

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 239 OF 2015**

Roshni Ashish Kapila

.... Petitioner.

V/s

Board of Directors
of Bank of Baroda & Ors

..... Respondents.

Ms. Yashashri Naik for the Petitioner.

Ms. Rathina Maravarman for the Respondent - Bank

**CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.**

DATE: 30th January, 2015

P.C.:- (Per V.M. Kanade, J.)

1. Petitioner is aggrieved by the orders dated 30/07/2014 dated 07/01/2015 passed by the learned Chief Metropolitan Magistrate on an application filed by the Respondent - Bank under section 14 of the SARFAESI Act.

2. Petitioner claims to be a tenant of the said premises and after the order dated 30/07/2014 was sought to be implemented by the Bank, she filed an application for setting aside the impugned order. Her application was rejected and against that order she had approached this Court. This Court directed the Chief Metropolitan Magistrate to expeditiously

dispose of the said application.

3. Grievance of the Petitioner in this Petition is that the learned Chief Metropolitan Magistrate dismissed the application of the Petitioner and refused to grant any adjournment. Reliance is placed on the order dated 07/01/2015. It is, therefore, submitted that the said order may be set aside and matter may be remanded back, directing the learned Chief Metropolitan Magistrate to give hearing to the Petitioner or her advocate and then decide the application.

4. On the other hand, the learned Counsel appearing on behalf of the Respondent - Bank has submitted that the Petitioner has not produced a reasoned order which was passed by the learned Chief Metropolitan Magistrate. She submitted that the Petitioner's Counsel was duly heard and thereafter the reasoned order was passed by the learned Chief Metropolitan Magistrate. However, the said order has not been annexed to the Petition. She submitted that, therefore, there is suppression of material facts from this Court. Secondly, she submitted that the mortgage in respect of the suit property was created on 28/09/2012 and thereafter notice was issued under section 13(2) on 02/04/2013 and the learned Magistrate was pleased to pass an order under section 14 against the owner on 30/04/2014.

She submitted that, however, the owner entered into leave and license agreement dated 21/08/2014 after the order was passed by the learned Magistrate. She submitted that the Petitioner, by suppressing the material facts, is only trying to protract the proceedings.

5. We have perused the impugned order passed by the learned Magistrate. Petitioner has annexed only part of the order dated 07/01/2015 which reads as under:-

“ORDER BELOW EXH.-9 IN CASE No.891/MISC/2014

No authority letter is filed by the advocate, who has submitted this adjournment application. Be that as it may. No medical certificate is placed on record for showing that advocate Sophia Pinto is ill. Even otherwise, the intervener has engaged two advocates named advocate Shri Navneetha T. Krishnan and advocate Ms. Sophia Pinto. As such, one of the advocate could very well appear before this Court to argue this matter, more so, when last chance was granted to the intervener to that effect. The application is apparently filed to protract the hearing of the matter. So, I do not think it fit to grant further adjournment to the intervener. Accordingly, I hold that the application is liable to be rejected, Hence, the order.

ORDER

Application stands rejected.”

However, the learned Counsel appearing on behalf of the Respondent – Bank has produced the reasoned order in which all contentions raised by the Petitioner were

considered and rejected. In para 7 of the said reasoned order, the learned Magistrate has observed as under:-

“7. Even assuming for the sake of argument, this Court can recall its order, the intervener, who claims to be the tenant of Flat No.202, 2nd floor, Lamour Building, Plot No.92, 15th Road, Near Agarwal Nursing Home, Bandra (West), Mumbai 400 050 (hereinafter referred to as “the secured asset”) has not placed on record any registered document to fulcrum her claim. So, in view of the ratio laid down by the Hon'ble Supreme Court in Harshad Govardhan Sondagar's case (cited supra), the intervener is not entitled to protect her so-called possession over the secured asset.”

6. In our view, no case is made out for interfering with the impugned orders while exercising our writ jurisdiction under Article 226 of the Constitution of India. Petition is, therefore, dismissed.

(REVATI MOHITE DERE, J.)

(V.M. KANADE, J.)