

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WA.No. 37 of 2015 IN WP(C).32207/2014

AGAINST THE JUDGMENT IN WP(C) 32207/2014 DATED 08-12-2014

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APPELLANT/PETITIONER :

SYAMABHA A.R.,
D/O.RAVEENDRAN, NANMA, MANIKKASSERI
KONGAD, PALAKKAD.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS/RESPONDENTS:

1. STATE BANK OF TRAVANCORE
TRIVANDRUM, REPRESENTED BY ITS BRANCH MANAGER
MANNARKKAD BRANCH, PALAKKAD-679303.
2. AUTHORISED OFFICER (CHIEF MANAGER)
STATE BANK OF TRAVANCORE, MANNARKKAD, PALAKKAD-679303.
3. SUPERINTENDENT OF POLICE
SP OFFICE, PALAKKAD-678001.
4. PRAKASH
SRI.LAILASA, CHAKKARAKULAMBU, KUMARAMPUTHUR
MANNARKKAD TALUK, PALAKKAD-679303.

R1 & R2 BY ADV. SRI.T.SETHUMADHAVAN (SR.)
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
R3 BY SPL.GOVERNMENT PLEADER, SMT. GIRIJA GOPAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, Ag.C.J. & A.M. SHAFFIQUE, J.

W.A. No. 37 OF 2015

Dated this the 12th day of January, 2015

JUDGMENT

Ashok Bhushan, Ag.C.J.

Heard learned counsel for the appellant as well as learned counsel appearing for the respondent Bank. This Writ Appeal has been filed against the judgment in W.P.(C) No.32207 of 2014 dated 08.12.2014.

2. The petitioner, claiming to be a tenant of a residential building, had filed the writ petition praying for the following prayers:

“1. Issue a writ of mandamus directing the respondents 1 and 2 to restore the possession of the property to the petitioner forthwith.

2. Directing respondent 3 to enquire in to the matter and take appropriate action against the wrong.”

3. Proceedings under SARFAESI Act, 2002 were initiated and application under Section 14 of the Act was filed before the Chief Judicial Magistrate who appointed an Advocate Commissioner. The Advocate Commissioner went to the premises on several occasions and ultimately on 21.11.2014,

the possession was taken by preparing inventory of the articles found in the house. Petitioner filed the writ petition claiming that she was a tenant in the premises and could not have been evicted in the summary manner as was done. The writ petition was filed on such premise which has been dismissed by learned Single Judge.

4. Learned counsel for the appellant submits that though he did not have a registered instrument of lease, but the lease period was for 11 months, which period was renewed and she was evicted from the premises. He submits that the judgment of the Apex Court followed by the learned Single Judge reported in **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and Others** [(2014) 6 SCC page 1] is not attracted to the facts of the present case. Learned counsel for the Bank, refuting the said submission, contended that the petitioner was set up as a tenant by the borrower and there was actually no tenancy at all nor the petitioner was living in the said premises. He submits that the articles which have been found and included in the inventory are

belonging to the borrower and petitioner had no right to the said belongings.

5. We have considered the submissions of the parties and perused the record. The learned Single Judge has referred to and relied on paragraph 36 of the judgment in **Harshad Govardhan Sondagar's** case (supra) which is to the following effect:

"36. 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 receipt 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 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 a year from the date of the instrument or from the date of delivery of possession in his favour by the landlord.”

6. In the facts of the present case it is clear that there was no registered document to evidence execution of any lease in favour of the petitioner. An unregistered agreement which is said to be filed by the petitioner in a Civil Suit filed by him in O.S. No.135 of 2014 was also for a period of 11 months, had come to an end by the day when possession was taken. Learned counsel for the appellant although contended that as per the clause in the agreement, the period of 11 months was extended but there is nothing on record.

7. The learned Single Judge did not commit any error in following paragraph 36 of the Apex Court judgment in which the Apex Court had treated the petitioner therein in the other category. Learned counsel for the appellant lastly submitted that the articles belonging to her including the medical records and

walker were noted and required by the petitioner. The Advocate Commissioner having been appointed under Section 14 of the SARFAESI Act, it is open for the petitioner to approach the Chief Judicial Magistrate to establish her right to the articles or under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal.

We do not find any error in the judgment of the learned Single Judge. Hence the Writ Appeal is dismissed.

**Ashok Bhushan,
Acting Chief Justice.**

**A.M. Shaffique,
Judge.**