116 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-285-2019 (O&M)
Date of decision: 16.08.2022

The Jammu and Kashmir Bank Ltd.

....Petitioner

Versus

Gagan Deep Bansal and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Aman Bahri, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

The petitioner herein is a Bank. It has initiated proceedings under the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as '2002 Act'), against the borrower. The plaintiff filed a suit for grant of decree of permanent injunction restraining the Bank from dispossessing him claiming protection under the provisions of East Punjab Urban Rent Restriction Act, 1949. The Bank's application for relegating the plaintiff to the remedy before the Debt Recovery Tribunal has been dismissed.

Notice of motion was issued and as per the office report, the respondents have been served. However, they remain unrepresented. Learned counsel representing the petitioner contends that in view of amendment in Section 17 of 2002 Act by an amendment dated 01.09.2016, sub-section 4-A has been added to Section 17 which enables the Debt Recovery Tribunal to examine the tenancy or lease hold rights claimed by the tenant in secured assets. Section 17 (4-A) is extracted as under:-

under:-

> *"Where-*
> *any person, in an application under sub-section (i), 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 the lease or tenancy (a) has expired or stood determined; or (b) is contrary to Section 65A of the Transfer of Property Act, 1883; 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."*

The trial court has relied upon the judgments passed in **Indian Bank vs. Nippon Enterprises 2016 (3) JT 46** and **Vishal N Kalsaria vs. Bank of India and others 2016 (1) Scale 472**. Both these judgments are interpreting the provisions as applicable before the amendment brought in with effect from 01.09.2016. In **'Maan Mohan vs. Kamal Parkash Goyal and others' 2018 (2) Law Herald 1051**, after detailed analysis of the amended provisions with reference to the judgment passed in **Vishal N Kalsaria's case (supra)** this Court has held that it would not be appropriate to entertain a suit for injunction as a specific remedy before the Debt Recovery Tribunal. Hence, the aforesaid judgments will not be applicable, particularly when the statute itself has provided a remedy to the tenant. Hence, the order under challenge is set aside. The plaintiff (respondent) shall be at liberty to file an application before the Debt Recovery Tribunal, if so advised.

The petition stands allowed.

All the pending miscellaneous applications, if any, are also disposed of.

16.08.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No