(2019) 02 MP CK 0087

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1604 Of 2019

Abhishek Tiwari APPELLANT

Vs

State Of Madhya Pradesh & Others RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 — Section 13(2), 13(4), 14, 17(4A)
Transfer of Property Act, 1882 — Section 65A

Citation : (2019) 02 MP CK 0087

Hon'ble Judges : S. C. Sharma, J;Virender Singh, J

Bench : Division Bench

Advocate : Manoj Kumar Songare

Judgement

The petitioner before this court has filed this present petition stating that action has been initiated by Andhra Bank against the petitioner and he is a tenant in respect of premises in question under the provisions of SARFAESI Act, 2002.

Shri Amit Bhatia, learned counsel for respondent No.4 at the outset has argued before this court that even if the petitioner is a tenant, in the light of sub-section 4A of Section 17 of the SARFAESI Act, 2002 which has come into force with effect from 1.9.2016, the petitioner does have a remedy only before the Debt Recovery Tribunal. He has placed reliance upon a judgment delivered by Division Bench of this court in the case of Swastik Coal Corporation Pvt. Ltd. Vs. District Magistrate & Competent Authority and others in WP No.20509/2018 on 6.9.2018 and Para-2 to 6 reads as under:-

"2. The respondent No. 3 is a borrower of the respondent No.2 and had mortgaged Secured Assets on 27/04/2011. As dues were not paid by the respondent No.3, therefore, his account was declared NPA and notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short ... "the SARFAESI Act, 2002") was issued on 12/10/2017. Thereafter, notice under Section 13(4) was issued on 9/01/29018 to the petitioner. After taking symbolic possession, a proceeding under Section 14 of the SARFAESI Act of 2002 has been initiated by the respondent No.2 Bank before the District Magistrate, Indore.

3. Learned counsel for the petitioner has submitted that the Bank has filed an incomplete application before the respondent No.1 without showing the factum of tenancy in the Secured Assets, much prior to taking of credit facility by the respondent No.3 in the year 2011. The petitioner is the tenant of the premises in question and, therefore, he filed an application for intervention vide Annexure-P/4 on 27/08/2018, but the respondent No.1 refused to receive the application and, therefore, the present writ petition has been filed on the ground that against the action of non-acceptance of petitioner's application for intervention is violative to Article 14, 19 and 21 of the Constitution of India. He has also drawn our attention to the decision of the Apex Court in the case of Vishal N. Kalsaria vs. Bank of India & Ors. reported in (2016) 3 SCC 762 and Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited & Ors., reported in (2014) (O) AIJEL SC 55360 and the Single Bench of Principal seat at Jabalpur in the case of Prafulla Kumar Maheshwari Vs. Authorized Officer & Chief Manager & Ors., passed in W.P. No.10649/2017 decided on 22/11/2017 wherein the learned writ court after considering the judgment of the Apex Court in the case of Vishal N. Kalsaria vs. Bank of India & Ors.(supra) came to the conclusion the secured creditor is required to disclose his tenancy before the District Magistrate and quashed the order passed by the District Magistrate.

4. After the judgment of Apex Court, Sub-section 4(A) of Section 17 of the SARFARSI Act, 2002 has been inserted by Act No.44 of 2016 on 1.9.2016 which reads as under :-

"[(4-A) Where-

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured assets, 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 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 6 of 8 accordance with the provisions of this Act.]"

5. In view of statutory remedy available to the petitioner-tenant, we dismiss this writ petition with liberty to assail the action of the District Magistrate by filing an application before the Debts Recovery Tribunal under Section 17(4A) of the SARFAESI Act.

6. With the aforesaid liberty, W.P. No.20509/2018, W.P. No.20510/2018 and W.P. No.20511/2018 are dismissed."

In the light of the aforesaid as there is a statutory remedy available to the petitioner, the writ petition is dismissed with liberty to the petitioner to file an appropriate application before the Debt Recovery Tribunal under Section 17(4A) of the SARFAESI Act, 2002.

With the aforesaid, the admission is declined.

