

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

RSA No. 2882 of 2013(O&M)

Date of decision: 1.10.2019

Pardeep Kumar

.....Appellant

VERSUS

Bank of India and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Munish Jolly, Advocate for the appellant.

Mr. K.P.S. Dhillon, Advocate for respondent No.1.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for permanent injunction restraining the defendants from interfering in peaceful possession of the plaintiff over the shop and residential house marked with letters ABCD in the site plan situated in Mohinder Ganj, Rajpura was dismissed by the trial Court in view of its findings on issue No.1. The appeal preferred by unsuccessful plaintiff was dismissed by the Additional District Judge (Fast Track Court), Patiala. The Appellate Court not only affirmed findings of the trial Court on issue No.1 but even reversed findings of the trial Court on issue No.2, in exercise of powers under Rule 33 of the Order 41 of the Code of Civil Procedure, 1908 (in short 'CPC') and accordingly, it was held that suit for injunction is not maintainable.

Counsel for the appellant would argue that total area of suit property is 79 square yards out of which 39 Square yards was purchased by

defendants No.2 to 5 vide sale deeds of 1997. It is further submitted that appellant/plaintiff is a tenant in the entire property since the year 1960, therefore, he is entitle to protect his possession except in due course of law by seeking his eviction under the provisions of Rent Act. It is further argued that out of entire property measuring 79 square yards only area measuring 39.5 Square yards owned by defendants No.2 to 5 was mortgaged with the Bank as a security for repayment of loan obtained by them, therefore, respondent No.1 is not entitle to recover possession of entire property and, at best, can seek possession of area measuring 39.5 square yards and that too after partition of the joint property between its co-owners. Counsel would further argue that controversy raised in the present appeal is squarely covered in favour of the appellant by judgment of Hon'ble the Supreme Court **Vishal N. Kalsaria Vs. Bank of India and others, 2016(1) RCR (Civil) 911.** He would further argue that the judgment in **Bajarang Shyamsunder Agarwal Vs. Central Bank of India and another, Criminal Appeal No.1371 of 2019 arising out of SLP (Crl.) No.9590/2015 decided on 11.09.2019** does not prejudicially affect claim of the appellant as in para 37 of the judgment, it has been held that the Court has not interpreted the new amendment per se or the law with respect to other categories of tenants which may be taken up in appropriate cases. It is argued that as in the case of appellant therein namely Bajarang Shyamsunder Agarwal, tenancy stood determined and in those circumstances, it was held that the Courts are correct in ordering delivery of possession to respondent No.1- Bank. It is further argued that tenancy of the appellant has not been determined when otherwise the

appellant becomes a statutory tenant on expiry of initial period of tenancy and is entitle to protection under Rent Act.

Counsel representing respondent No.1 has supported consistent findings recorded by the Courts that appropriate remedy for the appellant is to approach the competent authority under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act'), therefore, the appellant is not entitle to indulgence of the Court for interference in consistent findings recorded by the Courts on issue No.1.

I have heard counsel for the parties, perused the paper-book particularly the judgments impugned.

Counsel for the appellant has not disputed that by way of amendment vide Act No.44 of 2016, Section (4-A) has been inserted in Section 17 of the SARFAESI Act that deals with right of a tenant or lessee upon secured asset to file an application before the Debts Recovery Tribunal (in short 'DRT') and DRT has been conferred with jurisdiction to examine the case in the light of provisions of sub-Section (4-A) of Section 17. A relevant extract therefrom, reads as follows:-

“(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 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."

Till date, there is no favourable order passed in favour of the appellant by the Courts. On the contrary, the Appellate Court has even reversed findings of the trial Court on issue No.2 and determined the said issue against the appellant. Counsel for the appellant has not made any submissions as to why the provisions of Section 17(4-A) of the Act are not attracted in the given scenario. Rather, he has prayed that period during which the suit remained pending before the Civil Court may be condoned so that his application before DRT may not be dismissed on the ground of limitation.

Taking into consideration amendment of Section 17 of SARFAESI Act whereby Section (4-A) has been added thereto, there is no scope for interference in the judgments impugned.

For the foregoing reasons, the appeal fails and is accordingly dismissed. However, nothing stated hereinbefore shall prejudice right of the appellant to file an application before the DRT. It would be open for the appellant to seek condonation of delay by pleading that he had been pursuing his remedy before the Civil Court under a bona fide mistaken belief.

OCTOBER 1, 2019		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no