



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. _____ OF 2025
(Arising out of SLP (C) No.7288 of 2024)

PNB Housing Finance LimitedAppellant(s)

VERSUS

Sh. Manoj Saha & Anr.Respondent(s)

J U D G M E N T

Joymalya Bagchi, J.

1. Leave granted.
2. Appellant has assailed the judgment and order passed by High Court whereby the secured asset¹ whose possession was taken by the Appellant, was directed to be handed back to the 1st Respondent.
3. 1st Respondent claims to be a tenant of the secured asset. He had entered into an unregistered tenancy agreement with M/s Janapriya Finance and Industrial Investment (India) Pvt. Ltd² for

1 Space of 450 sq.ft. on first floor, 1 Allenby Road, Kolkata – 700020

2 Original landlord

a period of 5 years. In 1992, the term of tenancy expired. But 1st Respondent alleged he continued as a monthly tenant under the original landlord. In 2007, the original landlord sold the secured asset to 2nd Respondent. By letter of attornment dated 04.03.2008, 2nd Respondent that is, the new landlord called upon 1st Respondent to pay rent. 1st Respondent contends he paid rent to 2nd Respondent and continued to occupy the secured asset as a tenant.

4. On 09.02.2017, 2nd Respondent took a loan from the Appellant against creation of security interest on the premises. A second loan was also taken. The loan account was not serviced and became a Non-Performing Asset (NPA). Demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002³ was issued to the 2nd Respondent on 13.07.2021, requiring the latter to pay Rs.3,09,65,636.97/- along with applicable future interest and charges within 60 days. The notice further stated that, in the event of non-payment, the secured creditor would initiate measures under Section 13(4) of SARFAESI, including

³ hereinafter referred to as, 'SARFAESI'

taking possession and sale of the secured asset. Despite such intimation, no payment was made within 60 days of receipt of notice. In the meantime, 2nd Respondent instituted an ejectment suit against 1st Respondent on various grounds, including non-payment of rent.

- 5.** On 02.12.2021, symbolic possession of the secured asset was taken by the Appellant under section 13(4) of SARFAESI. As per Rule 8 (1) and (2) of the Security Interest (Enforcement) Rules, 2002, notice of symbolic possession was published in two leading newspapers and also affixed on a conspicuous part of secured asset.
- 6.** 2nd Respondent filed a securitization application⁴ before Debt Recovery Tribunal⁵ - III, Kolkata challenging the recovery measures initiated under section 13(4) of SARFAESI.
- 7.** On 08.04.2022, Appellant filed an application under section 14 of SARFAESI, seeking assistance of District Magistrate to take physical possession of the secured asset. District Magistrate allowed the application and directed Deputy Magistrate to take

⁴ No.139/2022

⁵ hereinafter referred to as, 'DRT'

possession of the secured asset. However, DRT by order dated 09.11.2022, directed the Appellant to serve prior notice to 2nd Respondent before taking physical possession. Accordingly, on 19.07.2023 intimation was given to 2nd Respondent with regard to taking over possession of the secured asset. Similar notice was also pasted on the secured asset. On 02.08.2023, physical possession was taken by the Deputy Magistrate and handed over to the Appellant.

8. On 23.08.2023, 1st Respondent informed the Appellant he was a tenant of the secured asset and called upon the latter to hand over documents on the basis of which possession of secured asset was taken. Thereafter, 1st Respondent filed a securitization application⁶, *inter alia*, praying for various reliefs including handing back possession of the secured asset. An interim application⁷ seeking stay of notice dated 02.08.2023 under section 13(4) and other reliefs was also filed.

9. After hearing the parties, DRT held the claim of tenancy was based on an unregistered instrument. Neither borrower nor the

⁶ No.737/2023

⁷ No.2331/2023

tenant had intimated the Appellant about the tenancy at the time of creation of mortgage. Given these facts, in view of *Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and Ors.*⁸, DRT rejected interim relief and fixed the matter for final hearing.

10. 1st Respondent assailed DRT order before the High Court under Article 227 of the Constitution. The Appellant resisted the application on the ground of existence of alternate remedies as well as on merits. Referring to paragraph 29 of *Harshad Govardhan Sondagar* (supra), High Court repelled the argument regarding alternate remedy and directed restoration of possession as follows:

“17. Thus, the contention of the bank that there is an alternative remedy of appeal is not accepted by this court in the peculiar facts and circumstances of this case. By the order impugned, the right of the petitioner as canvassed in his SA, has been finally decided. A doctor who was in occupation of the premises and running his chamber, in my, prima facie, view could not be thrown away without due process of law. The issue whether the doctor was inducted as a valid tenant and/or whether his possession was legal or not, are matters which will be decided in the SA, but the occupation cannot be doubted, as available from the records.

18. Under such circumstances, the interim prayer for use of the premises as a chamber ought to have been granted to the petitioner by the learned tribunal in lawful exercise of jurisdiction vested upon it, with certain conditions.

⁸ (2014) 6 SCC 1

19. Accordingly, the revisional application is allowed.”

11. Mr. Suri contended the High Court ought not to have entertained the matter in view of the existence of appellate remedy under section 18 of SARFAESI. We are in wholesome agreement with this submission.

12. In 2016, SARFAESI was amended. By the amending Act, section 17(4A) was introduced with effect from 01.09.2016, enabling any person claiming to be lessees/tenants in respect of secured assets to approach the DRT against measures under section 13(4) of SARFAESI, including taking possession of the secured asset. Tribunal was empowered to declare such measures invalid and restore possession. Order of DRT was made appealable before the appellate tribunal under section 18 of SARFAESI. In light of the aforesaid statutory scheme, this Court repeatedly deprecated interference of High Courts under Article 226/227 in matters pertaining to SARFAESI.⁹

13. In the present case, High Court erroneously relied on *Harshad Govardhan Sondagar* (supra) to entertain the application. The

⁹ Varimadugu Obi Reddy v. B. Sreenivasulu and Ors. (2023) 2 SCC 168 [Para 36]; South Indian Bank Ltd. and Ors. v. Naveen Mathew Philip and Anr. (2023) 17 SCC 311 [Para 17]

observations in *Harshad Govardhan Sondagar* (supra) with regard to absence of statutory remedy available to a lessee/tenant to assail measures under section 13(4) before DRT is based on the pre-amended law and has no manner of application under the post amendment regime. Be that as it may, as the High Court had examined the matter on merits and restored possession of the secured asset to 1st Respondent, we have tested the correctness of the impugned direction in the facts and circumstances of the case.

- 14.** Defending the order, Mr. Gupta submitted 1st Respondent had been inducted as a tenant in 1987 initially under an unregistered lease agreement for 5 years. Thereafter, he was continuing as a monthly tenant. His tenancy is protected under the West Bengal Premises Tenancy Act, 1997¹⁰ and he could be evicted only on the grounds enumerated under section 6 of the said Act. Recovery of possession of secured asset by the Appellant illegally extinguished the tenancy and deprived him of his constitutional right to property.

¹⁰ hereinafter referred to as, 'the Rent Act'

15. Rights of lessees/tenants in properties which are held by financial institutions as secured assets under SARFAESI fell for consideration in *Harshad Govardhan Sondagar* (supra). The Bench analyzed the impact of SARFAESI, particularly section 13 on the rights of lessees/tenants in the secured asset. The Bench held though section 13(13) of SARFAESI overrides section 65A of the Transfer of Property Act, 1882¹¹ and renders invalid any lease created by the borrower after issuance of notice under section 13(2) without taking written permission of the secured creditor, the said section does not determine a prior lease created by a registered instrument. However, if the lessee claims tenancy through an oral/unregistered agreement, the term of the lease cannot exceed one year and the lessee is not entitled to possession of the secured asset beyond a period of one year.

16. In *Vishal N. Kalsaria v. Bank of India and Ors.*¹², a Coordinate Bench carved out an exception from the ratio in *Harshad Govardhan Sondagar* (supra) with regard to tenancies created

¹¹ hereinafter referred to as, 'TP Act'

¹² (2016) 3 SCC 762

under the rent laws. The Bench held SARFAESI and rent laws operate in separate fields and the non-obstante clause in the former cannot override the latter:

“35. The decision of this Court rendered in Harshad Govardhan Sondagar cannot be understood to have held that the provisions of the SARFAESI Act override the provisions of the Rent Control Act, and that the banks are at liberty to evict the tenants residing in the tenanted premises which have been offered as collateral securities for loans on which default has been done by the debtor/landlord”

xxx

xxx

xxx

xxx

xxx

“37. It is a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant. A non obstante clause (Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested in the tenants under the Rent Control Act. The expression “any other law for the time being in force” as appearing in Section 35 of the SARFAESI Act cannot mean to extend to each and every law enacted by the Central and State Legislatures. It can only extend to the laws operating in the same field.”

17. Subsequently, a Three-Judge Bench in *Bajarang Shyamsunder Agarwal v. Central Bank of India and Anr.*¹³ differed from *Vishal N. Kalsaria* (supra) with regard to width of the non-obstante clause under section 35 of SARFAESI:

13 (2019) 9 SCC 94

“23. While we agree with the principle laid out in Vishal N. Kalsaria case that the tenancy rights under the Rent Act need to be respected in appropriate cases, however, we believe that the holding with respect to the restricted application of the non obstante clause under Section 35 of the SARFAESI Act, to only apply to the laws operating in the same field is too narrow and such a proposition does not follow from the ruling of this Court in Harshad Govardhan case” **(emphasis supplied)**

18. Noting the interplay between the objective of the SARFAESI *vis-à-vis* TP Act and rent laws, *Bajarang Shyamsunder Agarwal* (supra) clarified onus lies on tenants claiming through an oral/unregistered agreement to produce rent receipts, property/water taxes receipts, electricity charges, etc., to establish the creation of a valid tenancy.¹⁴ Even then, such tenancies created through an oral/unregistered agreement would not continue beyond one year from issuance of notice under section 13(2) of SARFAESI and the tenant upon expiry of the said period shall be deemed to be a ‘tenant in sufferance’.

19. Mr. Gupta vehemently argued the ratio in *Bajarang Shyamsunder Agarwal* (supra) that tenancy under the Rent Act is determined by efflux of time runs counter to the Constitution

¹⁴ See Para 27

Bench in *V. Dhanapal Chettiar v. Yesodai Ammal*¹⁵ and is not good law.

20. In *V. Dhanapal Chettiar* (supra), question which fell for consideration before the Constitution Bench is whether a notice to determine tenancy under section 106 of the TP Act is necessary for eviction of a tenant under the rent laws. Answering in the negative, the Bench, *inter alia*, held under the extended definition of the word “tenant” under various State laws,¹⁶ jural relationship between the landlord and tenant is not snapped on determination of contractual tenancy and continues till order of eviction is passed.

21. In *Anthony v. K.C. Ittoop & Sons and Ors.*¹⁷, this Court reiterated jural relationship between lessor/lessee created through an unregistered instrument shall be protected under rent laws.

22. It has been argued on behalf of the Appellant that the impact of the non-obstante clause in SARFAESI on the provisions of the Rent Act did not fall for consideration in the aforesaid authorities.

¹⁵ (1979) 4 SCC 214 [Para 6]

¹⁶ Section 2(g) of West Bengal Premises Tenancy Act, 1997– “ ‘tenant’ means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy....”

¹⁷ (2000) 6 SCC 394

On the other hand, such issue was raised and answered vis-à-vis rights of tenants/lessees under oral/unregistered agreement in *Bajarang Shyamsunder Agarwal* (supra).

23. We choose not to delve into the aforesaid issue further as we are not convinced with the evidence adduced by 1st Respondent before the DRT with regard to prior tenancy. Although 1st Respondent claimed he was a tenant in the secured asset from 1987, he was unable to place on record any rent receipt, tax receipt or electricity bill evidencing continued occupation of the premises prior to issuance of demand notice under section 13(2) of SARFAESI. 1st Respondent has only relied on documents showing deposit of rent with Rent Controller from January 2022 to December 2022, that is, after demand notice was issued by the Appellant. Mere reference to some pre-existing tenancy in the sale deed or issuance of letter of attornment by 2nd Respondent (who is also the borrower) unsubstantiated by independent and convincing possessory evidence would not establish a compelling case of pre-existing tenancy in favour of 1st Respondent. Given this situation, institution of the ejectment suit by 2nd Respondent

may not be a determining factor as the possibility of setting up a sham and collusive suit to defeat the claim of the Appellant cannot be ruled out.

- 24.** High Court failed to consider these relevant aspects and illegally directed restoration of *status quo ante*. High Court also lost sight of the conduct of the 1st Respondent in failing to take prompt steps to protect his interest in the secured asset. Appellant had on 02.12.2021 published notice of taking symbolic possession of the secured asset in two leading newspapers and also pasted the notice in a conspicuous place on the secured asset. In spite of such publication, 1st Respondent did not bother to intimate the Appellant with regard to his pre-existing tenancy rights or approach the DRT.
- 25.** Thereafter, on 19.07.2023 intimation notice regarding taking over physical possession had been pasted on the secured asset. Even then 1st Respondent remained indifferent. Only after physical possession had been taken over by the Appellant, did he approach the DRT for restoration of possession. A mandatory order restoring *status quo ante* necessitates a compelling cast

iron case which 1st Respondent has failed to establish. His indifferent conduct and failure to produce rent receipts and/or other evidence regarding continued possession prior to issuance of demand notice under section 13(2) of SARFAESI does not justify a mandatory order.

26. In light of the aforesaid discussion, we allow the appeal and set aside the impugned order passed by the High Court and direct *status quo* in respect of the secured asset till the disposal of securitization application¹⁸. The application shall be disposed of within 2 months from the date of communication of this order without granting unnecessary adjournment to either of the parties.

27. Pending applications, if any, shall stand disposed of.

.....**J.**
(PAMIDIGHANTAM SRI NARASIMHA)

.....**J.**
(JOYMALYA BAGCHI)

**New Delhi,
July 15, 2025.**