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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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Date of decision: 06.04.2026

DEEPAK KUMAR

...Petitioner

Versus

RAMPHAL AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. Nikhil Chopra, Advocate,
Ms. Trishanjali Chopra, Advocate and
Mr. Jatin Verma, Advocate for the petitioner.

YASHVIR SINGH RATHOR. J.(Oral)

1. This revision petition is directed against the judgment dated 12.03.2025 passed by the Court of Additional District Judge, Kaithal, whereby civil miscellaneous appeal instituted by the petitioner/plaintiff against the order dated 02.01.2023 passed by the Court of Additional Civil Judge (Sr. Division) Guhla has been dismissed vide which the application under Order 39 Rule 1 and 2 CPC had been dismissed.

2. As per version of plaintiff/petitioner, he is in possession over the suit property detailed in para No.1 of the plaint, as tenant under defendant No.1, vide rent note dated 30.03.2009, @ Rs.8,000/- per month. He was inducted as a tenant for a period of 11 months and at present, the rate of rent is Rs.11,200/- per month. He has been paying the rent regularly to defendant No.1 and rent upto January, 2022 has been paid and he is ready to pay the future rent. The tenancy is still subsisting and there is no order of ejection against the plaintiff and he has also not surrendered his tenancy rights. Defendant No.1 threatened to dispossess him



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which necessitated the present suit.

3. Defendant No.1 filed written statement and reply to the injunction application and admitted relationship of landlord and tenant between the parties since 30.03.2009 but alleged the rate of rent to be Rs.13,000/- per month, which was initially Rs.8,000/- per month. It is also submitted that plaintiff is not paying the rent regularly and he is in arrears of rent since January 2022 and dismissal of the application was sought.

4. Defendant No.2-Kotak Mahindra Bank Limited was subsequently impleaded as defendant and it also filed written statement and reply to the injunction application submitting that property in question was mortgaged by defendant No.1 in favour of defendant No.2 and defendant No.2 has already started the proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**hereinafter referred to as SARFAESI Act**). This fact has not been disclosed by plaintiff and defendant No.1. Another suit bearing Civil Suit No.324 of 2022 was decided by Civil Judge (Jr. Division) Guhla and the plaint has been rejected under Order 7 Rule 11 CPC. Now plaintiff and defendant No.1 have colluded with each other to defeat the rights of defendant No.2. It is further submitted that Civil Court has no jurisdiction to entertain the suit of the present nature in terms of Section 34 of the said Act and dismissal of the application was sought.

5. After hearing learned counsel for the parties, the Court of Additional Civil Judge (Sr. Division) dismissed the application under Order 39 Rule 1 and 2 CPC, vide order dated 02.01.2023 and the appeal instituted by the plaintiff has also been dismissed, vide judgment dated 12.03.2025.



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6. I have heard learned counsel for the petitioner and have gone through the material placed on the file.

7. Learned counsel for the petitioner contended that the petitioner is in settled possession over the suit property, since the year 2009. Mortgage, if any, has been created by defendant No.1, after creation of tenancy and the same is not binding upon him and the financial institution/defendant No.2 cannot dispossess him from the suit property. Both the Courts below have failed to appreciate the material on record and position of law in the correct perspective and the impugned orders are thus liable to be set aside. In support of his contention, learned counsel has relied upon judgments passed by Hon'ble Supreme Court in *Law Finder Doc ID # 2685740, Central Bank of India and Anr. Vs. Smt. Prabha Jain and Ors.* and *Law Finder Doc ID # 540988, Punjab National Bank Vs. Savitri Devi.*

8. However, I do not find any force in the contentions raised by learned counsel for the petitioner and the case law cited by him is not at all applicable to the facts of the case in hand.

9. Before proceeding further, relevant portion of Section 17 [(4A) of the Act is reproduced as under:-

*“17. [Application against measures to recover secured debts].-(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:
[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]*



[Explanation.-For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.]

(4A) Where-

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,-

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]”

10. A perusal of the aforesaid provision makes it clear that in case any person in an application under sub-Section 1 claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal after examining the



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facts of the case and evidence produced by the parties in relation to such claims, for the purposes of enforcement of security interest, have the jurisdiction to examine whether the tenancy has expired or stood determined and if the Debt Recovery Tribunal is satisfied that the tenancy right claimed in the secured asset falls under sub-clause (a), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act. This provision thus makes it clear that the tenant has the remedy to approach the Debt Recovery Tribunal for the desired relief and he can agitate his rights before the DRT.

11. Section 34 of the said Act bars jurisdiction of the Civil Court which is reproduced as under:-

“34. Civil court not to have jurisdiction- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).”

12. Aforesaid provision further makes it clear that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In the



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present case also, defendant No.2 has already instituted the proceedings for recovery of the amount under Section 13(2) of the SARFAESI Act and the only remedy with the petitioner/plaintiff is to move an application before DRT under Section 17(1) of the said Act which can be decided as per procedure laid down in Section 17 (4A) of the said Act and suit in the present form before the Civil Court is thus not maintainable.

13. Both the Courts below have also rejected the application under Order 39 Rule 1 & 2 CPC on the basis of sound judicial considerations. No manifest error or material illegality thus has been committed so as to call for any interfere.

14. Resultantly, the petition in hand stands dismissed.

(YASHVIR SINGH RATHOR)
JUDGE

06.04.2026
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No