w.e.f. 01.09.2016, wherein it is provided that 'for the purpose of declaring the tenancy rights, jurisdiction would vest with the Debts Recovery Tribunals only.'

Section 17 (4-A) of the Act is reproduced as under:-

(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 and tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause(b) or sub-clause (c) 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."

The proceedings of stay is a camouflage at the instance of the Borrowers. Civil Suit is, thus, meaningless being without jurisdiction in view of Section 17 (4-A) of the Act. Therefore, we direct the respondent No.1 to take possession of the mortgaged property in question, through help of police and deliver the same to the petitioner-Bank forthwith.

The petition is disposed of.

[RAKESH KUMAR JAIN]
JUDGE

[AVNEESH JHINGAN]
JUDGE

July 24, 2019

pankaj baweja

1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No