07.04.2021
Item No.07
Court No.17
Avijit

FMA 449 of 2021
with
IA No. CAN 1 of 2021
(Through Video Conference)

Fullerton India Credit Company Limited
versus
Sri Madhukant Bajoria & anr.

Mr. Kaushik Chatterjee,
Mr. Suparno Ghosh
Mr. Subharthi Bhattacharya
……….for the Appellant
Mr. Chayan Gupta,
Mr. Saumendra Mohan Rakshi
……….for the Respondent No.1

The appeal is arising out of an order dated 2nd February, 2021 in a suit claiming tenancy over the suit property created prior to mortgage. The plaintiff prayed for an order of injunction restraining the present appellant from interfering with the possession of the present plaintiff in view of alleged prior agreement of tenancy and/or creation of tenancy in favour of the plaintiff. The plaintiff has relied upon few rent receipts to show that before measures have been taken under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, Securitisaiton Act), the relationship of landlord and tenant between the appellant and the defendant no.1 was created.

On the basis of the aforesaid averments, the learned Trial Court relying upon a judgment of our former Chief Justice in a case reported in AIR 2008 Cal 9 granting an order of injunction.

The appeal is preferred by the securitisation company questioning the maintainability of the suit as well as the order passed by the learned Single Judge on the ground that once the measures have been taken under Section 13 of the Securitisation Act, Civil Court loses its jurisdiction in view of Section 34 of the said Act. It *prima facie* appears that the measures were taken after creation of alleged tenancy as claimed by the plaintiff. In view of the fact that measures have been taken against the borrower under Section 13(4) of the Securitisation Act and the remedy lies in preferring an appeal under Section 17(4A) read with Section 18 of the Securitisation Act is by a person aggrieved by the measures taken by the appellant. The plaintiff is a person aggrieved. The plaintiff should have approached the DRT instead of filing a civil suit. The suit is not maintainable once measures under Section 13(4) have been taken by the securitisation company.

In view of the law laid down by the Hon'ble Supreme Court in Bajarang Shyamsunder Agarwal Vs. Central Bank of India & anr. reported in (2019) 9 SCC 94, we are *prima facie* of the opinion that the order passed by the learned Civil Judge granting injunction should continue till the matter is first taken up by the Debt Recovery Tribunal. The DRT shall decide regarding extension of interim order.

The interim order passed by the learned Trial Court stands modified to the aforesaid extent.

This order is passed as we feel that the order impugned is against the measures taken by the securitisation company under Section 13(4) of the Securitisation Act as rightly pointed out by the learned counsel appearing on behalf of the securitisation company and the remedy lies in Section 17(4A).

In view of the pendency of the suit and the proceeding before the learned Trial Court we feel that the period of 45 days in preferring the application before the DRT should be counted from this day and not from the date of measures taken by the appellant.

The plaintiff should file appropriate application before the Debt Recovery Tribunal having the jurisdiction over the matter within three weeks from date failing which interim order passed by this Court modifying the order of learned Trial Court shall stand vacated without any further reference to this Court.

In view of the aforesaid the suit filed before the learned Civil Judge stands dismissed due to the jurisdictional bar created under Section 17(4A) read with Section 34 of the Securitisation Act.

With the aforesaid observation, the appeal being FMA 449 of 2021 and the connected application being CAN 1 of 2021 are disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Kausik Chanda, J.) **(Soumen Sen, J.)**