

Cygnnet Machinibg And Engineering Private Limited Vs Aanag Enterprises Private Limited And Others

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 21, 2025

Acts Referred: Code of Civil Procedure, 1908 â€” Section 144, Order 39 Rule 4, Order 41 Rule 11

Indian Easement Act, 1882 â€” Section 60(b)

Securitisation And Reconstruction Of Financial Assests And Enforcement Of Security Interest Act, 2002 â€” Section 13(4), 17

Hon'ble Judges: Sabyasachi Bhattacharyya, J; Uday Kumar, J

Bench: Division Bench

Advocate: Saptansu Basu, Kumarjit Banerjee, Sanchari Chakraborty, Puja Dey, Samriddha Saha, Om Narayan Rai, Anirban Pramanick, Subhasree Dey, Punarbasu Nath, Bhagyasree Dey

Final Decision: Dismissed

Judgement

1. The present appeal has been preferred against an order whereby an injunction application filed by the appellant has been dismissed and a petition

under Order XXXIX Rule 4 of the Code of Civil Procedure for vacating the ad interim injunction granted initially on such injunction application has

been allowed.

2. Learned senior counsel appearing for the appellant submits that, taking undue advantage of the predicament of the appellant in view of this court

initially not having determination to take up Order XLI Rule 11 matters and the appellant having had to move before a different Bench, the Bank has

in the meantime taken possession of the premises, thereby ousting the appellant.

3. However, it is pointed out that the appellant still has a remedy in the nature of Section 144 of the Code of Civil Procedure to get restoration of

possession, since illegally ousted, if the appeal succeeds.

4. Learned senior counsel for the appellant submits that the appellant has filed a suit for declaration of irrevocable license of the appellant in respect of

the disputed property.

5. The respondent-Bank has all along participated in such suit and has never filed any application for rejection of plaint or otherwise, in the nature of

demurrer.

6. Rather, the respondent-Bank has sought expeditious disposal of the suit from a different Bench of this court.

7. It is contended that it does not lie in the mouth of the Bank, which has been participating in the suit without taking any objection or demur, that it

could take possession of the premises under the provisions of the SARFAESI Act.

8. Learned senior counsel appearing for the appellant places reliance and much stress on the fact that the appellant is a pre-mortgage occupant of the

disputed property.

9. It is an admitted position that the appellant had been in possession of the premises as a licensee under the owner, the latter having mortgaged the

property to the Bank.

10. Learned senior counsel takes the court through the annexure at page-134 of the connected stay application, which is a letter dated February 21,

2007 issued by the owner/mortgagor to the bank admitting that a portion of the property which was mortgaged was under "tenancy occupation on

monthly rent".

11. Thus, a higher right of the appellant as tenant has been admitted by the mortgagor himself in the document of mortgage, which was well within the

knowledge of the Bank.

12. Learned senior counsel also places reliance on a document in the nature of a certificate dated February 6, 2007 annexed at page-57 of the present

application where the mortgagor/licensor certified that it had allotted 340 square feet floor space (the disputed property) on the third floor to the

present appellant for their day to day work free of cost.

13. In view of such admission of pre-mortgage possession of the appellant, it is contended that the civil suit filed by the appellant is very much

maintainable.

14. It is further argued that the appellant has not sought interdiction with any measures taken under the SARFAESI Act against the mortgagor but

seeks to protect its own possession in the capacity of pre-mortgage licensee in its own right in respect of the property.

15. It is contended that even a licensee, or for that matter a trespasser, is entitled to the protection of law inasmuch as such licensee/trespasser cannot

be evicted without due process of law.

16. Learned senior counsel places much reliance on Bank of Rajasthan Limited vs. VCK Shares and Stock Broking Services Limited reported at

(2023) 1 SCC 1 for the proposition that the jurisdiction of a civil court to try a suit filed even by a borrower against a Bank or financial institution is not

ousted by virtue of the scheme of the then Recovery of Debts and Bankruptcy Act, 1993.

17. Borrowing the same logic, it is argued, the fetter incorporated in the SARFAESI Act to a civil suit does not debar the jurisdiction of a civil court to

entertain a suit for declaration.

18. In the present case, the appellant has filed a suit for declaration of its licensee rights and as a consequential relief, has sought injunction.

19. Thus, such suit and the relief of injunction are very much maintainable.

20. Learned senior counsel next cites Bajarang Shyamsunder Agarwal vs. Central Bank of India and another reported at (2019) 9 SCC 94, where it

was held by the Supreme Court that if there is a pre-existing valid tenancy under the law created prior to the creation of the mortgage, such

possession cannot be disturbed by the secured creditor by taking possession of the property.

21. Since at the Order XLI Rule 11 stage, the respondents do not have a right of hearing, we choose not to go into the details of the contentions of the

respondents.

22. However, on a plain reading of the materials before the court and the impugned order, we are of the opinion that no interference is called for, for

the following reasons:

23. First, the appellant cannot plead tenancy on the strength of a mere stray phrase in the letter of confirmation for creation of mortgage between the

Bank and the mortgagor to the effect that a portion of the property is "under tenancy occupation on monthly rent".

24. Not only does the said phrase not specifically refer to the appellant as the tenant or specify the exact portion of the property which is under

tenancy, such statement is palpably contrary to the plaint case made out by the appellant itself.

25. The first relief sought in the plaint is a declaration that the plaintiff is an irrevocable licensee within the meaning of Section 60(b) of the Indian

Easement Act, 1882.

26. In paragraph no. 5 of the plaint, the plaintiff/appellant-company has boldly asserted that it was granted a license for running its business from the

subject premises.

27. It is required to be noted here that the provisions of the Indian Easement Act, 1882 are not applicable in the State of West Bengal.

28. Although there are a line of decisions which say that the basic principles of justice, equity and good conscience incorporated in the said Act can be

borrowed under general claims on tort, the specific declaration of irrevocable licensee on the strength of Section 60(b) of the said Act cannot be

prayed for in the State of West Bengal.

29. Thus, a declaration regarding the alleged irrevocability of a license cannot be sought within the State of West Bengal, at least on a prima facie

footing.

30. That apart, the plaintiff has stated in paragraph no. 5 of the plaint that it was granted a license merely for running its business from the subject

premises.

31. With the stay application in connection with the present appeal, the appellant has also annexed a certificate of the mortgagor/licensee dated

February 6, 2007 which is also important in the context.

32. The said certificate clearly says that the disputed plot was allotted to the plaintiff for their "day to day work", "free of cost".

33. Whereas the expression "free of cost" indicates that it was a mere license, the other expression "day to day work" clearly shows that

exclusive possession was not imparted to the appellant but the license was in the nature of a day-to-day permissive right to occupy for the mere

purpose of running a business.

34. Thus, even on a prima facie view of the matter, no exclusive tenancy rights were ever created in favour of the plaintiff, nor has the plaintiff sought

for such relief in the suit itself, from which the present injunction application emanates.

35. The ratio laid down in *Bajarang Shyamsunder Agarwal* (supra) cited by the appellant is not applicable at all to the present case, since in the said

case, the Supreme Court was dealing with the interplay between the Transfer of Property Act, the Rent Control laws as well as the SARFAESI Act.

36. In such context, it was observed by the Supreme Court that only if a valid tenancy under law is in existence prior to the creation of the mortgage,

the tenant's possession cannot be disturbed by the secured creditor by taking possession of the property.

37. There is a gulf of difference, however, between a valid tenancy under law and a mere license.

38. It is well-settled that the possession of a licensee does not rob the licensor/owner of exclusive possession or control of the property, as opposed to

a valid tenancy created in law.

39. Seen from such perspective as well, the proposition laid down in the said cited judgment in the context of a valid tenancy is not applicable to the

present case, where the plaintiff claims rights as a mere licensee, at all.

40. Insofar as *Bank of Rajasthan Limited* (supra) is concerned, the said decision was rendered in the context of the Recovery of Debts and

Bankruptcy Act, 1993, which is a different statute than the SARFAESI Act.

41. Although the restrictions imposed therein are somewhat similar to the SARFAESI Act, in view of the SARFAESI Act, as reflected in its object

and reasons, being specifically to expedite the recovery of debts from non-paying borrowers, the provisions in the SARFAESI Act have to be seen in

a different context.

42. In terms of the SARFAESI Act, not only a suit cannot be entertained by the civil court if the same pertains to the powers conferred under the

SARFAESI Act, the SARFAESI Act specifically debars any injunction from being granted by a civil court in respect of such matters.

43. In the present case, the respondent-Bank admittedly initiated measures under Section 13(4) of the SARFAESI Act and as such, the jurisdiction of

the civil court is palpably barred, including the jurisdiction to grant any injunction.

44. That apart, Section 17 of the SARFAESI Act clearly provides remedy to "any person", including the borrower, aggrieved by any measure so

taken, to take seek legal remedy before the concerned tribunal.

45. Thus, on such count as well, the plaintiff could not be said to be remediless in such situations.

46. Hence, there is strong doubt as to whether the suit itself, in the teeth of the measures taken under Section 13(4) of the SARFAESI Act by the

Bank against the mortgagor/alleged licensor, is maintainable at all.

47. In such view of the matter, we are of the opinion that although the impugned order is somewhat lacking in appropriate and elaborate reasons, the

learned Trial Judge, nevertheless, took into consideration the different decisions cited before the said court as well as the arguments of the parties and

came to a conclusion that this is a separate proceeding where the plaintiff, by the suit, cannot stop the proceedings under the SARFAESI Act.

48. Hence, we choose to supplement the somewhat unhappy language of the impugned order by further reasons as given above.

49. Since the conclusion of the learned Trial Judge was justified in law, her reasons have to be read in the context of the further reasons which we

have provided in the present order.

50. On the premise of the said additional rationale, we are of the opinion that there is no scope of interference with the impugned order.

51. Accordingly, F.M.A.T. 92 of 2024 is dismissed under XLI Rule 11 of the Code of Civil Procedure. The connected applications, bearing CAN 1 of

2024 and CAN 2 of 2025, stand accordingly dismissed as well.

52. There will be no order as to costs.

53. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.