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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No. 704 OF 2015

Mr. Sureshbhai V. Kukadia ... Petitioner
Vs.
State Bank of India & Anr. ... Respondents

AND

WRIT PETITION (L) No. 705 OF 2015

M/s. Bhavik Gems ... Petitioner
Vs.
State Bank of India & Anr. ... Respondents

AND

WRIT PETITION (L) No. 707 OF 2015

J. B. Jewellery Pvt. Ltd. ... Petitioner
Vs.
State Bank of India & Anr. ... Respondents

AND

WRIT PETITION (L) No. 713 OF 2015

Vallabhbhai P. Surani ... Petitioner
Vs.
State Bank of India & Anr. ... Respondents

Ms. Y. Y. Naik i/b Pranita Kshirsagar, for the Petitioner.

Mr. Rohit Gupta i/b Vivek Sawant, for Respondent No. 1.

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

DATE : APRIL 8, 2015

PC.

1. Heard the learned counsel appearing on behalf of

Petitioner and the learned counsel appearing on behalf of Respondent No. 1. Petitioners are aggrieved by an order passed by the Metropolitan Magistrate under Section 14 of the SARFAESI Act, permitting the Respondent-Bank to take possession of the property in question. It is submitted that the Petitioners are tenants of the said property, prior to the date of mortgage, and as such, therefore, Bank cannot take possession of the said property.

2. Reliance is placed on the judgment of the Madras High Court, in the case of – ***Indian Bank, Petitioner Vs. M/s. Nippon Enterprises South & Ors., Respondents [WP 23850 & 27432 of 2010, dated 8.3.2011]***. It is submitted that in the said case also, the Petitioner, who was tenant, was given protection by the High Court and the Bank was prevented from taking possession of the property, which was a tenanted property.

3. Learned counsel appearing on behalf of the Petitioner has invited out attention to various documents in support of her contention that the Petitioner is tenant of the property.

4. On the other hand, learned counsel appearing on behalf of

the Respondent-Bank submitted that in view of the judgment of the Apex Court in the case of - ***Harshad Govardhan Sondagar, Appellant Vs. International Assets Reconstruction Company Limited & Ors., Respondents [(2014) 6 SCC 1]***, since the tenants do not have registered instrument of lease in their favour executed by the landlord, and the Magistrate has rightly rejected their application seeking protection. He submitted that in the case of - ***Harshad Govardhan Sondagar (supra)***, Petitioners therein had intervened, and their case was considered and the matter was remanded to the Chief Metropolitan Magistrate, and thereafter, after they were heard, the order was passed.

5. It is submitted that since the Petitioners do not have any registered instrument of lease in their favour, the law declared in the case of ***Harshad Govardhan Sondagar (supra)*** cannot be applied to the facts of the present case. It is further submitted that Petitioners had also challenged the order passed by the Metropolitan Magistrate in different capacities viz. borrowers, guarantors, guarantors by filing securitisation application before the DRAT-III, Mumbai, and the said application was dismissed by the DRT. Learned counsel appearing on

behalf of the Respondent has invited our attention to the chart, which shows the date of purchase of the property, the date of mortgage, the date of lease / tenancy and the relation of the tenant with the borrowers / guarantors. He submitted that Petitioners are also borrowers and they have also executed the deed of guarantee.

6. In Writ Petition (L) No. 704/2015 filed by Sureshbhai V Kukadia, following are the details :

1.	Details of property	1406, 14 th floor, Walkeshwar
2.	Owned by	Bhagwanbhai K. Kukadia Kashiben B Kukadia Kankuben V Kukadia Kanjibhai K. Kukadia
3.	Date of Purchase	08.04.1985
4.	Date of Mortgage	12.09.1997
5.	Date of Lease/Tenancy	01.07.1994
6.	Document	No registered Document. Few rent receipt and address proof on record.

7.	Relation of Tenant with Borrower / Guarantor	1. Sureshbhai Kukadia is Director in J B Diamonds. 2. S. Kukadia is also guarantor for the facilities given by the bank. 3. Signatory and privy to all loan transaction. 4. Sureshbhai Kukadia is family member of the owners of the property.
8.	SLP No.	4061 of 2012

7. In Writ Petition (L) No. 713/2015 filed by Vallabhai P Surani, following are the details :

1.	Details of property	2005, 20 th Floor, Chandanbala Malabar Hill
2.	Owned by	Jivrajbhai P Surani
3.	Date of Purchase	05.12.1985 (registered in 2000)
4.	Date of Mortgage	12.09.1997
5.	Date of Lease/Tenancy	01.08.1994
6.	Document	No registered Document. Few rent receipt and address proof on record.

7.	Relation of Tenant with Borrower / Guarantor	1. Tenant is Director in J B Diamonds. 2. Tenant is also guarantor for the facilities given by the bank. 3. Tenant is brother of the owner. 4. Tenant is signatory to the mortgage deed.
8.	SLP No.	4057 of 2012

8. In Writ Petition (L) No. 705/2015 filed by Bhavik Gems through Sureshbhai V Kukadia, following are the details :

1.	Details of property	6B Unity House second floor
2.	Owned by	J. B. Diamonds Ltd (under liquidation)
3.	Date of Purchase	22.09.2000
4.	Date of Mortgage	25.10.2000
5.	Date of Lease/Tenancy	January 2001
6.	Document	No registered Document. Few rent receipt and address proof on record.

7.	Relation of Tenant with Borrower / Guarantor	1. Sureshbhai Kukadia is Director in J B Diamonds. 2. S. Kukadia is also guarantor for the facilities given by the bank. 3. Signatory and privy to all loan transaction.
8.	SLP No.	4052 of 2012

1.	Details of property	405-406, 4 th Floor Prasad Chambers
2.	Owned by	J. B. Diamonds Ltd (under liquidation)
3.	Date of Purchase	08.12.1985 28.10.1981
4.	Date of Mortgage	12.09.1997
5.	Date of Lease/Tenancy	January 1989
6.	Document	No registered Document. Few rent receipt and address proof on record.

7.	Relation of Tenant with Borrower / Guarantor	1. Sureshbhai Kukadia is Director in J B Diamonds. 2. S. Kukadia is also guarantor for the facilities given by the bank. 3. Signatory and privy to all loan transaction.
8.	SLP No.	4052 of 2012

Petitioner Bhavik Gems through Sureshbhai V. Kukadia filed Writ Petition No. 705/2015. Sureshbhai Kukadia was tenant of two properties, the details are mentioned in the above two charts.

9. Lastly, Sureshbhai Kukadia and Bhagwanbhai Kukadia (Directors) filed Writ Petition No. 707/2015, its details are as under:

1.	Details of property	Office No. 418, 4 th floor, Prasad Chambers
2.	Owned by	J. B. Diamonds Ltd (under liquidation)
3.	Date of Purchase	04.05.2002
4.	Date of Mortgage	11.12.2002
5.	Date of Lease/Tenancy	July 2003

6.	Document	No registered Document. Few rent receipt and address proof on record.
7.	Relation of Tenant with Borrower / Guarantor	1. Suresh Kukadia is Director in J B Diamonds. 2. S. Kukadia is also guarantor for the facilities given by the bank. 3. Bhagwanbhai is also Director, Guarantor and mortgagor. 4. Signatory and privy to all loan transaction.
8.	SLP No.	4064 of 2012

10. We are satisfied that after going through the documents like passport, the learned Magistrate was justified in not accepting contention of the Petitioners. Learned Magistrate has not granted the protection to the Petitioners, pursuant to the directions given by the Apex Court in the case of ***Harshad Govardhan Sondagar (supra)*** and thereafter passed an order under Section 14 of the said Act.

12. In our view, the ratio of the judgment in the case of ***Harshad Govardhan Sondagar (supra)***, more particularly law laid

down, in paragraph 36 is binding on this Court. Therefore, the learned Magistrate, in our view, has rightly passed order under Section 14 of the said Act. We are informed that the total amount due is more than Rs. 200 Crores. Amount due to the consortium banks is Rs.1,000 Crores, out of which 60% amount may be adjusted, according to the Petitioners. Be that as it may. We are of the view that no case is made out for interference with the impugned order. All the writ petitions are, therefore, dismissed. Learned counsel submitted that proposal for payment of 60% amount was given under the OTS scheme.

12. At this stage, learned counsel appearing for the Petitioners seeks four weeks time to approach the Apex Court for the purpose of clarification of the order passed in the case of ***Harshad Govardhan Sondagar (supra)***. Taking into consideration the fact that Petitioners are the Directors, guarantors and also signatory to the loan documents, we are not inclined to continue the interim order. Hence, request for continuation of interim relief is declined.

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

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