
(2014) 12 UK CK 0033

In the Uttarakhand High Court

Case No : Writ Petition No. 2030 of 2014 (M/S)

Bansidhar Chaman Lal

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 13(4), 14

Citation : AIR 2015 UC 32 : (2015) 2 UC 1589

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : Lok Pal Singh, for the Appellant; A.K. Joshi, Addl. C.S.C., K.K. Shah and Rajat Mittal, for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J. Undisputedly, respondent No. 3 availed loan/credit facilities from the Allahabad Bank in the year 2010; respondent No. 3 of which respondent Nos. 4 and 5 are partners failed to discharge the liability, therefore, Bank was pleased to issue notices to the respondent Nos. 3, 4 and 5 under Section 13(4) of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on 02.07.2012; thereafter, possession was taken on 02.08.2014 of entire property bearing Municipal No. 30/A (New No. 65) Arhat Bazar, Dehradun measuring 198.09 sq. metre; petitioner, claiming himself as tenant of the shop on the ground Floor of the property bearing Municipal No. 30/A (new number 65) Arhat Bazar, Dehradun, approached this Court by way of present petition saying petitioner was inducted as tenant in the shop, in question, long before @ Rs. 53/- p.m.; eviction proceedings were also initiated against the tenant/petitioner by the landlord under Section 21(1)(a) of Act No. 13 of 1972 in the year 1993 which was registered as P.A. Case No. 120 of 1993; P.A. Case No. 120 of 1993 under Section 21(1)(a) of the Act was dismissed vide judgment dated 24.12.1997 and appeal arising therefrom was also dismissed by the Appellate Authority; Bank in the garb of the proceedings under Section 13(4)

of the Act cannot dis-possess the established tenant, however, Bank can take only symbolic possession of the tenanted portion, therefore, sealing of the tenanted shop is illegal and Bank should be directed to reopen the seal of the shop in possession of the petitioner. I have heard Mr. Lok Pal Singh, learned counsel for the petitioner and Mr. K.K. Sah, learned counsel for respondent No. 2 Bank and Mr. Rajat Mittal, learned counsel for the borrower/respondent Nos. 3, 4 and 5 and have carefully perused the record.

2. There is no dispute that loan facility was availed by respondent Nos. 3 to 5 in the year 2010 while petitioner tenant was inducted as tenant about three decades before taking loan from the Bank. Not only this eviction proceeding was initiated by the landlord/borrower against the petitioner tenant in the year 1993 which was ultimately decided in favour of the tenant petitioner way back in the year 1997, therefore, submission of Mr. K.K. Sah, Advocate, appearing for the Bank, that eviction proceeding was collusive cannot be accepted for the simple reason that in the year 1993 when eviction suit was filed neither petitioner nor respondent Nos. 3, 4 and 5 could have thought that loan would be taken after almost two decades and therein default would be made by the borrower and defence would be set up to save the shop.

3. Section 13(4) and Section 14 of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are being reproduced hereunder :

"(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

2[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of business of the borrower which is relatable to the security for the debt".]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may

become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

Section 14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.--

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him--

(a) take possession of such asset and documents relating thereto; and

(b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority."

4. A bare perusal of clause (a) of Section 13(4) would demonstrate that secured creditor may take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset. Language of Section 14 of the Act also demonstrate that Chief Metropolitan Magistrate or District Magistrate as the case may be may take or cause to be taken such steps for use, or cause to be used, such force as may in his opinion, require to take possession of such asset from the possession of the borrower. Meaning thereby, such possession shall be taken from the borrower, which borrower has. In other words, physical possession can be taken of the secured asset from the possession of the borrower wherein borrower himself is in actual physical possession, however, where borrower is not in actual physical possession and has only symbolic possession and actual possession is with the tenant then such tenant cannot be evicted or dispossessed in the garb of sub-section (4) of Section 13 read with Section 14 of the Act and in that event secured creditor can take only symbolic possession over the secured asset which borrower was having. Consequently, writ petition succeeds and is hereby allowed. Respondent Nos. 1 and 2 are directed to open the seal of the tenanted property forthwith and to allow the petitioner tenant to use tenanted property in

accordance with law. However, the Bank or transferee from the Bank shall be at liberty to recover the rent from the tenant petitioner as well as to initiate appropriate eviction proceedings in accordance with law.