

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION [STAMP] NO.9604 OF 2015

Iqbal Hassan Ali Rupani

..Petitioner

Versus

SICOM Limited

and others.

..Respondents

....

Mr. Yogesh Joshi, Advocate for the Petitioner.

Mr. Sunil Kadam, Advocate for the Respondent.

....

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

DATE : APRIL 10, 2015

P.C.

1. Heard the learned Counsel appearing on behalf of the petitioner.

2. The petitioner is aggrieved by an order passed by the District Magistrate, Thane dated 16th July, 2014. By the said order, the learned Magistrate was pleased to permit the bank to take possession of the secured mortgaged property. The petitioner claimed to be a licensee in respect of Flat No.10/C, 10th Floor,

Laurel House, Eden Woods, Manpada, Thane (W). It is an admitted position that the said flat was mortgaged by the owner of the said flat in favour of the respondent No.1 and pursuant to the order passed by the District Magistrate, Thane dated 16th July, 2014 the possession of the flat has been taken by the respondent No.1.

3. The grievance of the petitioner is that he is a licensee and he has entered into a licence agreement which was entered into prior to creation of the mortgage in favour of the bank. It is submitted that the petitioner was not heard by the District Magistrate and his application was rejected. In our view the petitioner being only a licensee in respect of the suit premises, he does not have any legal interest in the said property and his possession is only a permissive possession. If he has any right against the owner of the property, he may file a suit for damages and / or seeking any other relief in the Civil Court against the owner who has entered into leave and licence agreement.

4. The petitioner has produced an unregistered agreement.

The said agreement says that it is an agreement for tenancy. The said agreement admittedly is not registered and, therefore, in view of the judgment of the Apex Court in the case of ***Harshad Govardhan Sondagar Vs. International Assets Reconstruction Co. Ltd. and others***¹ a tenant who relies on an unregistered agreement is not entitled to get possession. It is submitted that though the agreement say that is an agreement of tenancy, according to the learned Counsel appearing on behalf of the petitioner, the said agreement is infact a leave and license agreement since the intention of the parties can be gathered from the terms and conditions of the said agreement. It is further submitted that the judgment in the case of ***Harshad Govardhan Sondagar (supra)*** deals with an agreement of lease and not leave and license agreement. This submission is also without any substance since the agreement of license does not create any legal interest in the property. Hence, the Petition is dismissed.

5. If an application is made by the petitioner to the Bank for removal of his movables, assets, articles etc.. the Bank may consider

¹ (2014) 6 SCC 1

said application and with the assistance of Police Officer may return said movables, assets, articles i.e. T.V, Fridge etc. after preparing inventory and taking signature and acknowledgment from the petitioner.

(A. R. JOSHI, J.)

(V.M. KANADE,J.)

Deshmane, (P.S.)