

(2000) 03 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision Petition No. 495 of 1997

Krishan Singh Rana

APPELLANT

Vs

Haryana State Industrial Development Corporation Ltd.

RESPONDENT

Date of Decision : 23-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2000 P&H 226 : (2000) 125 PLR 649

Hon'ble Judges : Iqbal Singh, J

Bench : Single Bench

Advocate : Sweena Pannu, for the Appellant; B.R. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Iqbal Singh, J.—Krishan Singh Rana (petitioner) brought a suit for permanent injunction asserting that he is a tenant of the premises in question under Veena Devi. The premises consist of three rooms, bathroom, latrine and Kitchen on the first floor of S.C.F, Nos. 21-22, Sector 19-C, Chandigarh. It was further stated that some dispute had arisen between the landlady Smt. Veena Devi and the Haryana State Industrial Development Corporation Ltd. (hereinafter referred to as the defendant-Corporation) as a result of which the defendant-Corporation was trying to dispossess the petitioner from the demised premises in spite of the fact that his tenancy rights are protected under the statute and cannot be interfered with by the defendant-Corporation. In the suit, the petitioner filed an application under Order XXXIX, Rules 1 and 2 read with Section 151 of the CPC (hereinafter referred to as the Code) seeking an ad interim injunction during the pendency of the suit.

2. This application of the petitioner was resisted by the defendant-Corporation. In the written statement filed to the application, the defendant-Corporation asserted that the defendant-Corporation being a financial Corporation, was acting under the provisions of Section 29 of the State Financial Corporation Act, 1951

(hereinafter referred to as the Act) as the demised premises stood mortgaged by Veena Devi with the defendant-Corporation to secure a loan granted to M/s. A. M. Oil and Fats Ltd. It was further stated that the defendant-Corporation was entitled to recover more than two crores of rupees from M/s. A. M. Oil and Fats Ltd. of which Veena Devi was a Promoter Director and in view of this, the defendant-Corporation is entitled to invoke the provisions of Section 29 of the Act. It was also stated that the Civil Court has no jurisdiction to entertain the suit as there was neither privity of contract between the parties nor any relationship of landlord and tenant between them and the defendant-Corporation had not tried to take forcible possession.

3. The trial Court, after going through the documents brought on the record, declined the prayer of the petitioner for temporary injunction by holding that since the Corporation is proceeding u/s 29 of the Act and seeking the possession of the mortgaged property and as such, is not committing any illegality by doing so.

4. Aggrieved against the order passed by the trial Court, the petitioner-plaintiff went in appeal before the lower appellate Court and the same was also dismissed.

5. In this revision petition filed u/s 115 of the Code, the petitioner-plaintiff has challenged the order passed by the lower appellate Court.

6. I have heard Ms. Sweena Pannu, Advocate, on behalf of the plaintiff-petitioner and Mr. B. R. Gupta, Advocate, on behalf of the defendant-Corporation and have gone through the records of the case.

7. The question that requires determination in this revision petition is--whether the defendant-Corporation is entitled to take possession of the premises in question which have been mortgaged with it (defendant-Corporation) by the landlady Veena Devi irrespective of the fact that the petitioner has been inducted as a tenant therein (demised premises).

8. Veena Devi, who is owner, of the demised premises i.e. S.C.F. Nos. 21-22. Sector 19-C, Chandigarh, took loan from the defendant-Corporation in the year 1993 by pledging the said S.C.F. with the defendant-Corporation as a collateral security. Thereafter, Veena Devi had become defaulter in repayment of the loan, as a result of which the defendant-Corporation started proceedings for recovery of the loan amount from her by taking resort to the provisions of Section 29 of the Act. The relevant provisions of Section 29 of the Act, for facility of reference, are reproduced as under :--

"29. Rights of Financial Corporation in case of default.-- (1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligation, in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to

take over the management or possession or both of the industrial concern as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers (x x x x x x) under Sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any action has been taken against an industrial concern under the provisions of Sub-section (1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and, the residue of the money so received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of Sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purposes of suits, by or against the concern, and shall sue and be sued in the name of the concern."

9. A bare perusal of the above provisions of Section 29 of the Act makes it abundantly clear that the defendant-Corporation, which is proceeding u/s 29 to get possession of the mortgaged property, is not committing any illegality by doing so. In fact, the defendant-Corporation is proceeding within the legal limits. u/s 29 of the Act, the defendant-Corporation, has got full power to recover possession of the mortgaged property though the said property may be in possession of a third person and the right of the defendant-Corporation would include right to take over possession of such property also. In this view of the matter, the petitioner has got no prima facie case to protect his possession in respect of the demised premises and it has been rightly so held by both the Courts below. It is well-settled that the High Court should go slow in upsetting the findings recorded by the Courts below in proceedings under Order XXXIX, Rules 1 and 2 of the Code.

10. The main contention of Ms. Sweena Pannu, the learned counsel for the petitioner, is that since the petitioner is a tenant in the demised premises under the landlady Veena Devi, therefore, the defendant-Corporation cannot take possession from the petitioner without taking resort to the provisions of the East Punjab Urban Rent Restriction Act, 1949, the premises in question being situated in the urban area of Chandigarh and the petitioner being a statutory tenant. In

support of her contention, the learned counsel for the petitioner relied upon the cases of Noorduiddin Vs. Dr K.L. Anand, ; Parmar Kanaksinh Bhagwansinh (Dead) by Lrs. Vs. Makwana Shanabhai Bhikhabhai and Makwana Prabatbhai Bhikhabhai, and Brahmdeo Chaudhary, Adv. Vs. Rishikesh Prasad Jaiswal and another, .

11. In the present case, neither any receipt issued by Smt. Veena Rani to the petitioner regarding receipt of rent by her from him (petitioner) nor any rent agreement executed between the landlady Smt. Veena Rani and the petitioner, has been produced on record by the petitioner showing that relationship of landlady and tenant existed between them.

12. In Noorduiddin's case (AIR1994 SCW 5093) (supra), the dispute related to evacuee property of the cousins of appellant's father and latter's brothers Rehmatullah and Wazu who had migrated to Pakistan and their properties were declared as evacuee properties. The competent authority on 12-3-1956, had passed an order separating the respective shares held by the evacuees, Munshi, Banda as well as father of the appellant and two others. At an auction held on 14-4-1967 of the evacuee properties, the respondent was the highest bidder and a sale certificate was issued in his favour. The sale was challenged in the High Court by filing a writ petition which was dismissed by a learned single Judge. The order dismissing the writ petition was affirmed by a Division Bench in Letters Patent Appeal. That order became final. In the meantime, the respondent Dr. K. L. Anand filed a suit before the District Judge, Delhi against Rehmatullah and Wazu, who were appellant's brothers, for possession of the properties. The suit was dismissed. However, on appeal before the High Court, a Division Bench of that High Court decreed the suit for possession and the said decree became final. The respondent thereafter sought execution of the aforesaid decree by filing an execution application. The appellant resisted the execution and delivery of possession by filing an application under Order 21, Rules 97 and 98 read with Section 151 of the Code of Civil Procedure. The executing Court dismissed the appellant's application holding that since the dispute was adjudicated upon by the High Court and therefore, the claim made by the applicant-appellant was no longer tenable. The appellant Noorduiddin preferred a revision petition in the High Court against the order of the executing Court dismissing his application under Order 21, Rules 97 and 98 read with Section 151 of the Code. The learned single Judge of the Delhi High Court dismissed the appellant's revision petition holding that the controversy was already concluded in the writ petition in which the appellant's father was a party respondent and, therefore, he could not make the objections. The matter did not rest here. The appellant Noorduiddin still carried appeal before the Supreme Court against the order dismissing his revision petition. The Supreme Court held that when an application has been made under Order 21, Rule 97, the Court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. It was further held that determination shall be conclusive between the parties as if it

was a decree subject to right of appeal and not a matter to be agitated by a separate suit.

13. In *Parmar Kanaksinh Bhagwansinh's case* (AIR 1995 SCW 188) (*supra*), the plaintiff-appellant had filed a suit in the year 1966, for redemption of the suit properties which were mortgaged as security for certain monies borrowed by him from the defendant-respondent Nos. 1 and 2. Defendant No. 2, brother of defendant No. 1 had been joined in that suit on the allegation that the latter was not in possession of mortgage properties by the former subsequent to the coming into existence of the mortgages. That suit was resisted by the defendants by filing separate written statements which in substance did not differ from each other. The defence in those written statements was that defendant No. 1 and his family members had become tenants of the suit properties in the year 1959-60 and had continued to be such tenants at the time of mortgage deeds executed in respect of those properties in the year 1961 and thereafter. It was also claimed by the defendants in the written statement that they had become owners of the said properties when the plaintiff in the year 1962 sold those properties to defendant No. 1. On a consideration of these facts, the Supreme Court held that when in a suit for redemption of mortgaged property filed by mortgagor in a Civil Court, a plea is raised by the defendant-mortgagee claiming that he was a tenant of the property under the Bombay Tenancy and Agricultural Lands Act, 1948 and seeks a reference of that issue by the Civil Court to Mamlatdar for recording a finding thereon, the Court was obliged to stay the suit and refer the issue to the competent authority for determination, instead of itself deciding the issue and proceeding to decide the suit on the basis of the finding thereon. It was also held that even if the landlord obtains a decree for redemption of the property, the lessee can still claim a right to continue in possession of the property as tenant under the 1948 Act.

14. Similarly, in *Brahmdeo Chaudhary, Adv. Vs. Rishikesh Prasad Jaiswal and another*, , it was held that where resistance is offered to the execution of a decree by a stranger occupying decretal premises to his own right, the right of the stranger has to be decided by the executing Court after giving opportunity of hearing to the stranger and decree holder.

15. As is clear from the facts of the present case, the respondent-Corporation is proceeding against the petitioner u/s 29 of the 1951 Act to get possession of the premises in question from the petitioner and, therefore, in my opinion, it need not proceed to evict the tenant under the East Punjab Urban Rent Restriction Act, 1949 as has been argued by the learned counsel for the petitioner.

16. Besides above, when there is no prima facie evidence to hold that there is a relationship of landlord and tenant between the parties, the authorities relied, upon by the counsel for the petitioner as noticed above are of no help to the case of the petitioner.

17. On a consideration of the matter, I find force in the contention of the learned

counsel for the respondent-Corporation that temporary injunction cannot be granted restraining the Corporation, which is a financial institution, from recovering the loan and from taking management and possession of the property mortgaged for realising the loan u/s 29 of the 1951 Act who has sought support from the cases of Hindustan Engineering Corporation, Jaipur Vs. Rajasthan Financial Corporation and Another, , Miss. K.T. Sulochana Nair Vs. Managing Director, Orissa State Financial Corporation and Others, and U. P. Financial Corporation v. Gen. Cap. (India) Pvt. Ltd. AIR 1993 SC 1435.

18. In Hindustan Engineering Corporation, Jaipur Vs. Rajasthan Financial Corporation and Another, , it has been held that a temporary injunction cannot be granted restraining a Financial Corporation from recovery of loan and from taking management and possession of the property mortgaged for realising loan u/s 29 of the Act. The absence of the Rules or Regulation u/s 48 of the Act would be immaterial. And it cannot be said that the provisions of Section 29 of the Act cannot be invoked as no regulations have been framed u/s 48 of the Act.

19. The view taken in Miss K. T. Sulochana Nair's case (AIR 1992 Orissa 157) (supra) is that u/s 29(1) of the Act, the Corporation has the right to take over the management or possession of both of the industrial concern as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation. It has been further held that there is nothing in the provision to indicate that the right u/s 29 of the Act is only in respect of the property of the loanee mortgaged with the Corporation. On the other hand, all properties mortgaged with the Corporation would come within the purview of Section 29 of the Act.

20. In U. P. Financial Corporation's case (AIR 1993 SC 1435) (supra) the Apex Court by observing that the Corporation is supposed to act in the best interest of the industrial concern with the object primarily to promote and advance the industrial activity without, of course, undue involvement or risk of its financial commitments, held that power of the High Court while reviewing the administrative action is not that of an appellate Court.

21. In the instant case, the defendant-Corporation is not taking possession of any other property of the mortgagee Smt. Veena Rani, but is taking possession of the property which had been mortgaged by her with the defendant-Corporation at the time of securing loan from it (defendant-Corporation). The Corporation is not supposed to give loans once and go out of business. In nutshell, the fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it. This Court cannot act as an Appellate Authority over the defendant-Corporation in restraining it from recovering its money or taking possession of the mortgaged property.

22. For the aforesaid reasons, I do not find any Illegality or material irregularity in the orders passed by the trial Court and the lower appellate Court on the application moved by the petitioner under Order XXXIX, Rules 1 and 2 of the

Code which may warrant exercise of revisional jurisdiction of this Court u/s 115 of the Code. Accordingly, this revision petition is hereby dismissed being without any merit.