Before Rakesh Kumar Jain, J.

STATE BANK OF INDIA —*Petitioner*

versus

ADDITIONAL DEPUTY COMMISSIONER-CUM-DISTRICT MAGISTRATE, JALANDHAR AND OTHERS — *Respondents*

CWP-COM NO.38 OF 2016

May 01, 2017

Constitution of India, 1950 —Art. 226, 227—Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) —Ss. 13(2), 13(4), 14, and 17(4-A) — Respondent No.2, partnership firm availed loan facilities from petitioner —Respondent No. 4, partner in the firm created equitable mortgage of a house for the loan and deposited title deeds — Petitioner filed original application before Debts Recovery Tribunal (DRT) for recovery of loan amount as Respondent No.2 defaulted in repayment — Proceedings also taken out under Section 14 of the Act — District Magistrate directed the Tehsildar to take over possession of the mortgaged property — Owner-mortgager of property caused a collusive suit to be filed by respondent No.5, who claimed to be a tenant and obtained ad interim injunction — Tehsildar stayed his hands in the matter because of the injunction order and on reference of the matter to the District Magistrate, the latter ordered that the petitioner could only take symbolic possession, and matters regarding tenancy etc. were to be decided by Civil Court.

Noticing Section 17(4-A) of the SARFAESI Act, the High Court held that it is the exclusive jurisdiction of the DRT to decide such issues —High Court also noticed that there was no mention regarding the tenancy in the year 2008 when the loan was obtained, though the tenancy allegedly commenced in the year 2002 — No such plea was taken by respondent No.4 in the SA before the DRT — In the circumstances, Court came to conclusion that the property was never given out on rent, and left it to the petitioner to launch appropriate civil and criminal action against the respondents — Writ petition allowed.

Held that in view of the position explained above, following two questions have arisen for determination:-

1. Whether the impugned order is patently illegal and erroneous in view of the decision rendered by the Supreme Court in Harshad Govardhan Sondagar's case (supra)?

2. Whether the DRT only has the jurisdiction to decide the issue regarding the possession of respondent no.5 as a tenant on the property in question after 01.09.2016 by virtue of an amendment in Section 17(4-A) of the Act and whether the bank can prosecute respondents no.3 and 4 for making false averments in the Securitization Application?

(Para 10)

Further held that, in so far as the first question is concerned, the issue is no more res integra because it has been held by the Supreme Court in Harshad Govardhan Sondagar's case (supra) that the jurisdiction would vest with the District Magistrate to decide all the issues pertaining to Section 14 of the Act. The judgment relied upon by counsel for respondent no.5 in Vishal N. Kalsaria's (supra) would be of no help to him because it has to be decided by the DRT as to whether the tenancy was created before or after the mortgage. There is no doubt that if the bank had taken the mortgaged property along with a tenant, then the bank would take symbolic possession along with the tenant sitting over the property but if the tenancy was created after the property was mortgaged with the bank, then the tenant would not have any protection of the provisions of the Rent Control Act. Even otherwise, after the amendment dated 01.09.2016, by virtue of Section 17(4-A) of the Act, it is the exclusive discretion of the DRT to decide such issues.

(Para 11)

Further held that, consequently, the first question is decided in favour of the petitioner, holding that the order passed by the District Magistrate is patently erroneous and illegal whereby he has directed the petitioner to approach the Civil Court for a decision about relationship of landlord and tenant and it can take only symbolic possession.

(Para 12)

Further held that, in so far as the second question is concerned, this Court relies upon the affidavits filed by the parties. The averments made in the affidavit filed by respondent no.4 have already been noticed in which she has specifically stated that the whole property in question is in her possession and no part of it is either on lease or rent.

Respondents no.2 to 4 nowhere mentioned in SA No.200 of 2014 filed on 03.03.2014 that any part of the property is on rent, rather it was claimed that if they would be dispossessed, then they would loose their right to live. If respondents no.2 to 4 were not actually in possession of the property in question, then they could have easily mentioned this fact in the pleadings caused in the SA filed by them before the DRT, which have also been verified by them as true and correct to their knowledge. If the property in question was already let out in the year 2002 and the loan was obtained in the year 2008, it could have also been very easily mentioned in the affidavit that a portion of the property is on rent. However, nothing has been mentioned either in the affidavit or in the pleadings of the SA because of the reason that the property was not on rent either in part or as a whole and, thus, the Civil Suit filed by respondent no.5 is actually at the behest of respondents no.2 to 4, who wanted to protect their possession in any case.

(Para 13)

Further held that, Thus, in my considered opinion such type of cases have to be dealt with sternly where the process of law is being tried to be misused by the unscrupulous litigants and hence, I leave it to the petitioner to launch appropriate proceedings, both civil as well as criminal, against respondents no.3 and 4 for causing false pleadings.

(Para 14)

Rakesh Gupta, Advocate
for the petitioner.

Suresh Singla, Addl. A.G., Punjab.

Atul Sharma, Advocate,
for respondents no.2 to 4.

Pankaj Bali, Advocate,
for respondent no.5.

RAKESH KUMAR JAIN, J. (ORAL)

(1) The petitioner has challenged the order passed by respondent no.1 dated 30.06.2016 by which application filed by it under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "Act") has been dismissed, relegating the petitioner to the Civil Court to seek its remedy.

(2) In short, respondent no.2., a partnership firm, was

constituted by four partners including respondents no.3 and 4 besides the other two partners, namely, Sandeep Jain S/o Surinder Pal Jain and Surinder Pal Jain S/o Babu Ram. Respondent no.2 availed financial facilities to the tune of Rs.2.75 crores from the petitioner-bank after executing security documents and after accepting the terms and conditions conveyed vide arrangement letter dated 19.09.2008. Respondent no.4 created an equitable mortgage of her house measuring 17 marlas and 81 sq. feet bearing House No.455-A, New Jawahar Nagar, Jalandhar. Original title deeds bearing registration No.6095 dated 21.10.1994 were handed over to the bank along with memorandum of mortgage. An affidavit was also filed by respondent no.4 that the property in question was self-occupied. It is alleged that the borrower failed to keep the financial discipline and their account was classified as Non Performing Asset (NPA)'. Notice under Section 13(2) of the Act was served upon respondents no.2 to 4 on 21.11.2013 and since the payment was not made within the stipulated period, therefore, possession notice was served upon them on 19.02.2014 and symbolic possession was taken. The petitioner, thereafter, filed Original Application No.473 of 2013 before the Debts Recovery Tribunal-II, Chnadigarh (hereinafter referred to as the "DRT") for recovery of an amount of Rs.2,66,76,796/- as on 31.05.2014. The petitioner also issued possession notice under Section 13(4) of the Act to the borrower on 19.09.2014. In order to protect their possession, respondents no.3 and 4 filed S.A. No.200 of 2014 before the DRT, claiming themselves to be the owners in possession of the house in question. The said SA was contested by the petitioner and no interim stay was granted in it to the owner/mortgagor. The aforesaid SA is still pending. In the meantime, the petitioner filed an application under Section 14 of the Act to the District Magistrate, Jalandhar who, vide his order dated 22.05.2014, granted necessary assistance and directed the Tehsildar, Jalandhar to take physical possession of the mortgaged property in order to hand it over to the petitioner. Since the owner/mortgagor failed to get any interim order, therefore, it filed a collusive suit for permanent injunction at the instance of respondent no.5, who claimed to be in possession of the house in question as a tenant. In the said suit, an application was also filed for interim injunction. Since it was a collusive suit, therefore, written statement was filed by respondent no.4 admitting tenancy of respondent no.5, as a result thereof, interim injunction order was passed by the Civil Court on 19.04.2014. Since the petitioner came to know about the injunction order, therefore, it moved an application under Order 1 Rule 10 CPC in order to inform

the Civil Court that the suit is collusive in nature but the said application was dismissed on 16.07.2015. The Tehsildar, to whom the direction was issued by the District Magistrate to take physical possession of the house in question, did not cooperate on the pretext that there was an injunction order, which led to the filing of an application before the District Magistrate by the petitioner to pass further orders in this regard so that the petitioner may take physical possession of the secured asset as the injunction granted by the Civil Court was not against it. The District Magistrate, vide impugned order dated 30.06.2016, dismissed the application holding that the petitioner can only take symbolic possession as the determination of tenancy as well as the other issues raised by the bank are beyond its jurisdiction and can only be decided by the competent Civil Court. He also observed that the bank may approach the Civil Court for eviction of the tenant/objector by following due process of law.

(3) Counsel for the petitioner has submitted that the impugned order is patently illegal and erroneous because in the affidavit dated 16.09.2008, it is averred by respondent no.4 that she is the absolute owner in possession of the suit property and no portion of it was on rent or lease. It is further submitted that respondents no.2 to 4 have averred categorically in their SA No.200 of 2014 filed on 3.03.2014 that "*because, as if the bank is permitted to proceed against the solitary residential house of the applicants, the applicants would lose their respect and right to live".* It is further submitted that respondents no.2 to 4 did not mention anywhere in the SA that the property in question or part of it has already been rented out.

(4) Counsel for the petitioner has relied upon a decision of the Supreme Court rendered in the case of ***Harshad Govardhan Sondagar*** versus ***International Assets Reconstruction Co. Ltd. and others***[1] to contend that it was incumbent upon the District Magistrate to decide the controversy about the tenancy while deciding the application filed under Section 14 of the Act instead of relegating the matter to the Civil Court. He has also referred to an amendment brought in the Act by Act No. 44 of 2016, by virtue of Section 14(iv) w.e.f. 1.09.2016, by which Section 17(4-A) has been inserted, wherein it is provided as under:-

> (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

[1] 2014(3) R.C.R. (Civil) 501

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 65-A 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 sub-section(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) It is further submitted that now the jurisdiction lies with the DRT to decide about as to whether the mortgaged property/secured asset is in possession of third party as lessee or tenant.

(6) Counsel for the petitioner has further relied upon the decisions rendered by this Court in the cases of NEC Packaging Limited vs. Punjab National Bank and others, CWP-COM No. 39 of 2017, decided on 16.03.2017, Dil Bahadur Singh vs. State Bank of India and others, CWP No. 26351 of 2016, decided on 19.12.2016 and a decision of the Supreme Court rendered in the case of ***Jagdish Singh*** versus ***Heeralal and others***[2] to contend that the Civil Court does not have the jurisdiction to decide about the relationship of landlord and tenant.

(7) On the other hand, counsel for respondent no.5 has submitted that since the property in question is in his possession as a tenant, therefore, only the law regulating the relationship of landlord and tenant can apply i.e. the Rent Control Act and in this regard, he has relied upon a decision of the Supreme Court rendered in the case of

[2] 2014(2) PLR 649

Vishal N. Kalsaria versus ***Bank of India and others***[3].

(8) Counsel for respondents no.2 to 4 has rather submitted that since part of the property in question is in possession of respondent no.5, therefore, the DRT alone has the power to decide the said issue. It is further submitted by him that the tenancy was created in the year 2002, prior to the date on which the loan was advanced.

(9) I have heard learned counsel for the parties and examined the available record with their able assistance.

(10) In view of the position explained above, following two questions have arisen for determination:-

> 1) Whether the impugned order is patently illegal and erroneous in view of the decision rendered by the Supreme Court in Harshad Govardhan Sondagar's case (supra)?
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> 2) Whether the DRT only has the jurisdiction to decide the issue regarding the possession of respondent no.5 as a tenant on the property in question after 01.09.2016 by virtue of an amendment in Section 17(4-A) of the Act and whether the bank can prosecute respondents no.3 and 4 for making false averments in the Securitization Application?

(11) In so far as the first question is concerned, the issue is no more *res integra* because it has been held by the Supreme Court in Harshad ***Govardhan Sondagar's*** case (supra) that the jurisdiction would vest with the District Magistrate to decide all the issues pertaining to Section 14 of the Act. The judgment relied upon by counsel for respondent no.5 in ***Vishal N. Kalsaria's*** (supra) would be of no help to him because it has to be decided by the DRT as to whether the tenancy was created before or after the mortgage. There is no doubt that if the bank had taken the mortgaged property along with a tenant, then the bank would take symbolic possession along with the tenant sitting over the property but if the tenancy was created after the property was mortgaged with the bank, then the tenant would not have any protection of the provisions of the Rent Control Act. Even otherwise, after the amendment dated 01.09.2016, by virtue of Section 17(4-A) of the Act, it is the exclusive discretion of the DRT to decide such issues.

(12) Consequently, the first question is decided in favour of the

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[3] 2016(1) R.C.R.(Civil) 911

petitioner, holding that the order passed by the District Magistrate is patently erroneous and illegal whereby he has directed the petitioner to approach the Civil Court for a decision about relationship of landlord and tenant and it can take only symbolic possession.

(13) In so far as the second question is concerned, this Court relies upon the affidavits filed by the parties. The averments made in the affidavit filed by respondent no.4 have already been noticed in which she has specifically stated that the whole property in question is in her possession and no part of it is either on lease or rent. Respondents no.2 to 4 nowhere mentioned in SA No.200 of 2014 filed on 03.03.2014 that any part of the property is on rent, rather it was claimed that if they would be dispossessed, then they would loose their right to live. If respondents no.2 to 4 were not actually in possession of the property in question, then they could have easily mentioned this fact in the pleadings caused in the SA filed by them before the DRT, which have also been verified by them as true and correct to their knowledge. If the property in question was already let out in the year 2002 and the loan was obtained in the year 2008, it could have also been very easily mentioned in the affidavit that a portion of the property is on rent. However, nothing has been mentioned either in the affidavit or in the pleadings of the SA because of the reason that the property was not on rent either in part or as a whole and, thus, the Civil Suit filed by respondent no.5 is actually at the behest of respondents no.2 to 4, who wanted to protect their possession in any case.

(14) Thus, in my considered opinion such type of cases have to be dealt with sternly where the process of law is being tried to be misused by the unscrupulous litigants and hence, I leave it to the petitioner to launch appropriate proceedings, both civil as well as criminal, against respondents no.3 and 4 for causing false pleadings.

(15) With these observations, the second question is decided accordingly.

(16) Ultimately, the present writ petition is hereby allowed and the impugned order is set aside with a further direction to respondent no.4 to make payment of Rs.50,000/- as costs to the petitioner-bank within a period of one month from today.

P.S. Bajwa