

PC.

1. By this petition [Writ Petition (St.) No. 7930/2015], which is filed under Article 226 of the Constitution of India, Petitioner is seeking an appropriate, writ order and direction for quashing and setting aside the order passed by the Chief Metropolitan Magistrate, dated 16th December, 2014. The Petitioner claims to be a tenant in respect of the flat No. 204, 2nd floor, Cosmos Court, Opp. IOC Petrol Pump, S. V. Road, Vile Parle (West), Mumbai 56, which is owned by Respondent No. 4. Respondent No. 4 is a guarantor to the loan, which was sanctioned by Respondent No. 1 State Bank of India in favour of Respondent No. 2 M/s. Shree LTC Exports (India) Pvt. Ltd. According to the Petitioner, he is a tenant in respect of the said flat, whose possession is not taken by Respondent No. 1 Bank, since 1st February, 2011. In support of the said submission, the Petitioner has relied upon in all 36 rent-receipts from 1.2.2011 to 1.2.2014 and letters of the defendant (Respondent No. 4 herein).

2. It is submitted that the judgment and order passed by the learned Chief Metropolitan Magistrate is contrary to the judgment of the Apex Court in the case of - *Harshad Govardhan Sondagar, Appellant Vs. International Assets Reconstruction Company Ltd. &*

Ors. [(2014) 6 SCC 1]. Our attention is invited to paragraph 27 of the judgment, which is a certified copy of the impugned judgment. In paragraph 12 of the petition, it is stated Petitioner intervened in the Securitisation Application, which was filed by the Bank, under Section 14 of the SARFAESI Act. However, the said intervention application was dismissed on the ground that a registered document of lease, prior to the date of mortgage was not produced. It is submitted that under the Maharashtra Rent Control Act and under the provisions of 107 of the Transfer of Property Act, a lease can be created even by oral agreement, alongwith transfer of possession. In support of the said submission, reliance has been placed on the judgments of the learned Single Judge of this Court in the case of – *Ramji Dhondji Dhumal & Ors., Petitioners Vs. Madhu Jalbaji Dhumal & Ors., Respondents [2009(6) Mh. L. J. 461]* and also on another judgment in the case of – *Shashikant s/o Ramrao Kulkarni, Petitioner Vs. Nirmala w/o Vasantrao Gore, Respondent [2011(5) Mh.L.J. 251]*. It is submitted that in both these judgments, it has been held that there can be an oral lease, accompanied by delivery of possession. Reliance is also placed on Section 55 of the Maharashtra Rent Control Act, 1999.

3. It is submitted that there is a violation of principles of natural justice since the learned Magistrate has refused to give hearing to the Petitioner. It is submitted that there is a finality clause attached to the order passed by the Chief Metropolitan Magistrate. Under subsection (3) of Section 14 of the SARFAESI Act, the order becomes final and the tenant has no right to file an appeal under Section 17 of the said Act. Reliance is placed on several judgments, in support of the said submission.

4. We are unable to accept the submissions made by the learned counsel appearing on behalf of the Petitioner. It is an admitted position that the lease, which was alleged to be created on 1st February, 2011 is not a registered agreement of lease. The Petitioner was unable to produce the registered agreement of lease in her favour.

5. The Apex Court in clear terms has held, in case of *Harshad Govardhan Sondagar (supra)*, that only a tenant, in whose favour a registered agreement of lease is executed by the landlord prior to the execution of the mortgage, is entitled to get protection of possession and the Magistrate, only in such cases, can give hearing to such lessees or tenants. In paragraph 27 of the judgment, the Apex

Court has observed as under:

27. 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 an year from the date of the instrument or from the date of delivery of possession in his favour by the landlord.

6. The Apex Court having expressly stated that if the lessee or tenant does not produce registered agreement of lease, he is not entitled to get protection. We would not be in a position to grant any relief in favour of the Petitioner who does not have in her possession, registered agreement of lease, executed prior to the date of mortgage. The said judgment of the Apex Court is binding on all the Courts in India. As such, therefore, the judgment of the learned Single Judge in the case of - *Ramji Dhondji Dhumal (supra)* and *Shashikant s/o Ramrao Kulkarni (supra)*, on which reliance is placed by the learned counsel appearing on behalf of the Petitioner, is of no assistance to the Petitioner.

7. Similarly, the submission made by the learned counsel appearing on behalf of the Petitioner that principles of natural justice are violated, is also without any substance. The Apex Court in the case of – *Mardia Chemicals Ltd. etc., Petitioners Vs. Union of India & Ors., Respondents [AIR 2004 Supreme Court 2371]* as well as

Transcore Vs. Union of India [(2008) 1 SCC 125] has clearly observed that the proceedings under Section 13 are non-adjudicatory in nature and the question of giving any hearing to the borrower does not arise. An exception is made in the case of *Harshad Govardhan Sondagar (supra)* only to the extent of lessee or tenant, who is a holder of registered agreement of lease, in his favour, and that too executed prior to the mortgage. Since the Petitioner does not fall in that category, question of giving her hearing does arise, and therefore, her application for intervention was dismissed by the learned Magistrate.

8. We find that after the judgment in the case of *Harshad Govardhan Sondagar (supra)* delivered by the Apex Court, in almost all cases, this plea is being raised, and on the last day, an application is made, seeking stay to the order of possession. In the present case, learned Magistrate passed the order on 16th December, 2014 and the present petition has been moved today at 11.00 a.m. when the possession was sought to be taken at 1.30 p.m. Perusal of the rent-receipts also indicates that *prima facie* they are all fabricated subsequently, only in order to make an attempt to save the possession.

9. Hence, we are not inclined to interfere with the impugned order passed by the Chief Metropolitan Magistrate. Writ petition (St.) No. 7930/2015 is therefore dismissed in limini. In other petitions viz. Writ petition (St.) Nos. 7933/2015, 7934/2015, 7936/2015 also the facts and submissions are identical, and therefore, for the same reasons, these petitions are not entertained, and are accordingly dismissed in limini.

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

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

Vinayak Halemath