

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.841 OF 2015

Shri Harish Rammurti Shastri	..Petitioner
Versus	
The State of Maharashtra and others.	..Respondents

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Mr. Rahul S. Kadam, for the Petitioner.

Mr. Sanjiv Punalekar a/w. Mr. Madhur Rai and Mr. Arun Shilwant
i/b. PRS Legal for Respondent No.6.

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

DATE : FEBRUARY 26, 2015

P.C.

1. Heard learned Counsel for the petitioner and learned Counsel for the Respondent – Bank.
2. The grievance of the petitioner is that he is a lessee in respect of the property which is mortgaged in favour of the bank and yet the bank without making the petitioner as a respondent in an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”, for short) has obtained an order from the District Magistrate for taking possession of the property. It is submitted that the impugned order passed by the Magistrate, therefore, is required to be set aside. Reliance is placed on a decision of the Apex Court in the case of *Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Ltd. & Ors.* reported in (2014) 6 SCC 1.

3. It is submitted that the bank was aware that the petitioner is a tenant of the suit premises. They even intervened in the proceedings which were filed by the petitioner before the lower Court. Lastly it is submitted that the petitioner does not have any alternate remedy since the lessee does not have a right to file any application under Section 17 of the SARFAESI Act.

4. On the other hand learned Counsel for the respondent bank has submitted that the petitioner is relying on an unregistered agreement and in view of the observations appearing in para-36 of the judgment of the Supreme Court in the case of *Harshad Sondagar (supra)* the petitioner is not entitled to seek any

protection from the learned Magistrate.

5. In our view, the submission made by the learned Counsel for the petitioner is without any substance. The Apex Court in the case of ***Harshad Sondagar (supra)*** observed in para-36 as under :

“36. We may now consider the contention of the Respondents that some of the Appellants have not produced any document to prove that they are bona fide lessees of the secured assets. We find that in the cases before us, the Appellants have relied on the written instruments or rent receipts issued by the landlord to the tenant. Section 107 of the Transfer of Property Act provides that a lease of immoveable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made 'only by a registered instrument' and all other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. 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.”

6. The material which is annexed to the Petition indicates that the petitioner claims to be a lessee on the basis of an unregistered agreement. That being the position, in view of the observations made by the Apex Court in para-36 of *Harshad Sondagar (supra)*, the petitioner is not entitled to seek protection. The Petition is, therefore, dismissed.

(A. R. JOSHI, J.)

(V.M. KANADE,J.)

Deshmane, (P.S.)