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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 78 OF 2015

Arvind Rajaram Jagnade ... Petitioner
Vs.
The Collector & District Magistrate,
Sangli & Ors. ... Respondents

Mr. P. M. Arjunwadkar, for the Petitioner.

Mr. S. S. Bhise, AGP for Respondent Nos. 1 & 7.

Mr. O. A. Das, for Respondent Nos. 2 & 3.

CORAM : V. M. KANADE, &
A. R. JOSHI, JJ.

DATE : MARCH 30, 2015

PC.

. The grievance of the Petitioner is that forcible possession of the flat, in which he is a lessee, has been taken by the Bank, pursuant to the directions given by the District Magistrate under Section 14 of the SARFAESI Act. It is submitted that the agreement is termed as "leave & licence agreement". In fact intention of the parties was to create a lease. Secondly, it is submitted that Petitioner had given a notice to the landlord and the Bank that he is in possession of the premises. However, this fact was not disclosed by the Bank to the

Magistrate, as is required under Section 14(1) of the said Act. Our attention is invited to the observations made in paragraph 21 of the judgment of the Apex Court in the case of – *Harshad Govardhan Sondagar, Appellant Vs. International Assets Reconstruction Company Limited & Ors., Respondents [(2014) 6 SCC 1]*. It is submitted that the Apex Court in clear terms has observed that the lessee is entitled to be protected, provided lease is executed prior to the execution of the mortgage by the borrower.

2. On the other hand, learned counsel appearing on behalf of the Respondent-Bank submitted that the landlord himself in his reply before the District Magistrate has mentioned that the Petitioner herein was neither licensee nor lessee, and was never in possession of the flat.

3. In our view, the submissions made by the learned counsel appearing on behalf of the Petitioner is without any substance. The Apex Court in the case of *Harshad Govardhan (supra)* in paragraph 36 has observed as under:

“36. Hence, if any of the Appellants claim that they are entitled to possession of a secured asset for any term

exceeding one year from the date of the lease made in his favour, he has to produce proof of execution of a registered instrument in his favour by the lessor. Where he does not produce proof of execution of a registered instrument in his favour and instead relies on an unregistered instrument or oral agreement accompanied by delivery of possession, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, will have to come to the conclusion that he is not entitled to the possession of the secured asset for more than a year from the date of the instrument or from the date of delivery of possession in his favour by the landlord.”

It is not possible for us to go into the question as to whether the document, which is executed, is a lease or leave & license agreement. The agreement clearly mentions that it is a leave & license agreement, and one of the clauses in the said agreement mentions that license is for a period of 11 months only. Be that as it may, it is a leave and license agreement and not a registered instrument of lease. The District Magistrate has rightly held that contention of the Petitioner that he is in possession of the flat as a lessee, is unacceptable.

4. We are, therefore, not inclined to interfere with the order passed by the District Magistrate. Writ petition is therefore dismissed.

5. Learned counsel appearing on behalf of the Petitioner submits that some valuable articles of the Petitioner are lying in the said flat. If the Petitioner establishes that the said articles belonged to him, the Respondent-Bank may remove the said articles and hand them over to the Petitioner after making a panchanama and inventory.

Sd/-
[A. R. JOSHI, J.]

Vinayak Halemath

Sd/-
[V. M. KANADE, J.]