(2009) 08 P&H CK 0214

In the Punjab And Haryana At Chandigarh

Tripatjit Kaur and Others APPELLANT

Vs

Punjab Financial Corporation and Others RESPONDENT

Date of Decision : 05-08-2009

Acts Referred:
State Financial Corporations Act, 1951 — Section 29

Citation : (2009) 156 PLR 51 : (2010) 6 RCR(Civil) 313

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Judgement

Ajay Kumar Mittal, J.—The plaintiff-petitioners have approached this Court by way of instant revision petition, impugning the order dated 12.11.2002 whereby the trial Court though granted interim injunction against defendant No. 1, but declined the same qua defendants No. 2 and 3. The said order was affirmed on appeal by the lower appellate Court vide order dated 19.04.2003.

2. Briefly stated, the facts which may be noticed for thedisposal of the present revision petition are that as per averments made in the plaint, priginally property No. B-XXI-1575 situated at Dholewal, Ludhiana was owned by Pakhar Singh, father of defendant No. 1, who died about two years before the filing of the suit. The husband of plaintiff No. 1 took on rent one shop at a monthly rent of Rs. 450/- from Pakhar Singh in the year, 1978. Plaintiff No. 1 claimed that she was in possession of the shop as a tenant and her tenancy was protected under the provision of the East Punjab Rent Restriction Act and similarly plaintiff Nos. 2 and 3 took different shops on rent from said Pakhar Singh in the years 1978 and 1990, respectively, which form part of property No. B-XXI-1875. After the death of Pakhar Singh, his son Manjit Singh, defendant No. 1, had been collecting rent from them. The property in dispute was mortgaged by the son of Pakhar Singh in favour of the Punjab Financial Corporation in the year, 1996 to secure a loan and he submitted the affidavits dated 11.06.1996 and 7.9.1996 with the Punjab Financial Corporation stating therein that he was owner in possession of the suit property. Upon his having defaulted in the payment of loan, the Punjab Financial

Corporation initiated action against him u/s 29 of the State Financial Corporation Act, 1951 (for short "the Act") and thereby wanted to take possession of the suit property from the plaintiff-petitioners. It was thereafter that the plaintiff-petitioners approached the civil court seeking permanent injunction primarily on the ground that they were inducted as tenants by Pakhar Singh prior to the mortgage and the Punjab Financial Corporation was not authorised to take possession from them u/s 29 of the Act as the same can only be taken in accordance with law. As noticed earlier, the courts have declined the interim injunction to the plaintiff-petitioners qua defendants No. 2 and 3. Hence, they have approached this Court by way of the present revision petition.

3. Learned Counsel for the petitioners submitted that the plaintiff-petitioners were inducted as tenant by the owner prior to the mortgage of the property with the respondent-Corporation. According to the learned Counsel, the respondent-Corporation in such a situation cannot take possession of the property in dispute from the tenant or person claiming such right, u/s 29 of the Act. On the strength of decision of the Apex Court reported in Krishan Singh Rana v. Haryana State Industrial Development J.T. 2000 S.C. 444 : 2000 AD 330 arising out of SLP (C) No. 7620 of 2000 decided on 9.10.2000), he urged that the courts below were in error in declining ad interim injunction to the plaintiff-petitioners as they could only be evicted in accordance with law.

4. Learned Counsel for the respondents, on the other hand, has supported the orders passed by the Courts below.

5. I have heard learned Counsel for the parties and have perused the record with their assistance.

6. It is undisputed that the plaintiff-petitioners were inducted as tenants by the owner of the property prior to its mortgage with the respondent-Corporation. The Hon''ble Apex Court in Krishan Singh Rana''s case (supra), while adjudicating right of the tenant in a property under similar circumstances had in para 4 held as under:

In the present case question is, respondent while proceeding u/s 29, could it dispossess a tenant. The field of Section 29 is between Corporation and the owner. Respondent-Corporation can do all that is permissible to it u/s 29 as against owner, but as against tenant or person claiming such right, could only be evicted in accordance with law by the owner now or owner who may subsequently come in. But u/s 29, respondent cannot evict the appellant.

7. In view of the above, the plaintiffs cannot be evicted from the suit property except in due course of law. Consequently, the orders impugned herein are set aside and application for ad interim injunction is allowed and the defendants are restrained from dispossessing the plaintiffs forcibly and illegally during the pendency of the suit except in due course of law.

8. Learned Counsel for the parties state that as the suit relates to the year 2002,

a direction may be issued to the trial Court to decide the same expeditiously.

9. Accordingly, the trial Court is directed to decide the suit expeditiously preferably within a period of one year.

10. Nothing observed in this order shall be construed to be an expression of opinion on the merits of the case.

