

(2021) 02 SHI CK 0300
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 570 Of 2021

Dimple

APPELLANT

Vs

Bank Of India & Ors

RESPONDENT

Date of Decision : 26-02-2021

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 17, 17(4A)
Transfer Of Property Act, 1882 — Section 65A

Citation : (2021) 02 SHI CK 0300

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Tara Singh Chauhan, Ranvir Chauhan, Ashok Sharma, Vinod Thakur, Vikas Rathore, Shiv Pal Manhans, Bhupinder Thakur, Yudhvir Singh Thakur

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. Proceedings under SARFAESI stand initiated against the principal borrower Mr. Munish Kapoor. The petitioner claims to be the tenant in the

premises and has filed the instant petition for the grant of following substantive relief:-

(I) That the respondents may be directed not to take the possession of the school building known as Mandi Public Senior Secondary School, Mandi, in

pursuance to Annexures P-4 and P-5.

2. Section 17 of the SARFAESI Act has been amended vide S.O. 2831(E), dated 1st September, 2016 whereby Section 17(4A) has been introduced,

which reads as under:-

17(4A) Where-

(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 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 65A 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.

3. A bare perusal of the aforesaid section reveals that all the claims of the so-called "tenant" or "leasehold rights" are to be adjudicated only

by the Debt Recovery Tribunal, where the proceedings otherwise are stated to be pending.

4. In this view of the matter, the instant petition is clearly not maintainable, as this Court does not have the jurisdiction to entertain such petition.

5. Consequently, the instant petition is disposed of as such. However, liberty reserved to the petitioner to avail such remedy(ies) as may be available to

her in accordance with law. Pending application(s), if any, also stands disposed of.