

vat

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

WRIT PETITION No.730 OF 2015

Nirmal Bazaz

...Petitioner

Vs.

State Bank of India and Ors.

...Respondents

Mr.A.C. Philip for Petitioner

Mr.Lalitkumar Jain for Respondent No.1

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

DATE : APRIL 18, 2015

P.C. :

1. Heard the learned counsel appearing on behalf of the Petitioner. The Petitioner claims to be a tenant of the property which has been mortgaged by the landlord in favour of the Bank in the year 2004. It is submitted that the Petitioner had filed a suit in the Small Causes Court, Mumbai, Bandra Branch and an order of injunction was passed, restraining the borrower from dispossessing the Petitioner. It is submitted that the Petitioner is neither the borrower nor the guarantor and has not been heard even by the Learned Chief Metropolitan Magistrate when he filed an application for recalling the order passed by the Learned Chief Metropolitan Magistrate dated 7.7.2012.

2. It is submitted that in view of the judgment of the Apex Court in the case of **Harshad Govardhan Sondagar, Appellant vs. International Assets Reconstruction Company Ltd. and Ors.**

(WPL 730 of 2015)

[(2014) 6 SCC 1], a tenant is liable to be protected from being evicted by the secured creditor. The Learned counsel appearing on behalf of the Petitioner has invited our attention to various observations made in the said judgment.

3. On the other hand, the learned counsel for the Bank has submitted that the Original Borrower had filed an application before the DRAT seeking protection and in the said application, he has stated that he was in possession of the property. It is submitted that the said application was dismissed. It is further submitted that another application was filed by the brother of the borrower, which application was also dismissed. He has further submitted that the property in question was auctioned twice and the brother-in-law of the borrower had given an undertaking to the DRAT that he would participate in the auction and purchase the said property and clear the dues of the Bank. He submits that despite the undertaking which was given by the brother-in-law, no such payment was made to the Bank. It is submitted that the the Petitioner claims to be a tenant. However, he has not produced a registered agreement for lease in his favour as laid down by the Apex Court in the case of **Harshad Govardhan Sondagar (Supra.)** and, therefore, it is submitted that he is not entitled to be protected.

4. In our view, there is much substance in the submissions made by the learned counsel for the Bank. The Apex Court in the case of **Harshad Govardhan Sondagar (Supra.)** has clearly observed in paragraph 27 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 bonafide lessees of the

(WPL 730 of 2015)

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."

In paragraph 26, the Apex Court has considered the question as to whether the tenants have remedies under the concerned tenancy law. The Apex Court, after relying on section 34 of the SARFAESI Act, has held that the Civil Court shall not have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered to by or

(WPL 730 of 2015)

under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Apex Court, therefore, has considered this issue and has held that the Court or Authority mentioned in section 33 of the Maharashtra Rent Control Act cannot grant the injunction to prevent such action by the secured creditor or by the Chief Metropolitan Magistrate or the District Magistrate. In view of this observation, the submissions made by the learned counsel appearing on behalf of the Petitioner cannot be accepted. The impugned order passed by the Small Causes Court at Mumbai, Bandra Branch, therefore cannot come in the way of the Bank for taking possession of the secured assets. Hence, writ petition is dismissed.

6. At this stage, the learned counsel appearing on behalf of the Petitioner seeks stay to the impugned order passed by the Small Causes Court, Mumbai in order to enable the Petitioner to approach the Apex Court. In the facts and circumstances of the case, request for stay is declined. Even otherwise, from the documents, which are produced before the Small Causes Court, are taken into consideration, it appears that the rent receipts which have been produced for the year 2013-2014, have been issued after the order was passed by the Chief Metropolitan Magistrate in 2012.

[A.R. JOSHI, J.]

[V. M. KANADE, J.]