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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.1030 OF 2015

M/s.Optic Trading Pvt.Ltd. ...Petitioner
vs.
State Bank of Mysore & Ors. ...Respondents

Mr.Mayur Khandeparkar a/w Mr.Vivek Phadke i/b
Kaikini Phadke & Associates for the Petitioner
Mr.Yunus Menun a/w Mr.Saahil Menon and Navid Menon
i/b Sandhya Yunus Menon for the respondent No.1

CORAM : A.S.OKA, &
V.L.ACHLIYA, JJ.
DATE : OCTOBER 16, 2015

P.C.:

1 Heard the learned counsel for the petitioner. This is a case which shows as to how by fraudulent acts, the claim of the first respondent-Bank sought to be defeated. The third and fourth respondents are the directors of the company which is the borrower of the first respondent. The third and fourth respondents created a mortgage in favour of the first respondent of the secured assets subject matter of this petition. The petitioner-company is claiming tenancy on the basis of the leave and licence agreements executed on 21st December 2009 by the third and fourth respondents respectively. When the so called leave and licence agreements were allegedly executed in favour of the petitioner-company, the third and fourth respondents were the Directors of the petitioner-company as well. It is claimed that they ceased to be the Directors of the

petitioner-company from December 2010, but they continued to be the shareholders of the petitioner.

2 The challenge in this petition is to the order passed by the learned Chief Metropolitan Magistrate under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the said Act'). The basic submission of the learned counsel for the petitioner is that even in the letter of confirmation of creation of mortgage by deposit of title deeds, it is disclosed by the third and fourth respondents that a part of the property is in possession of the tenants. Secondly, it is contended that in the affidavit filed by the first respondent-Bank before the learned Chief Metropolitan Magistrate in terms of the decision of the Apex Court in the case of Harshad Sondagar Vs. I.A.R.C. And others¹, the first respondent-Bank admitted that the petitioner was a tenant. The submission based on section 109 of the Indian Evidence Act is that the burden shifts on the first respondent-bank to prove that the petitioners has no right. The submission is that admitted position is that when the application under section 14 of the said Act was made, the petitioner was a tenant in possession of the secured assets as is reflected from the documents on record including the document of the first respondent which show the possession of the petitioner.

1 2014 6 SCC (1)

3 As stated earlier, the third and fourth respondents are the Directors of the second respondent borrower who were admittedly the Directors of the petitioner-company on 21st December 2009, when the so called two separate leave and licence agreements were executed by and between the petitioner and the third and fourth respondents respectively. The leave and licence agreements are not registered. They are purportedly executed before a Notary Public. Both the documents do not bear the document registration number of the Notary. In any event, the petitioner-company is claiming on the basis of the so called leave and licence agreements dated 21st December 2009. The well settled law is that an agreement of leave and licence does not create any interest in the property subject matter of the licence. We have a serious doubt about even the genuineness of the said two documents. Even assuming that the said documents are genuine and by ignoring that the documents are not registered, the petitioner can at highest can claim to be a licensee. Mere use of the word 'tenant' in a letter or in the affidavit filed by the authorised officer of the first respondent does not entitle the petitioner to claim tenancy. To repeat, when the so called leave and licence agreements were executed by the third and fourth respondents, they were the Directors of borrower-company as well as the petitioner-company. Admittedly, there is no document on record showing the creation of tenancy. By no stretch of imagination, the petitioner can claim to be a tenant

of the secured assets based on unregistered Leave and Licence Agreements. This is not a case where the petitioner should be allowed to invoke Article 226 of the Constitution of India. Hence, there is absolutely no merit in the petition and the same is rejected.

4 A prayer is made by the learned counsel for the petitioner for the extension of ad-interim relief. The said prayer is opposed by the learned counsel for the first respondent. Ad-interim relief is operative from 2nd February 2015. The said ad-interim relief will continue to operate for a period of six weeks from today.

(V.L.ACHLIYA,J.)

(A.S.OKA,J.)