(2006) 08 DEL CK 0259

In the Delhi High Court

Case No : WP (C) No. 12463 of 2006

Shri Sanjeev Bansal — APPELLANT

Vs

Oman International Bank SAOG and Another — RESPONDENT

Date of Decision : 07-08-2006

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14, 14(1)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17(1)
Transfer of Property Act, 1882 — Section 65A, 65A(1), 65A(2), 65A(3)

Citation : (2006) 4 BC 299 : (2006) 131 DLT 729

Hon'ble Judges : Markandeya Katju, Acting C.J.;Kailash Gambhir, J

Bench : Division Bench

Advocate : Ashish Agarwal, for the Appellant; Adarsh B. Dial and Sushil Kr. Tekriwal, for R1, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—The petitioner in the present writ petition has assailed the order dated 25th July, 2006 passed by the learned Debt Recovery Appellate Tribunal in Miscellaneous Appeal No. 169/2005. The principal contention raised by the petitioner is that he being a tenant and in physical possession of the entire first floor of the property bearing No. H-36, South Extension Part-I, New Delhi-110049 by virtue of lease deed dated 15th May, 2001, duly executed by the principal borrower and mortgagor of the property M/s. Eupharma Laboratories Ltd., is fully protected under the provisions of Delhi Rent Control Act and cannot be dispossessed without taking recourse to the provisions of the Delhi Rent Control Act. We need not narrate the detailed facts. But it is suffice to state that M/s. Eupharma Laboratories Ltd. who is a principal borrower had availed some loans from Oman International Bank after mortgaging the said flat in question in favor of the bank by executing a memorandum of mortgage dated 4th February, 1999. On the failure of the borrower to pay back the loan, the bank had invoked the relevant provisions of SRFAESI Act and approached the learned

CMM, Delhi so as to seek directions for taking over the possession of the said mortgaged property. The present petitioner had filed an appeal u/s 17(1) of the SRFAESI Act before the Debt Recovery Tribunal so as to seek restraint order against the bank from taking over the physical possession of the secured asset i.e. the mortgaged property bearing No. H-36, 1st Floor (entire), NDSE Part-I, New Delhi. The Debt Recovery Tribunal dismissed the appeal of the petitioner vide order dated 28th July, 2005. Being aggrieved by the said order of the DRT, the petitioner challenged the same before the Debt Recovery Appellate Tribunal and vide order dated 25th July, 2006, the Debt Recovery Appellate Tribunal did not find any merit in the appeal of the petitioner and the same was dismissed.

2. The petitioner has laid much emphasis on his contention that the provisions of the DRC Act will have over-ridding effect on the provision of Transfer of Property Act and he being a tenant enjoys the protection against any sort of eviction u/s 14 of the Delhi Rent Control Act which starts with non-obstante clause. It would be worthwhile to reproduce the relevant portion of Section 14(1) of the Delhi Rent Control Act.

14. Protection of tenant against eviction (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely....

3. Even a cursory glance over the said provision would clearly show that the protection afforded to a tenant is from the landlord of the premises and the landlord of the premises cannot recover possession from the tenant unless he takes recourse to any of the grounds as available to him u/s 14(1) of the Delhi Rent Control Act and the right of the tenant is fully protected notwithstanding anything contrary contained in any other law or contract. In the present case, it is a mortgagee who has enforced his right under the SRFAESI Act against the principal borrower who had mortgaged the said property in question by duly and validly executing the memorandum of mortgage in favor of the mortgagor. There is no denial of the fact that the said unregistered lease deed on a insufficient stamp paper was executed much later than the deed of mortgage.

4. Section 65-A of the Transfer of property Act clearly mandates that the duration of lease to be executed by the mortgagor cannot exceed three years. It will be better to reproduce Section 65-A which deals with the power of mortgagor to lease the mortgaged property.

65-A. Mortgagor''s power to lease - (1) Subject to the provisions of Sub-section(2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(c) No such lease shall contain a covenant for renewal.

(d) Every such lease shall take effect from the date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.

(3) The provisions of Sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of Sub-section (2) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section.

5. Section 65-A of the Transfer of Property Act deals with the power of the mortgagor to lease the mortgaged property. This power of mortgagor is not unfettered but has been conditioned under Sub-Sections 1, 2 and 3 of Section 65-A of TP Act.

6. Manifestly the said unregistered lease was created for the alleged unlimited period through unregistered lease deed in complete contravention of Section 65-A of the Transfer of Property Act. As per the said provision of Section 65-A, the lessee can enjoy the protection if the lease is created by the mortgagor in conformity with the mandate of requirements laid down in Section 65-A of TP Act and not otherwise. Neither the mortgagor nor the lessee can defeat the right of mortgagee and no lessee can claim any protection unless his tenancy is as per the requirements of Section 65-A of Transfer of Property Act. The present petition is devoid of any merits. We would not like to interfere in the orders passed by the DRAT.

7. The petition is dismissed.