(2016) 04 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : CMPMO No. 158 of 2015

India Bulls Housing Finance Ltd. APPELLANT

Vs

Rakesh Kumar Banta and Others RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 34, Section 35

Citation : (2016) 04 SHI CK 0008

Hon'ble Judges : Sureshwar Thakur, J.

Bench : Single Bench

Advocate : B.C. Negi, Sr. Advocate and Pranay Pratap Singh, Counsel, for the Appellant; Ajay Kumar, Sr. Advocate and Dheeraj K. Vashisht, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Sureshwar Thakur, J.—1. As apparent on a reading of Annexure P-4, the petitioner herein defendant No. 1 before the learned trial Court, stands constituted therein as a Financial Institution for the purpose of availing the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) hereinafter referred to in short as the Act of 2002. The defendant No. 2 borrowed from the petitioner herein defendant No. 1 before the learned trial Court, a loan under a loan agreement comprised in Annexure C. A portion of the property purveyed as security by him for servicing the loan obtained from the petitioner herein stands comprised in Khasra No. 369 and 370 Upmohal Sanjauli Bazar, Shimla, stands occupied by respondent No. 1 herein as a tenant. The plaintiff before the learned trial Court and respondent No. 1 herein instituted a suit for permanent prohibitory injunction for restraining the defendant No. 1 a Financial Institution from forcibly and unlawfully dispossessing him from the rented premises. However, on the learned trial Court effectuating service of a notice of the plaint upon defendant No. 1/petitioner herein, the latter instituted an application under Order 7 Rule 11 of the Civil Procedure Code before it, for rejection of the suit in face of the specific statutory bar constituted under Sections 34 and 35 of the Act of 2002, which stands extracted hereinafter, against a Civil Court holding any jurisdiction to try a civil suit encapsulating a subject matter falling within the ambit or scope of the jurisdiction vested in the Debts Recovery Tribunal which solitarily stands statutorily empowered therein to recover/realize from the principal borrower the debt/loan advanced by it to him preeminently from his mortgaged corporeal assets comprised in Khasra Numbers aforesaid located at Sanjauli Bazar, Shimla, even when a portion thereof stands occupied by respondent No. 1 as a tenant.

"34. Civil Court not to have jurisdiction No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

35. The provisions of this Act to override other laws. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

The application stood dismissed. Hence, the instant petition stands laid before this Court for impugning the order of the learned trial Court whereby the application preferred before the learned trial Court by the petitioner herein under Order 7 Rule 11 stood dismissed by it.

2. The learned counsel for the petitioner submits with great vigour of the statutory bar constituted, in the afore referred sections of the Act of 2002 against any civil court entertaining any proceedings in respect of a subject matter, jurisdiction whereof stands conferred under the aforesaid Act upon the Debt Recovery Tribunal for enforcing its coercive provisions for enabling the Financial Institution concerned to realize the debt advanced to the principal borrower by it especially when it stands as manifested by Annexure P-4 empowered to seek availment of the provisions of Sections 34 and 35 of the Act of 2002 for hence excluding, given the specific statutory bar constituted therein, a Civil Court from exercising any jurisdiction thereupon, being an untrammeled statutory embargo or a fetter unamenable to any dilution. He further contends qua hence even a portion of the property standing mortgaged with the petitioner herein for servicing/realising the loan borrowed by the defendant No. 2 from it, the suit as constituted at the instance of the plaintiff before the learned trial Court was wholly not maintainable rather it entailed its rejection. However, the aforesaid submission addressed by the learned counsel for the petitioner herein stands denuded of its legal force in the face of a judgement rendered by the

Hon''ble Apex Court in Vishal N. Kalsaria v. Bank of India and others, , 2016 SCC OnLine SC 64, the relevant paragraph 40 whereof stands extracted hereinafter:--

"40. In view of the above legal position, if we accept the legal submissions made on behalf of the Banks to hold that the provisions of SARFAESI Act override the provisions of the various Rent Control Acts to allow a Bank to evict a tenant from the tenanted premises, which has become a secured asset of the Bank after the default on loan by the landlord and dispense with the procedure laid down under the provisions of the various Rent Control Acts and the law laid down by this Court in catena of cases, then the legislative powers of the state legislature are denuded which would amount to subverting the law enacted by the State Legislature. Surely, such a situation was not contemplated by the Parliament while enacting the SARFAESI Act and therefore the interpretation sought to be made by the learned counsel appearing on behalf of the Banks cannot be accepted by this Court as the same is wholly untenable in law.",

wherein the Hon''ble Apex Court while resolving the conflict inter se the right of a tenant occupying a portion of the property mortgaged by the principal borrower with the Financial Institution for servicing the loan advanced to him vis-?-vis the ouster of jurisdiction of a Civil Court under the aforesaid provisions of the Act of 2002 to entertain any suit or proceedings arising out of or relating to enforcement/availment at the instance of the Financial Institution concerned of the provisions contemplated therein for servicing/realizing the loan advanced by it to the principal borrower, has held that the right of a tenant occupying any portion of the building/property though standing mortgaged as a security to service or realize the loan borrowed by the principal debtor from the financial institution concerned cannot stand either belittled or overridden by any provisions constituted in the Act of 2002. In trite, the jurisdiction of a Civil Court to entertain any suit or proceedings as constituted before it, by a person in occupation as a tenant of a portion of the mortgaged assets/premises for protecting his rights therein, against any legal onslaught mounted by the financial institution concerned, is a pristine right, even though such assets/ premises when stand mortgaged as security by the principal borrower with the Financial Institution concerned are facilitative to the latter to realise the loan by resorting to the coercive statutory mechanism contemplated therein, cannot either stand dissipated nor stands overcome by the apposite provisions constituted in the Act of 2002, even if the latter provisions statutorily restrain it from entertaining, trying or adjudicating any suit or proceedings constituted before it devolving upon a subject matter whereupon the Debts Recovery Tribunal statutorily alone under the Act of 2002 stands vested with jurisdiction to take recourse to the coercive provisions embodied therein to enable the Financial Institution concerned to realize the dues/debts advanced by it to the principal debtor besides preeminently the apposite ouster of jurisdiction of a Civil Court contemplated in Sections 34 and 35 of the Act of 2002 extracted hereinabove cannot be put on anvil to either belittle or countervail or arbitrarily usurp the indefeasible rights of a tenant in possession of a part of the asset mortgaged by the principal borrower with the financial institution concerned as security for realizing the debt obtained by him from it.

3. Be that as it may, extantly when the plaintiff-respondent No. 1 herein is in occupation as a tenant in a part of the property mortgaged by the landlord with a financial institution, his rights as a tenant therein are covered with a protective umbrella for forestalling the financial institution concerned to, for realizing the loan advanced by it to the principal debtor, evict him therefrom by resorting to the coercive statutory mechanism contemplated in the Act of 2002, predominantly on the anvil of the jurisdiction of the Civil Court standing constituted in the afore extracted provisions of the Act of 2002, to suffer ouster. Contrarily the preemptive suit instituted by the plaintiff before the learned trial Court for restraining the financial institution concerned besides his landlord from interfering in his peaceful possession as a tenant qua a part of the property mortgaged with defendant No. 1, is a tenable protective endeavour to restrain the defendants in the Civil Suit, to except in accordance with law constituted by his landlord evicting him therefrom under an apposite decree rendered by the Rent Controller concerned especially when his dispossession therefrom is under an imminent threat in the face of the premises occupied by him as a tenant standing mortgaged with defendant No. 1/petitioner herein in garb whereof the latter may in derogation of the judgement of the Hon''ble Apex Court whose relevant paragraphs stand extracted hereinabove may resort to coercively under the statutory mechanism contemplated in the Act of 2002, usurp his indefeasible right as a tenant therein for realization of the money lent by it to the principal debtor. Consequently, the suit as instituted by the plaintiff before the learned trial Court is maintainable.

4. In face thereof, the order of the learned trial Court dismissing the application preferred before it by the Financial Institution is tenable and is affirmed. The petition is disposed of accordingly, so also the pending application(s) if any.

