

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

CWP-16256-2020 (O&M)
Date of Decision:-02.02.2021

Vikram Bhatia

... Petitioner

Versus

Andhra Bank and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. A.D.S. Jattana, Advocate
for the petitioner.

Mr. Gaurav Goel, Advocate
for respondents No.1 & 2.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The petitioner is before this Court in this writ petition to
challenge order dated 18.9.2020 (Annexure P-6) passed by respondent No.4-
Tehsildar (West)-cum-Officiating Executive Magistrate, Ludhiana, as the
same is contrary to order dated 7.1.2019 (Annexure P-7) passed by
Additional District Magistrate (Ludhiana) relating to property No.1124/1

Harnam Nagar, Ludhiana and being illegally implemented against property No.1114/4-A Harnam Nagar, Ludhiana.

In the writ petition, it has been pleaded that the petitioner took property No.1114/4-A Harnam Nagar, Ludhiana, on rent from respondent No.5-Varinder Singh vide rent deed (Annexure P-2). Respondent No.5 took certain loan from respondent No.1-Andhra Bank but he defaulted in repaying the same, on which respondent No.1 initiated action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as 'the SARFAESI Act'), against the mortgaged property of the borrower. Property No.1114/4A which is being occupied by the petitioner as a tenant, was never mortgaged with respondent No.1 by respondent No.5. Now respondent No.1 intends to take forcible possession of the said tenanted premises.

On notice of motion, respondents No.1 & 2 i.e. Andhra Bank appeared and filed written statement, contesting the claim of the petitioner. In the written statement, it has been pleaded that the petitioner did not approach the Court with clean hands. Actually, M/s Amitoj Textiles Ltd. took loan from respondent No.1 and respondent No.5 stood as guarantor to repay the said loan and his property bearing No.1124/1 Harnam Nagar, Ludhiana was mortgaged with the bank. One another loan was taken by M/s Gourmet Empire Ltd. from the said bank and respondent No.5 being guarantor, mortgaged property No.1114/4-A Harnam Nagar, Ludhiana, to secure the same. The aforesaid borrowers failed to repay the loan and accordingly actions were initiated against them, the guarantors and the

mortgaged properties including property No.1114/4A vide Annexures R1 to R4 and Annexures R-7 to R-9. It has been further pleaded that the impugned actions taken by respondents No.1 and 2 under the SARFAESI Act are legal and valid.

We have heard the counsel for the parties.

It is the case of the petitioner that respondents No.1 to 4 are having no right to interfere in property No.1114/4A Harnam Nagar, Ludhaina, which has been taken on rent by him from respondent No.5. The counsel for the petitioner while referring to **Vishal N. Kalsaria vs. Bank of India and others, (2016) 3 SCC 762**, contended that the petitioner being tenant can be evicted only after due process of law as prescribed under the provisions of Rent Control Act. This submission made by counsel for the petitioner is totally misplaced. After passing of judgment in **Vishal N. Kalsaria's** case (supra), the SARFAESI Act was amended and Section 17(4-A) was inserted in the Statute w.e.f. 1.9.2016, providing efficacious alternative remedy to a person claiming tenancy or leasehold rights upon the secured asset, by approaching Debts Recovery Tribunal (hereinafter referred as 'the Tribunal').

From the perusal of the documents Annexures R1 to R4 and Annexures R7 to R9, it can be easily made out that firm M/s Gourmet Empire Ltd. took term loan from respondent No.1 and property No.1114/4A, Harnam Nagar, Ludhiana was mortgaged by respondent No.5 as collateral security against the said loan. As the borrower defaulted in repayment of

loan, the bank has initiated proceedings against it, the guarantor and the secured asset (tenanted premises) under the SARFAESI Act. Even, if the petitioner is in lawful possession of the tenanted premises No.1114/4A Harnam Nagar, Ludhiana being tenant under respondent No.5, he can approach DRT under Section 17 (4-A) of SARFAESI Act for redressal of his grievance. The recourse of writ jurisdiction is not an appropriate remedy.

The present writ petition is accordingly dismissed. However, the petitioner is at liberty to invoke the remedy available to him under law, before the Tribunal.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

02.02.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No