

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 898 of 2023

Authorised Officer, State Bank of India, SARC & Anr.
Vs.
Smt. Juthika Debnath & Ors.

Ms. Shohini Chakraborty
Mr. Anirban Pramanick
Mr. Punarbasu Nath
Ms. Bhagyasree Dey
... For the petitioners

Mr. Rittick Chowdhury
Mr. Ramij Munshi
Ms. Muskan Agarwal
... For the opposite party nos.2, 3 & 4

1. This revisional application has been filed assailing the order dated 22nd February, 2023 passed in connection with Title Suit No.973 of 2021 wherein the learned Civil Judge (Senior Division), 9th Court, Alipore, South 24-Parganas, rejected an application under Order VII Rule 11(d) read with Section 151 of the Code of Civil Procedure filed by the defendant nos.4 and 5.

2. Application under Order VII Rule 11(d) read with Section 151 of the Code of Civil Procedure was filed on 11th November, 2021 with a prayer for rejection of plaint on the ground of the provision of Section 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

(hereinafter referred to as 'the SARFAESI Act') which deals with bar of jurisdiction of civil court.

3. A suit was filed by the plaintiff/opposite party no.1 herein with a prayer for declaring the right of tenancy in respect of the suit premises as well as consequential relief of permanent injunction restraining the defendants, including the defendant nos.4 and 5/petitioners herein from interfering with the peaceful possession of the plaintiff/opposite party no.1 herein.

4. In the plaint, it has been delineated by the plaintiff that she was tenant in respect of the suit premises at a monthly rental of Rs.20,000/- payable according to English Calendar month. She used to pay rent to the landlords/defendant nos.1 to 3 till the month of August, 2021. Thereafter, she received one notice under Section 13(2) of the SARFAESI Act on 1st September, 2021 with a direction to vacate the suit premises. Thereafter, the landlords/opposite party nos.2 to 4 herein also refused to accept the rent on and from September, 2021. It was further averred in the plaint that on 25th September, 2021, some men and agents of the defendant nos.4 and 5 entered into the suit premises and directed the plaintiff to vacate within fifteen days. According to the plaintiffs, cause of action arose in the suit on 12th September, 2021 when she received the notice under Section 13(2) of the SARFAESI Act dated 1st September, 2021 and also on 25th September, 2021 when men and agents of the

defendant nos.4 and 5/petitioners herein entered into the subject premises and directed the plaintiffs to vacate.

5. In that suit, defendant nos.4 and 5 filed an application under Order VII Rule 11(d) of the Code of Civil Procedure which was refused, particularly on the basis of the following decisions:-

1. (2004) 4 SCC 311;
2. (2012) 2 Cal LT 150 (HC);
3. (2011) 3 Cal LT 219 (HC);
4. (2014) 6 SCC 1, and
5. (2016) 3 SCC 762 (**Vishal N. Kalsaria v. Bank of India & Ors.**).

6. Ms. Shohini Chakraborty, learned counsel, appearing on behalf of the petitioners, has drawn my attention to the provision of Section 34 of the SARFAESI Act and to add to that, Section 14(4A) of the SARFAESI Act and has submitted that civil court has no jurisdiction to decide the issue involving notice under Section 13(2) of the SARFAESI Act.

7. Per contra, learned counsel appearing on behalf of the opposite parties has tried to make this Court understand that the right of a bona fide tenant cannot be curtailed by the provision of the SARFAESI Act overriding the law envisaged under the West Bengal Premises Tenancy Act as well as the Transfer of Property Act. In support of his contention, he relied on the ratio of **Vishal**

N. Kalsaria (supra), particularly paragraphs 29, 30 and 37.

8. Alternatively, the learned counsel appearing on behalf of the opposite parties has submitted that liberty may be given to the opposite parties to file appropriate application before the Debts Recovery Tribunal in terms of the provision of Section 17(4A) of the SARFAESI Act.

9. In **Vishal N. Kalsaria** (supra), the Hon'ble Apex Court noted down the following principles, particularly, in paragraphs 29, 30, and 37, which run as follows:-

“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 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 ejection 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.

30. The issue of determination of tenancy is also one which is well settled. While Section 106 of the Transfer of Property Act, 1882 does provide for registration of leases which are created on a year-to-year basis, what needs to be remembered is the effect of non-registration, or the creation of tenancy by way of an oral agreement. According to Section 106 of the Transfer of Property Act, 1882, a monthly tenancy shall be deemed to be a tenancy from month to month and must be registered if it is reduced into writing. The Transfer of Property Act, however, remains silent on the position of law in cases where the agreement is not reduced into writing. If the two parties are executing their rights and liabilities in the nature of a landlord-tenant relationship and if regular rent is being paid and accepted, then the mere factum of non-registration of deed will not make the lease itself nugatory. If no written lease deed exists, then such tenants are required to prove that they have been in occupation of the premises as tenants by producing such evidence in the proceedings under Section 14 of the SARFAESI Act before the learned Magistrate. Further, in terms of Section 55(2) of the special law in the instant case, which is the Rent Control Act, the onus to get such a deed registered is on the landlord. In light of the same, neither the landlord nor the banks can be permitted to exploit the fact of non registration of the tenancy deed against the tenant.

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 on 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.”

10. Learned Trial Judge relied on the ratio of the cases which dealt with the issues that cropped up prior to 1st September, 2016 when the provision of Section 17(4A) of the SARFAESI Act came into force by the Act 44 of 2016.

11. The provision of Section 17(4A) of the SARFAESI Act was inserted to provide a forum to the tenant after the tenanted premises was taken into consideration by the Debts Recovery Tribunal through the provisions of the SARFAESI Act. Prior to the insertion of the provision of Section 17(4A), in my opinion, there was no such provision in the SARFAESI Act. All the cases relied on by the learned Trial Judge were decided prior to 1st September, 2016 when the provision of Section 17(4A) was not in force. None of the cases relied on deals with the jurisdiction of the civil court in terms of the provision of Section 34 as well as Section 17(4A) of the SARFAESI Act.

12. Therefore, after a conjoint reading of the provision of Section 34 as well as Section 17(4A) of the SARFAESI Act, there is hardly any doubt to hold that the right of a tenant can be decided by the Debts Recovery Tribunal under Section 17(4A) of the SARFAESI Act and, accordingly, a tenant has no other option but to pry into the track of the provision of Section 17(4A) of the SARFAESI Act.

13. Aforementioned discussion clearly boils down to the position that Title Suit No.973 of 2021 is expressly barred under the provision of Sections 34/17(4A) of the SARFAESI Act and clearly comes within the purview of Order VII Rule 11(d) of the Code of Civil Procedure.

14. As a sequel, the order dated 22nd February, 2023 passed in connection with Title Suit No.973 of 2021 stands set aside.

15. The plaint of the Title Suit No.973 of 2021 stands rejected.

16. However, plaintiff/opposite party no.1 is at liberty to file an appropriate application before the appropriate forum.

17. With the aforesaid observation, the revisional application stands disposed of.

18. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)