



In the High Court of Punjab and Haryana, at Chandigarh

Second Appeal Order No. 52 of 2017 (O&M)

Date of Decision: 11.07.2024

State Bank of India

... Appellant(s)

Versus

Ramanand Sahni

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vikas Chatrath, Mr. Rajbir Singh,
Mr. B.P.S.Thakur and Ms. Priya Kaushik, Advocates
for the appellant(s).

Anil Kshetarpal, J.

1. The State Bank of India (defendant No.2) assails the correctness of the First Appellate Court's order passed while reversing the Trial Court's order rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC").

2. In substance, the First Appellate Court has set aside the Trial Court's order rejecting the plaint. The plaintiff has filed a suit for the grant of decree of permanent injunction. He claims to be the tenant of the borrower, namely Pardeep Mittal from the petitioner-bank. An application under Order VII Rule 11 CPC was filed by the Bank on the ground that the proceeding under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "2002 Act") has already been initiated as the notice under Section 13(2) of the 2002 Act has been issued and even the possession notice under Section

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13(4) of the 2002 Act has also been issued. The First Appellate Court, while relying upon the judgment passed in ***Vishal N. Kalsaria v. Bank of India and Others 2016(3) SCC 762***, accepted the appeal.

3. The learned counsel representing the appellant submits that the bank has filed the revision petition which was permitted to be withdrawn with liberty to file a review. In compliance thereof, a review application was filed while bringing to the notice of the Court that there is an amendment in Section 17 of the 2002 Act in the year 2016. However, the Court has still dismissed the same. The learned counsel prays for setting aside the First Appellate Court's order.

4. This issue has been examined in detail by this Court in ***Maan Mohan v. Kamal Parkash Goyal and Others (Civil Revision No. 8144 of 2017, decided on 20.02.2018)***. After discussing the effect of amendment in Section 17 of the 2002 Act, this Court has held as under:-

“A reading of sub-section 4-A of Section 17 of the Act of 2002 would show that any person, who claims any tenancy or leasehold rights upon the secured asset, can file an application before the Debt Recovery Tribunal which has the jurisdiction to examine what is the effect of lease or tenancy. Clause (ii) of sub section 4-A of Section 17 of the Act of 2002 provides that the Debt Recovery Tribunal, if satisfies that the tenancy right or leasehold rights claimed in secured asset falls within sub-clause (a) (b) (c) and (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 has the power to pass such



order as it deems fit.

Obvious purpose to amend and add sub section 4-A in Section 17 of the Act of 2002 is to confer the jurisdiction upon the Debt Recovery Tribunal to examine the claim made by a tenant who claims tenancy or leasehold rights upon the secured asset. Once the legislature has made a special provision enabling any person claiming tenancy rights on the secured asset to file an application before the Debt Recovery Tribunal then in such circumstances in view of the special provision conferring jurisdiction on the Debt Recovery Tribunal, the jurisdiction of the civil court to entertain a suit for injunction shall stand barred.

Section 17 of the Act of 2002 as it exists after the amendment w.e.f. 1.9.2016 when read in conjunction with Sections 34 and 35 of the Act of 2002 clearly proves that the legislature never intended that the tenants be permitted to file the civil suit.

*Learned senior counsel for the petitioner has very strongly relied upon a judgment of the Hon'ble Supreme Court in the case of **Vishal N. Kalsaria Vs. Bank of India and others, 2016 (3) SCC 762**, to contend that the Hon'ble Supreme Court has clearly laid down that the provisions of the Act of 2002 cannot be used to override the provisions of the Rent Control Act. He has further drawn attention of the Court to the*



observations made by the Hon'ble Supreme Court in para 30 of the judgment to contend that while considering the provisions of Section 35 of the Act of 2002, the Hon'ble Supreme Court has held that the protection available to the tenants under the Rent Control laws cannot be overridden by the operation of a non obstante clause in Section 35 of the Act of 2002. He submitted that Hon'ble Supreme Court has observed that a non obstante clause cannot be used to bulldoze the statutory rights vested on the tenants under the Rent Control Act.

*It is noticed that the judgment in **Vishal N. Kalsaria's** case (supra) was delivered on 20.1.2016, whereas sub section 4-A in Section 17 of the Act of 2002 has been added w.e.f. 1.9.2016. Thus, on the day, the Hon'ble Supreme Court delivered the judgment in **Vishal N. Kalsaria's** case (supra), sub section 4-A of Section 17 of the Act of 2002 was not part of the statute. Still further, learned senior counsel for the petitioner has also referred to the judgment of this Court in **Rakesh Kumar Vs. Canara Bank through Manager/Chief Manager and others, 2017 (4) PLR 266**. Even in the aforesaid judgment, this Court has not noticed sub section 4-A of Section 17 of the Act of 2002.*

Once the legislature has made a provision in the special statute, giving right to any person who claims any tenancy or leasehold rights upon secured asset to file an application under Section 17 of the Act of 2002 before the Debt Recovery



Tribunal, the tenant cannot be permitted to file a suit for injunction in the civil court. The legislature has been making effort to recover losses which having become non performing asset (NPA). The Act of 2002 was enacted to enable the secured creditors to recover the amount without the intervention of the court.

Learned senior counsel for the petitioner has also submitted that since the Rent Control Legislation falls in the State List-List-II of Seventh Schedule of The Constitution, therefore, clause (ii) of sub section 4-A of Section 17 of the Act of 2002 must be read in the manner to exclude the protection available to the tenants under State Rent Control Legislation. He submits that since the Parliament does not have power to control the rights of the landlord and tenants by enacting the Rent Control Legislation, therefore, the court should read down clause (ii) of sub section 4-A of Section 17 of the Act of 2002,

This Court has considered the submission. By adding sub section 4-A in Section 17 of the Act of 2002, the Parliament has not intervened in the Rent Control Legislations enacted by the respective State Government. The rights available to the tenants under the Rent Control Legislation do not get adversely affected by this amendment, but at the same time the legislature has specifically enabled the Debt Recovery Tribunals to examine whether the tenancy rights as are being sought to be claimed,

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have any substance in it or not. Hence argument of the learned senior counsel cannot be accepted.

In this considered opinion, the jurisdiction of the civil court to entertain a suit for permanent injunction at the behest of the tenant on the secured assets against whom proceedings under the Act of 2002 have been initiated shall stand barred. Petitioner would be at liberty to move an application before the Debt Recovery Tribunal to establish his right to occupy the premises as a tenant.”

5. Keeping in view the aforesaid discussion, no further deliberation is required. Hence, the impugned orders passed by the First Appellate Court are set aside and the Trial Court’s order rejecting the plaint shall stand restored.

6. Accordingly, the appeal stands disposed of.

7. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 11, 2024
“DK”

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