IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.251 OF 2014
AND
CIVIL APPLICATION NO.566 OF 2014
WITH
CIVIL REVISION APPLICATION NO.252 OF 2014
AND
CIVIL APPLICATION NO.567 OF 2014

Tarun S/o Ratansign Rathi .. Applicant
V/s.
Diwakar Bhaskar Shetty & Anr .. Respondents

Mr. Sudhir Sawant a/w Mr. Ashok M. Saraogi Advocate for applicant in both matters.
Mr. Hasanuddin S. Ansari, Advocate for Respondent No. 1 in both matters.
Dr. Birendra Saraf a/w Mr. Rohan Sawant and Mr. Nikhil Rajani, Advocate for respondent No. 2 in both matters and applicant in CRA No. 566/2014 and 567/2014

CORAM : K. R. SHRIRAM, J.
DATE : 10th March, 2015.

P.C.

1. By consent of the parties these Civil Revision Applications are taken up for final hearing at the admission stage itself.

2. The applicant has approached this court against the order of the Appellate Bench of the Small Causes Court, Mumbai which upheld the order of the Trial Court dismissing the application of the applicant for injunction restraining the respondent no. 2 from proceeding with the steps

taken under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'SARFAESI Act').

3. The Trial court as confirmed by the finding of the Appeal Bench, did not grant the injunction as sought for by the applicant. The relief that the applicant was seeking was that the respondent no. 2 not to disturb his possession except in due process of law as per the Maharashtra Rent Control Act.

4. The respondent No. 1 had obtained a loan from respondent no. 2 on or about 14th February, 1995 and to secure repayment of the credit facilities created equitable Mortgage by deposit of title deeds in respect of Flat No. 102, Palm House, Mogal Lane, Mahim, Mumbai-400 016.

5. On account of increase in the amount of liability towards respondent no. 2, Respondent no. 1 created equitable mortgage in respect of his adjacent flat as well namely flat no. 103. On 14th October, 1995 respondent no. 2 got notice published in newspapers inviting attention of the public that the said 2 flats namely flat no. 102 and 103 are duly mortgaged to respondent no. 2. In view of the default committed in repayment of the loan amount by respondent no. 1, respondent no. 2 commenced recovery proceedings. Various

proceedings were taken out and for the purpose the present application, it is not necessary to go into all the proceedings.

6. The respondent no. 2 finally took measures under the provisions of the SARFAESI Act and issued notice under section 13(2) of the Act and on or about 24th January, 2005 even moved an application under section 14 of the said act before the Chief Metropolitan Magistrate to seek assistance to take possession of the mortgaged flats. The Chief Metropolitan Magistrate by an order passed on 14th July 2006 allowed the application of the respondent no. 2.

7. In the meanwhile, the applicant herein had filed two declaratory suits in 1997 in the Small Causes Court, Mumbai seeking a declaration of being a lawful tenant. The basis was that the applicant had entered into an agreement of tenancy executed between the applicant and respondent no.1, some time on or about 13/14 October, 1995. Both the declaratory suits, however, came to be dismissed. The counsel for the applicant states that the suit was dismissed for default. The counsel for respondent no.2 on instructions states that it was dismissed for want of prosecution. It should not make any difference for the purpose of this matter. It is however, necessary to note that respondent no.1 has denied having executed any

such agreement and has alleged that the applicant is a trespasser. In any event, the alleged tenancy agreement is after the said two flats were mortgaged by respondent no. 1 to respondent no.2. The applicant, had also taken steps to challenge the banks recovery proceedings before the DRT, DRAT, and even filed writ petitions etc. The applicant also filed the RAD suit No.1917/2012 and 1918/2012 which is the subject matter of the present proceedings.

8. Section 34 of the SARFAESI Act reads 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 power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."*

9. Therefore, there is a bar on Civil Courts in entertaining any suits or proceedings in respect of any matter which is to be heard by Debt Recovery Tribunal or Debt Recovery Appellate Tribunal. The Apex Court in the matter of **Harshad**

Govardhan Sondagar V/s. International Assets Reconstruction Company Limited and Others reported in (2014)6 SCC 1, at paragraph 26 has held as under:-

> "26.A further question of law raised in these appeals is whether thetenants have remedies under the concerned tenancy law. In the State of Maharashtra,the Maharashtra Rent Control Act, 1999 is in force and this Act applies to premises let for the purposes of residence, education, business, trade or storage specified in Schedule I and Schedule II of the Act as well as houses let out in areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act,1947 applied before the commencement of the Act. Section 33 of the Maharashtra Rent Control Act is titled 'Jurisdiction of courts' and it provides that the courts named therein 'shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under the Act and the applications which are to be decided by the State Government or an officer authorised by it or the Competent Authority. <u>The question of law that we have to consider is whether the appellants as tenants of premises in the State of Maharashtra including Mumbai will have any remedy to move these courts having jurisdiction under Section 33 of the Maharashtra Rent Control Act and obtain the relief of injunction against the secured creditor taking possession of the secured asset from the appellants.</u> The answer to this question is in Section 34 of

the SARFAESI Act, which is extracted hereinbelow:

> "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).

A reading of the second limb of Section 34 of the SARFAESI Act would show that 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 the Act. Thus, when action is sought to be taken by the secured creditor under Section 13 of the SARFAESI Act or by the Chief Metropolitan Magistrate or the District Magistrate under Section 14 of the SARFAESI Act, the Court *or the authority mentioned in Section 33 of the Maharashtra Rent Control Act cannot grant the injunction to prevent such action by the secured creditor or by the Chief Metropolitan Magistrate or the District Magistrate. Even otherwise, Section 33 of the Maharashtra Rent Control Act vests jurisdiction in the courts named*

> *therein to decide disputes between the landlord and the tenant and not disputes between the secured creditor and the tenant under landlord who is a borrower of the secured assets."*
> *(emphasis supplied)*

10. Therefore, the Trial Court and the Appellate Court were right in refusing to exercise jurisdiction and granting interim relief against respondent no.2 bank. Therefore, in my view no interference is called for. Both the courts have correctly refused to exercise jurisdiction against respondent no.2.

11. In the circumstances both the Civil Revision Applications are dismissed. Consequently, the interim relief granted also stands vacated.

12. At this stage the counsel for the applicant requests that the order be stayed. I see no reason to stay this order because under the Maharashtra Rent Control Act, the Apex Court has observed that the Small Causes Court has no jurisdiction.

13. Accordingly the Civil Applications also stand dismissed.

(K. R. SHRIRAM, J.)