

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No. 706 of 2015

Tarun Ratan Singh Rathi

..Petitioner.

Vs

The State of Maharashtra & ors

..Respondents.

Mr Ashok Saraogi for the Petitioner.

Dr Birendra Saraf a/with Mr Rohan Sawant & Mr Nikhil Rajani i/by
V. Deshpande & Co. for respondent No.2.

Mr D.A. Nalawade for Respondent No.3.

Mr Rajendra Desai for the Intervener.

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

DATE : 17th March, 2015.

P.C.

1 Heard the learned Counsel appearing for the petitioner
and the learned counsel appearing for the respondents.

2 By this petition which is filed under Article 226 of the
Constitution of India, the petitioner is challenging the order passed
by the Chief Metropolitan Magistrate, Mumbai 14th July, 2006. By

the said order, the Chief Metropolitan Magistrate was pleased to permit the respondent bank to take possession of the property which was mortgaged in favour of the bank. The bank, in view of the said order, took the possession of the property in April, 2014. The grievance of the petitioner is that though he is a tenant in respect of the said flat since 13th April, 1995, the bank has taken possession of the property without informing the Chief Metropolitan Magistrate that he was a tenant in respect of the said property. It is submitted that the petitioner had filed a suit in the Small Causes Court for declaration that he is a tenant, against the landlord and also against the bank. The said suit was dismissed. Therefore, the petitioner filed appeal before the Appellate Bench of the Small Causes Court. Said appeal was also dismissed and the Civil Revision Application was filed by the petitioner in this Court which was also dismissed on merits.

3 After the possession was taken from the petitioner in April, 2014, he approached the DRT by filing an application. The said application was also dismissed. The appeal filed against the said order was also dismissed.

4 The petitioner also filed a suit in the Court and

applied for interim relief against the bank. The said application was dismissed and A.O. was filed against the said order in this Court. In the said A.O. the petitioner was directed to deposit Rs. 25 lakhs. Accordingly, he deposited the said amount and A.O., however, was withdrawn with liberty to take out an appropriate proceedings. The petitioner, thereafter approached the Co-operative Court and there he deposited the amount of Rs. 6.5 lakhs.

5 Shri Saraogi, the learned counsel appearing on behalf of the petitioner submitted that the petitioner was not heard by the Chief Metropolitan Magistrate and the bank also did not disclose to the Chief Metropolitan Magistrate that the petitioner was in possession of the property. Reliance is placed on the judgment of the Apex Court in the case of **Harshad Govardhan Sondagar Vs. International Assets Reconstruction Co. Ltd & Ors in Criminal Appeal No. 736 of 2014** (arising out of S.L.P. (Cri) No.1666 of 2012). It is submitted that the Magistrate ought to have given hearing to the petitioner and ought to have protected his interest. It is submitted that the tenancy agreement was executed by the petitioner who is a landlord in 1995 when it was not necessary to register the said agreement. The learned counsel

placed reliance on the observations made in paragraph 27 of the said judgment. It is further submitted that the petitioner is now ready and willing to purchase the said property in auction.

6 On the other hand, the learned Counsel appearing on behalf of the bank has submitted that the property has already been auctioned and auction purchaser has deposited an amount of Rs.51 lakhs, six months ago. It is submitted that this offer is now being made after the auction purchaser had deposited Rs.51 lakhs six months ago. It is submitted that after having lost in all courts the petitioner now has made this offer only to protract the proceedings and, therefore, the said offer may not be accepted.

7 After having heard both sides, we are of the view that firstly the petitioner has approached this Court belatedly. The impugned order was passed by the Magistrate in 2006. The possession of the property was taken by the bank in April, 2014. The auction purchaser has already paid an amount of Rs.51 lakhs and, therefore, the offer which is given by the petitioner for higher amount of Rs. 2.30 crores cannot be accepted.

8 The Apex Court in the case of **Harshad Govardhan Sondagar** (supra) a copy of which is annexed to this

petition, has clearly observed that only if the tenant is in position to produce a registered instrument of lease deed, his possession can be protected. The Apex Court in paragraph 27 observed as under:-

“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 immovable 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 immovable 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.”

9 In the present case, it is admitted position that the petitioner has not produced a registered instrument of lease in his favour.

10 Secondly, in paragraph No.21 the Apex Court has also observed that if a lease deed is executed after the creation of the mortgage, then, such a tenancy cannot be protected and that such lease would be redetermined in view of Section 111 of the Transfer of the Property Act. Further, the Small Causes Court as well as the Appellate Court have given a finding that the tenancy was created after the execution of the mortgage. Even on this point, therefore, the petitioner cannot get any protection that he is the tenant. Under these circumstances, we are not inclined to interfere with the order passed by the Chief Metropolitan Magistrate. The petition is,

therefore dismissed.

11 At this stage, the learned counsel appearing on behalf of the petitioner submits that sale may not be finalized for at least one day till the copy of this order is made available. This request is opposed by the learned counsel appearing on behalf of the petitioners. It is submitted that the auction purchaser has paid Rs.51 lakhs almost, six months ago and offer of payment of Rs.2.30 crores has been made after the petitioner has lost in all Courts. We are of the opinion that since the offer has now come at belated stage, it will not be possible to accept the said offer and, therefore, we are not inclined to grant any stay as prayed by the petitioner. Petition is therefore dismissed.

(A.R. JOSHI, J)

(V.M.KANADE,J)