

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

214

CWP No.31118 of 2018 (O&M)

Date of Decision: 27.09.2019

Indian Overseas Bank

.....Petitioner

Versus

M/s Rahul Industries and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. K.K. Goel, Advocate
for the petitioner.

Mr. Rohit Kaushik, Advocate for
Mr. Keshav Partap Singh, Advocate
for respondents No.1 and 2.

Ms. Kirti Singh, D.A.G., Haryana
for respondents No.3 and 4.

Mr. Sudhir Rana, Advocate
for the applicants (CM Nos.7922-23 of 2019).

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has prayed for the issuance of a writ in the nature of mandamus seeking directing to respondents No.3 and 4 to take physical possession of the property of respondents No.1 and 2 in terms of the order dated 27.05.2015 passed by the District Magistrate, Yamunanagar.

In brief, respondents No.1 and 2 had availed certain loans from the petitioner after mortgaging the following properties:

- a) Khasra No.43/32/1, H.No.46, Old Chhachhrauli Road, Neta Ji Subhash Road, Near Water Tank, Jagadhri, District Yamunanagar.
- b) Property No.1522 A-1, Khasra No.43/31, Old Chhachhrauli Road, Near Water Tank, Jagadhri, District Yamunanagar.
- c) Property No.1524, Khasra No.43/31, Old Chhachhrauli

Road, Mukherjee Park, Near Water Tank, Jagadhri, District Yamunanagar.

- d) Property No.C1/1523/3, Khasra No.26/28, Old Chhachhrauli Road, Mukherjee Park, Kali Mandir, Jagadhri, District Yamunanagar.
- e) Property No.1522 A-2, Khasra No.43/31, Old Chhachhrauli Road, Near Water Tank, Jagadhri, District Yamunanagar.
- f) Khasra No.26/32, Mukherjee Park, Near Kali Mandir, Jagadhri, District Yamunanagar.

Since they were remiss in payment of the dues of the Bank, therefore, proceedings were initiated by the Bank in terms of the provisions of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short, "the Act") and also filed an application under Section 14 of the Act before the District Magistrate, Yamunanagar, seeking assistance for taking actual physical possession of the mortgaged property. The said application was allowed by the District Magistrate on 27.05.2015 but so far the said order has not been executed. The present petition is thus filed for seeking a direction to respondents No.3 and 4 to execute the said order.

During pendency of this petition, CM Nos.7922 of 2019 were filed under Order 1 Rule 10 CPC by so called tenants alleging that the mortgaged property is in their tenancy. The following order was passed by this Court on 15.05.2019:

"Respondent No.1 is directed to remain present in Court on the date fixed.

Learned counsel for the tenants states that property is under tenancy. The alleged tenants are also directed to remain present and shall produce the original registered

rent deed in their favour.

Adjourned to 20.05.2019."

Thereafter, on 20.05.2019, the following order was passed:

"Learned counsel for the applicants in Civil Misc. Nos.7922-23 of 2019, prays for time to seek instructions and apprise the Court whether the applicant-tenants are ready to deliver vacant physical possession of the property in dispute to the Bank.

To come up on 22.05.2019."

Thereafter, the case was adjourned at the request of respondents No.1 and 2 to seek instructions. Ultimately, on 29.05.2019, the following order was passed by this Court:

"Earlier on 15.05.2019, the applicants were directed to remain present in the Court and to produce original rent deed in their favour. Subsequently on 27.05.2019, they were directed to be present in the Court but still they are not present.

Learned counsel for the applicants submits that they were informed but they are not present.

Let the presence of applicants(proposed respondents No.5 to 8) as mentioned in the amended memo of parties be procured on 31.05.2019 through Superintendent of Police, Yamuna Nagar.

Learned State counsel is directed to ensure their presence."

Today, counsel appearing on behalf of the applicants who had filed the miscellaneous application to be impleaded as a party allegedly being tenants has made an oral prayer for withdrawal of the application. Permission sought by them is hereby declined because the said applicants are now trying to avoid this Court as they have been cornered because of the earlier orders passed by this Court on

15.05.2019 and 20.05.2019 followed by the order dated 29.05.2019.

Counsel for respondents No.1 and 2 has failed to prove that the said applicants were inducted as tenants by them before the property was mortgaged. In view thereof, the said applicants have no right insofar as in the mortgaged property they are supposed to establish their rights of tenancy in terms of the provisions of Section 17(4) of the Act before the Debts Recovery Tribunal, which they have not done and are not allowed to agitate the said matter before this Court.

In view of the aforesaid facts and circumstances, we are satisfied that respondents No.1 and 2 have created the fake tenancy in favour of the applicants, for the purpose of protecting the property in dispute by taking recourse to the law wherein it is provided that if a person is inducted as a tenant in the property which has been mortgaged after the induction then adverse orders cannot be passed against him without giving an opportunity of hearing. Ignoring the claim of respondents No.1 and 2 and the applicants in regard to the tenancy, while allowing the writ petition a direction is issued to respondents No.3 and 4 to implement the order which was passed in favour of the petitioner Bank as far back as on 27.05.2015. The compliance is directed to be made within a period of seven days from the date of receipt of certified copy of this order.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

27.09.2019
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No