
(2018) 09 BOM CK 0097

In the Bombay High Court

Case No : Civil Revision Application No.80 Of 2018

Dena Bank Through Its Manager, Sitaburdi Branch, Nagpur	APPELLANT
Vs	
Pravin Vitthalrao Dorkhande And Another	RESPONDENT

Date of Decision : 26-09-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 7 Rule 11, Order 7 Rule 11(d)
Securitization and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 13, 13(4), 17(1), 17(4A), 34

Citation : (2018) 09 BOM CK 0097

Hon'ble Judges : A.S.Chandurkar, J

Bench : Single Bench

Advocate : S.D.Khati, S.N.Fuladi, H.F.Karbhari, R.Umbarwel

Final Decision : Allowed

Judgement

1. Admit.
2. Heard finally with the consent of the learned counsel for the parties.
3. The applicant is the original defendant no.2 in the suit that is filed by the non applicant no.1 for grant of temporary injunction seeking to restrain the defendants from evicting the plaintiff from the suit premises without following the due process of law. In that suit, the defendant no.2 filed an application under the provisions of Order VII Rule 11(d) of the Code of Civil Procedure, 1908, (for short, the Code) seeking rejection of the plaint. By the impugned order dated 21.03.2018 that application has been rejected.
4. In the suit, it is case of the original plaintiff that he has entered into a tenancy agreement in respect of flat no. CÂ702 on 10.10.2015 with the defendant no.1. That agreement was for a period of four years and the plaintiff was paying Rs.8,000/Âper month as rent. On 31.07.2017, the

Additional Collector passed an order permitting the defendant no.2 to present applicant to take vacant possession of the flat in question. According to

the plaintiff, as he is the tenant of defendant no.1, he is not liable to be evicted from the suit premises on the basis of order dated 31.07.2017. On

that basis, the aforesaid suit came to be filed.

5. The defendant no.2 which is a Bank and a creditor of the defendant no.1 filed an application under the provision of Order VII Rule 11 of the Code

on the ground that in the light of provisions of Section 17(4A) read with 13(4) of the Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (for short, the Act of 2002), the Civil Court had no jurisdiction to entertain the suit. That application was

opposed by the original plaintiff. The trial Court by the impugned order held that on perusal of the plaint, it could not be said that the suit was barred

by law. The application was accordingly rejected. Being aggrieved, the defendant no.2 has challenged the said order.

6. Shri S.D.Khati, learned counsel for the applicant submitted that on a plain reading of the plaint, it was clear that the suit was not maintainable and

the plaint was liable to be rejected. In the plaint, it was pleaded that there was a tenancy agreement in respect of flat no. C/702 and with regard to

the same flat, the Additional Collector had passed an order on 31.07.2017 in proceedings under Section 13 of the Act of 2002. The plaintiff was

claiming right on the basis of the tenancy agreement and in view of the provisions of Section 17 (4A) of the Act of 2002, that right could be

determined only in proceedings under Section 17(1) of the Act of 2002. He also referred to the provisions of Section 34 of the Act of 2002 to urge

that the jurisdiction of the Civil Court to entertain such claim was specifically barred. It was further submitted that the decision relied upon by the

trial Court in the case of Vishal N. Kalsaria Vs. Bank of India and others, reported in 2016(5) Mh.L.J. 321, would not be applicable considering the

fact that the provisions of Section 17 have been subsequently amended. It was thus submitted that the plaint was liable to be rejected.

7. Shri H.F.Karbhari, learned counsel for the non-applicant no.1 plaintiff supported the impugned order. According to him, the suit was maintainable

before the trial Court as the plaintiff was not a party to the alleged transaction between defendant no.1 and defendant no.2. Merely because the

tenancy agreement was not registered, the same would not be a reason for rejecting the plaint. The plaintiff was seeking to protect his possession and his prayer was that he should not be evicted without following the due process of law. The plaintiff was not concerned with the dispute between defendant no.1 and defendant no.2. It was submitted that the trial Court rightly considered the law in this regard and rejected the application. There was no jurisdictional error committed by the trial Court.

8. I have heard learned counsel for the parties and I have perused the plaint averments in the suit. As per the averments made in the plaint, defendant no.1 and the plaintiff entered into a tenancy agreement in respect of flat No. CÂ702 on 10.10.2015. That agreement was for a period of four years.

However, according to the plaintiff on 31.07.2017, the Additional Collector passed an order permitting the defendant no.2 to obtain possession of the suit premises. One of the prayers made in the plaint is to restrain the defendant no.2 from evicting the plaintiff on the basis of that order dated 31.07.2017.

From the pleadings in the plaint, it is clear that the plaintiff claims to be a tenant of the suit property and according to him, he has been inducted by the defendant no.1. The order dated 31.07.2017 has been passed in favour of the defendant no.2 which entitles it to recover possession by having recourse to the provisions of the Act of 2002.

9. The provisions of Section 17 of the Act of 2002 have been amended by Act No.44 of 2015 and subÂsection 4(A) has been added to Section 17.

As per this provision, any person including a borrower, who is aggrieved by any of the measures referred to in Section 13(4) of the Act of 2002 being taken by a secured creditor can approach the Debts Recovery Tribunal and can raise grievance in that regard. A person claiming tenancy or

leasehold rights is also entitled to make such application under Section 17 of the Act of 2002. As per the provisions of Section 34 of the Act of

2002, the Civil Court has no jurisdiction to entertain any suit or proceedings with regard to any matter which the Debts Recovery Tribunal is

empowered under the Act of 2002 to adjudicate. Thus, on reading of the provisions of Section 17(4ÂA) and Section 34 of the Act of 2002, it

becomes clear that a person claiming tenancy or leasehold rights with regard to

a secured asset if aggrieved by any measure taken under Section 13(4) of the Act of 2002 can approach the Debts Recovery Tribunal and seek relief. To that extent, the jurisdiction of the Civil Court has been excluded. On a plain reading of the plaint, it is obvious that the plaintiff seeks to restrain the defendant no.2 from evicting him on the basis of the order dated 31.07.2017 that is passed by the Additional Collector in exercise of the powers under Section 13 of the Act of 2002 at the instance of the defendant no.2.

10. The decision in Vishal N.Kalasaria (supra) was rendered on 20.01.2016. As noted above, the provisions of Section 17(4A) of the Act of 2002 have been amended on 01.09.2016 and hence in view of the amended provisions, the ratio of aforesaid decision cannot be made applicable to the case in hand. The trial Court without considering the provisions of Section 17(4A) of the Act of 2002, rejected the application below Exhibit 18 and thus committed jurisdictional error.

11. Hence for aforesaid reasons, the order passed below Exhibit 18 dated 21.03.2018 is liable to be quashed and set aside. Accordingly, the application that was filed by defendant no.2 below Exhibit 18 is allowed in terms of its prayer. Plaint in R.C.S.No.33/2018 is rejected under the provisions of Order VII Rule 11 (d) of the Code. It is open for the plaintiff to take such other steps as are permissible in law to ventilate his grievances.

12. Civil Revision Application is allowed in the aforesaid terms leaving the parties to bear their own costs.