$~97

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5222/2024 & CM APPL. 21367-21368/2024

FAREED FAROOQI & ORS. ..... Petitioners

Through: Mr. Farrukh Khan, Mr. Baasir Aziz, Mr. Mohd. Shahid and Mr. Mohd. Affan, Advocates.
Email: info@diwanadvocates.com
Mob: 8630051338

versus

UNION BANK OF INDIA ..... Respondent

Through: Mr. Rupak Srivastava & Mr. Sanjeev Sharma, Advs.
M: 9650943775
Email: glelawfirm16@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% **09.04.2024**

CM APPL. 21368/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.

2. Application is disposed of.

W.P.(C) 5222/2024 & CM APPL. 21367/2024

3. The present petition has been filed being aggrieved by the directions set forth in the order dated 28th February, 2024 passed by the learned Chief Metropolitan Magistrate (Central), Tis Hazari Courts, Delhi, in the case titled as ***Union Bank of India Versus M/s Ashok Paper Products and Others,*** in *MA No. 229/2023.*

4. Learned counsel appearing for the petitioner submits that the respondent has filed an application under Section 14(1) of the Securitization

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"). He submits that the said application has been allowed by the learned CMM, thereby allowing the respondent to take possession of the property no. 423, Ward No. XI situated at Gali Panna Wali, Matia Mahal, Jama Masjid, Delhi-110006, measuring 351 sq. yards, wherein the petitioners are currently residing as lawful tenants or carrying on their businesses since decades.

5. Learned counsel appearing for the petitioners submits that the petitioners are lawful tenants who are peacefully residing in the property in question and have been regularly paying rent to the landlords. It is submitted that recently on 3rd April, 2024, the petitioners came to know that the aforesaid property was subject to mortgage with the respondent-bank against the financial facilities/loan, availed/borrowed by M/s Ashoka Paper Products and M/s Ashoka Traders, wherein the landlords of the property in question were guarantors in the said transaction.

6. Since the said borrower defaulted in paying the loan amount to respondent-bank, proceedings under the SARFAESI Act have been initiated by the respondent-bank.

7. Thus, it is submitted that on 3rd April, 2024, when the bank officials along with receiver appointed by the Court of learned CMM, came to get the adjoining property of the petitioners vacated, it was then, the petitioners came to know about the said proceedings. It is submitted that the officials of the respondent-bank also visited the property of the petitioners on 4th April, 2024 to get the said property vacated. However, the requisite action was not taken.

8. Learned counsel appearing for the petitioner submits that the

petitioners are the statutory tenants of the aforesaid property. Therefore, they cannot be evicted without following the due process of law, i.e., without giving an opportunity of being heard. It is submitted that the petitioner being the protected tenants of the said property and having occupying the different portions of the property prior to the date of creation of the mortgage in favour of the respondent-bank, their vested rights cannot be taken away in this manner.

9. Thus, it is submitted that the petitioners being protected tenants under the provisions of the Delhi Rent Control Act, 1958 cannot be evicted in the present proceedings.

10. Per contra, learned counsel appearing for the respondent-bank submits that possession *qua* property no. 424, Ward No. XI situated at Gali Panna Wali, Matia Mahal, Jama Masjid, Delhi-110006, measuring 351 sq. yards, has already been taken over by the bank on 3rd April, 2024.

11. He further submits that the present proceedings shall not be maintainable.

12. Responding to the same, learned counsel appearing for the petitioner has relied upon the judgment of the Supreme Court in the case of ***Vishal N. Kalsaria Versus Bank of India and Others*** reported as ***(2016) 3 SCC 762*****,** wherein it has been held as under:

> *"xxx xxx xxx*
>
> ***29.*** *When we understand the factual matrix in the backdrop of the objectives of the above two legislations, the controversy in the instant case assumes immense significance. There is an interest of the Bank in recovering the non-performing asset on the one hand, and protecting the right of the blameless tenant on the other. The Rent Control Act being a social welfare legislation, must be construed as such. A landlord cannot be permitted to do indirectly what he has been barred from doing under the Rent Control Act, more so when the two*

legislations, that is the Sarfaesi Act and the Rent Control Act operate in completely different fields. While the Sarfaesi Act is concerned with non-performing assets of the banks, the Rent Control Act governs the relationship between a tenant and the landlord and specifies the rights and liabilities of each as well as the rules of ejectment with respect to such tenants. The provisions of the Sarfaesi Act cannot be used to override the provisions of the Rent Control Act. If the contentions of the learned counsel for the respondent Banks are to be accepted, it would render the entire scheme of all Rent Control Acts operating in the country as useless and nugatory. Tenants would be left wholly to the mercy of their landlords and in the fear that the landlord may use the tenanted premises as a security interest while taking a loan from a bank and subsequently default on it. Conversely, a landlord would simply have to give up the tenanted premises as a security interest to the creditor banks while he is still getting rent for the same. In case of default of the loan, the maximum brunt will be borne by the unsuspecting tenant, who would be evicted from the possession of the tenanted property by the Bank under the provisions of the Sarfaesi Act. Under no circumstances can this be permitted, more so in view of the statutory protections to the tenants under the Rent Control Act and also in respect of contractual tenants along with the possession of their properties which shall be obtained with due process of law.

xxx xxx xxx

37. *It is a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the Sarfaesi Act as that would amount to stultifying the statutory rights of protection given to the tenant. A non obstante clause (Section 35 of the Sarfaesi Act) cannot be used to bulldoze the statutory rights vested in the tenants under the Rent Control Act. The expression "any other law for the time being in force" as appearing in Section 35 of the Sarfaesi Act cannot mean to extend to each and every law enacted by the Central and State Legislatures. It can only extend to the laws operating in the same field.*

xxx xxx xxx"

(Emphasis Supplied)

13. Thus, it is submitted by learned counsel for the petitioner that the SARFAESI Act and the Rent Control Act operate in completely different

fields.

14. By referring to the aforesaid judgment, it is further submitted that Supreme Court has categorically held that a tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act, as that would amount to stultifying statutory rights of protection given to the tenant.

15. I have heard learned counsel for the parties and have perused the record.

16. Perusal of the court record clearly shows that the proceedings under the SARFAESI Act have been initiated by the respondent-bank, since the loan where the owners of the property in question were guarantors, has been declared as a Non Performing Asset ("NPA"). However, it is to be noted that the petitioners have an alternative remedy, which is an effective remedy, in terms of Section 17 of the SARFAESI Act, which reads as under:

> *"xxx xxx xxx*
>
> ***17. [1][Application against measures to recover secured debts].***-- *(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [2][may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within fortyfive days from the date on which such measure had been taken:*
>
> *[3][Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]*
>
> *[4][Explanation.--For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]*
>
> *[5][(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—*

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

[6]*[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.*

[7]*[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,--*

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

[8]*[(4A) 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 subsection (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.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]

xxx xxx xxx"

17. Thus, the present petition as such would not be maintainable before this Court. However, this Court notes that the Supreme Court in the aforesaid case of ***Vishal N. Kalsaria (Supra)*** has categorically held that the

statutory tenants cannot be evicted by using the provisions of the SARFAESI Act.

18. Though, the petitioners have been able to show valid rights in their favour, however, this Court is of the opinion that all the submissions which the petitioners have raised before this Court, can be raised before the learned Debt Recovery Tribunal ("DRT") and that the petitioners have an alternate and efficacious remedy in terms of the SARFAESI Act.

19. Thus, the petitioners have a valid and legal subsisting right over the property in question, which cannot be taken away by resorting to proceedings under the SARFAESI Act.

20. This Court also notes the submissions made by learned counsel for the petitioners that the petitioners need time to collect the various documents so that they can approach the learned DRT in accordance with Section 17 of the SARFAESI Act.

21. Considering the submissions made before this Court, the petitioners are granted liberty to approach the learned DRT in terms of Section 17 of the SARFAESI Act. However, it is directed that no coercive steps shall be taken against the petitioners for a period of three weeks from today, in order to enable the petitioner to approach the learned DRT in terms of provisions of the SARFAESI Act.

22. With the aforesaid directions, the present writ petition is disposed of, along with the pending applications.

MINI PUSHKARNA, J

APRIL 9, 2024
ak