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Vishal N. Kalsaria v. Bank of India & Ors.

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Introduction

In the case of *Vishal N. Kalsaria v. Bank of India & Ors.*[1], the Supreme Court has considered the question whether the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (''**SARFAESI Act**'') will override the provisions of the Maharashtra Rent Control Act, 1999 ("**Rent Control Act**"). This decision tries to strike a balance between the rights of a bank to recover its securities under the SARFAESI Act and the rights of a tenant under the Rent Control Act.

Facts

The Appellant was a tenant and under the possession of a house ("**Secured Asset**") which was mortgaged by his landlord with Bank of India ("**Bank**") against certain financial loan. The landlord failed to pay his dues on time, and hence the loan account became a non-performing asset. The Bank issued a notice to the landlord to recover dues, however the landlord failed to respond to the notice within the statutory time limit of 60 days. Consequently, the Bank filed an application before the Metropolitan Magistrate in order to take possession of the Secured Asset. The application was allowed and accordingly, the landlord issued notice to the Appellant to vacate the Secured Asset within 12 days of receipt of the notice.

The Appellant filed a rent suit before the Small Causes Court, and received an interim order of injunction restraining the Bank from taking possession of the Secured Asset. Subsequently, the Appellant also filed an application for staying the order of his eviction, before the Chief Metropolitan Magistrate. However, his application was dismissed on the ground that the lease deed executed between the landlord and the Appellant was not registered. Hence, the lease deed does not constitute a valid evidence of existence of tenancy. In addition to this, it was also held that once a secured creditor takes recourse to the provisions of Section 13 and 14 of the SARFAESI Act to recover his interests in the secured assets, it is not open for the court to grant injunction under the Rent Control Act.

Issue

The question before the Apex Court was whether the Bank could take action under the provisions of the SARFAESI Act and take possession of the Secured Asset which is in possession of the tenant.

Decision of the Supreme Court

The Court observed that in the present case, the lease deed was not registered. The Court interpreted Section 106 of the Transfer of Property Act, 1882 and stated that when a monthly tenancy is reduced to writing it must be registered. However, the onus of registration vests with the landlord as per Section 55 of the Rent Control Act. Hence, the tenant cannot be held liable for non-registration of the lease deed. The Apex Court also held that, where the monthly rent was paid and accepted regularly, then, mere non-registration of the lease deed would not negate the said lease. The tenant would still be protected under Rent Control Acts.

The Apex Court held that a tenant who is protected under the Rent Control Act can only be evicted after following due process as established under the Rent Control Act. The overriding provisions provided under Section 35 of the SARFAESI Act cannot be invoked to nullify the protection provided by the Rent Control Act. In a scenario, where the SARFAESI Act is said to prevail over the state Rent Control Acts the tenants would always bear the brunt of the failure of their landlords in paying dues to the banks/financial institutions. The banks/financial institutions would then take recourse under the SARFAESI Act and evict the tenants. Hence, the tenants would live in the fear that their landlords might mortgage the premises they are living in, and on default the tenants would be forced to give up possession of such premises. In order to protect the interests of tenants, Rent Control Acts have been enacted by several states. If the SARFAESI Act was allowed to prevail over the Rent Control Act, then the legislative powers of the State Legislature is denuded. Hence, it cannot be held that SARFAESI Act would have an overriding effect over the Rent Control Act.

[1] *Criminal Appeal No. 52 OF 2016 (Arising out of SLP (Crl.) No. 8060 of 2015)*