

(2015) 02 MP CK 0064
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6308/2014

Sudarshan

APPELLANT

Vs

Bullox Ventures Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 1(A)(A)(3)
Constitution of India, 1950 — Article 227
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 12, 12(1)(a), 12(1)(b), 12(1)(c), 12(1)(f)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4), 17, 34, 35, 37
Transfer of Property Act, 1882 — Section 13, 8

Citation : (2015) 02 MP CK 0064

Hon'ble Judges : S.R. Waghmare, J.

Bench : Single Bench

Advocate : Sarit Sanyal, Learned Counsel, for the Appellant; Rohit Gupta, Learned Counsel, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

S.R. Waghmare, J.—The present petition under Article 227 of the Constitution of India has been filed by the petitioner Smt. Sudarshan Sanyal being aggrieved by order dated 25.07.2014 (Annexure P/1) passed by the learned 21st Civil Judge, Class-I, Indore in Civil Suit No. 141A/14 rejecting the application of the petitioner filed under Section 13(6) of Accommodation Control Act for striking of the defence of respondents No. 1 and 2.

2. In brief and peculiar facts and circumstances of the case, the respondents No. 1 and 2/defendants in the trial Court M/s. Bullox Ventures Pvt. Ltd. and M/s. Bharat Phosphates and Chemicals Pvt. Ltd. were admittedly the tenants in the suit accommodation (commercial) belonging to Smt. Sudarshan. The petitioner owner filed a suit for eviction against the defendants on the grounds of arrears of rent i.e. Section 12(1)(a), 12(1)(c) and 12(1)(f) of the M.P. Accommodation

Control Act for recovery of arrears; for bonafide need and for vacant possession of the tenanted property. That even after passage of several months from the date of filing of the suit, the respondent tenant failed to pay the arrears of rent and hence an application under Section 13(6) of Accommodation Control Act to strike off the defence of the respondent was filed. The trial Court, however, rejected the application on the grounds that respondent No. 3 Punjab National Bank was in possession of the tenanted property; since, defendants No. 1 and 2 had taken a loan from the Bank which remained unpaid and the respondent Bank had proceeded against defendants No. 1 and 2 and under Section 13(4) of the SARFAESI Act and had taken symbolic possession of the tenanted premises by pasting a paper seal on the lock already put by the borrower defendant No. 1.

3. Counsel for the petitioner has vehemently urged the fact that the respondent/Bank had been made a party in the suit primarily because it was in possession of the disputed premises and the suit had been filed for eviction and vacant possession from the defendants No. 1 and 2 the respondents in the present case. The application impugned categorically stated that; under the garb of this seal, put by the respondent No. 3 Bank, the tenant was neither paying the rent nor doing anything regarding handing over vacant possession and in this light the defence of the respondent/defendant needed to be struck off. However, the trial Court by the impugned order has refused to do so which is contrary to the facts on record and the provisions of law. Counsel vehemently also urged that legal notice had been served on the respondent and all the formalities required had been completed by the petitioner owner whereas respondent No. 1 and 2 had hypothecated goods that were kept in the tenanted premises, then there was no privity of lease between the Bank and the owner petitioner vis-a-vis and the Court had wrongly allowed the plea taken by the respondent Bank that by putting a paper seal they had taken symbolic possession of its secured goods under the de-securitization proceedings and Section 13(4) of the SARFAESI Act.

4. Counsel has vehemently urged that the petitioner owner; was not concerned with the loan taken by the defendants nor was her property in any way involved in the transaction. Even if the contentions put forth by the Counsel for the respondent Bank are considered, Counsel submitted that the respondent Bank was fully entitled to the lien on the goods that were inside the tenanted premises and not on the premises itself and it is clear that the learned judge of the trial Court had erred and Counsel prayed for setting aside the impugned order. Counsel also urged that the respondents had in collusion deprived the present petitioner from her legal right to have the defence struck off since the defendants/tenants were neither paying the rent nor allowing the eviction proceedings to continue in accordance with the provisions of law.

5. Counsel for the petitioner placed reliance on *Gajra Bevel Gears Ltd. Vs. Manohar and Others*, to state that under Sections 12(1)(b) and 14 of the MP Accommodation Control Act sub-letting, assignment and parting with the possession by tenant without the consent of the owner; then all the three acts

are unlawful and the tenant parting with the possession is liable to be evicted. He loses protection of Section 12 and any single act of sub-letting without permission is sufficient for eviction. Placing reliance on *Hutchison Essar South Ltd. Vs. Union Bank of India and Aditya Automation*, Counsel submitted that the Bank can only take symbolic possession of the premises and it cannot be said that the tenant has been thrown out by the secured creditor/Bank and Counsel submitted that the respondent No. 1 had in collusion with the Bank precluded the present petitioner from eviction. The tenanted premises are not amenable to the SARFAESI Act.

6. Counsel for the Respondents No. 1 and 2 tenants on the other hand, has vehemently urged the fact that the Counsel for the petitioner was making a mis-statement regarding the arrears of rent. He has filed several proceedings of the trial Court whereby it was stated that since the respondent No. 3 Bank had taken over the possession, it was their responsibility to pay the rent, however, by proceedings dated 28.10.2014, it has demonstrated by Counsel for the respondents No. 1 and 2 that on application the Court had under Order 38 Rule 1(A)(A)(3) and (B) of the CPC directed defendants No. 1 and 2 the tenants to give a personal bond for Rs.5 lacs each towards the arrears of rent, which has been complied with according to proceedings dated 28.07.2014 and Counsel, therefore, stated that there was no infirmity in the order passed by the trial Court by refusing to strike off the defence, since it could not be held that, the petitioner owner, was entitled to the relief since the arrears if any have already been deposited in the trial Court according to the personal bond given as security. Counsel submitted that the petition was without merit and the same be dismissed.

7. Counsel for the respondent No. 3, on the other hand, has submitted that the Bank has been wrongly made a party and on this ground alone, the petition was not maintainable. He also supported the impugned order by saying that the learned Judge of the lower Court has clearly held that the issue is yet to be decided whether the defendants No. 1 and 2 are liable to be paid the rent as claimed by the petitioner plaintiff. Moreover the question is also to be decided whether this liability can be apportioned to the respondent No. 3 Bank. Counsel vehemently urged the fact that the Bank had taken a symbolic possession under Section 13(4) of the SARFAESI Act and it was misconceived to allege that the Bank was in illegal possession of the disputed premises. Moreover Counsel also vehemently urged the fact that if at all anybody is aggrieved by the secured creditor's (Bank's) action taken under Section 13(4) of the SARFAESI Act he has a perfect legal and efficacious remedy to file an appeal or application to the D.R.T. at Jabalpur.

8. Counsel placed reliance in the matter of *Velocity Ltd. Indore Vs. State Bank of India*, whereby the Division Bench of this Court had considered that the efficacious alternative remedy against action initiated under Section 13(4) of SARFAESI Act, was under Section 17 of the SARFAESI Act and the writ petition

was not maintainable. He also placed reliance on *United Bank of India Vs. Satyawati Tondon and Others*, whereby the Hon''ble Apex Court has also held that if secured creditor has initiated action under Section 13(4), the aggrieved person can resort to the alternative efficacious remedy provided in the SARFAESI Act itself. Moreover Counsel also submitted that according to Section 35 of the SARFAESI Act there was an overriding effect on any other laws and provisions and in case of dispute at the most jurisdiction under Section 34 of the SARFAESI Act would be of the Civil Court. The present petition was misconceived and Counsel prayed for its dismissal.

9. On considering the above submissions, I find that the singular question that arises for consideration in this writ petition is whether the trial Court had erred in rejecting the application filed under Section 13(6) of the MP Accommodation Control Act and whether the respondent No. 3 Bank has been rightly made a party. I find that considering the proceedings of the trial Court filed by the respondents No. 1 and 2 dated 28.10.2014, it cannot be said that by the impugned order; that any arrears of rent, as was being alleged so as to fulfill the requirements of provisions under Section 13(6) of the MP Accommodation Control Act are incurred and, therefore, the contentions put forth by the Counsel for the petitioner must fail. However, considering the fact that the respondent No. 3 Bank has put a lock on the tenanted premises whether such an action was permissible is the moot question that requires to be adjudicated.

10. It has been categorically stated by the Counsel for the Respondent No. 3/ Bank that the Bank has a lien on the secured goods that were lying inside the tenanted premises then it is unfathomable as to how the symbolic lock has been put by the paper seal on the lock put by the respondent on the disputed premises.

11. Considering Sections 34, 35 and 37 of the provisions of SARFAESI Act undoubtedly a lessee can remain in possession of the secured asset during the period of a lease; if such a lease has been made under Section 8 of the Transfer of Property Act, and he can enjoy the leased property and the secured creditor can decide to take measures mentioned in Section 13 of the said Act without determination of a valid lease, however, this is not the present case. The secured goods are inside the tenanted premises and the Bank has no lien on the tenanted premises, but only on the goods inside the tenanted premises; the tenanted premise, therefore, cannot be called as secured asset of the Bank, even if only the symbolic lock has already been put over the lock of the respondent No. 1's tenanted premises: as contended by the Counsel for the Respondent No. 3 Bank. Moreover Counsel also urged that considering the overriding effect of Section 35 of the SARFAESI Act; the efficacious remedy would be under Section 17 of the SARFAESI Act as laid down by the Court in the matter of *Velocity* (supra) and not by way of the present petition.

12. However in-consequence, in the interest of justice the petition is partly allowed. It is directed that although there is no infirmity in the order passed by

the trial Court, liberty is granted to the petitioner to file an application under Section 17 of the SARFAESI Act before the Tribunal DRT at Jabalpur and the DRT at Jabalpur shall expeditiously decide the case whether the Bank was entitled to put a lock or take symbolic possession of the disputed tenanted premises which actually belong to the petitioner as owner; and when the petitioner was in no way concerned with the loan taken by the defendants and the secured assets of the Bank are only the goods lying inside the tenanted premises. If the petitioner files the said application before the DRT at Jabalpur within 15 days from date of receipt of the certified copy of this order which shall be considered in accordance with the provisions of law as expeditiously as possible and limitation if any shall not stand in the way of the petitioner.

13. With the aforesaid, the petition is partly allowed only to the extent herein above indicated.