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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3765 OF 2016
WITH
CIVIL APPLICATION NO.1007 OF 2016
IN
WRIT PETITIN NO.3765 OF 2016

Mubeen Shaikh Mohd. Qadeer Petitioner

V/s.

State of Maharashtra and ors Respondents

Mr. Tanvir A. Shaikh, for the Petitioner.

Ms. Sushma Bhende, AGP for the Respondent Nos 1 &7.

Mr. SanjayAnabhawane I/by M & S Legal Ventures, for respondent No.2.

Mr. S.A. Jabbar I/by Mr. G.M. Joshi, for respondent Nos 3 to 6.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : 22nd APRIL, 2016.

P.C. :

1. After hearing learned counsel for both the parties and perusal of affidavit-in-reply, so also bearing in mind the observations of the learned Judge in his order passed on 29th March, 2016, in interim application in R.A.D. Suit No.362 of 2014, we are of the opinion that there

is no substance in the petitioner's (original plaintiff) claim of tenancy. The affidavit-in-reply discloses as to how the claim is found to be prima facie bogus, untenable and bad in law. The trial Court has observed that the petitioner plaintiff is not in possession of the premises with regard to which he claims tenancy. This is a last attempt by the borrower to resist the measures under the SARFAESI, Act that is how he has been putting the petitioner plaintiff as tenant. It has been held by the Court below that the plea of tenancy does not inspire confidence. The observations in paragraph Nos.23 and 24 of the trial Court's order at running page Nos.135 and 136 would indicate that there is no prima-facie case in favour of the petitioner plaintiff. The balance of convenience is not in favour of the petitioner, but the bank and it is the public who would be suffering losses, if it fails to recover the public money. It is in these circumstances that we are unable to agree with the learned advocate that any time should be granted to the petitioner to refute these statements in the affidavit-in-reply. Admittedly against the order of the learned Judge of Small Cause Court, Mumbai, referred above, there is no appeal filed as on date nor that order has been reversed. Surely, the recent pronouncement of the Hon'ble Supreme Court can never come to the aid of a litigant claiming protection from a writ court on a prima facie bogus and untenable claim. In such circumstances there is no merit in the writ

petition. Petition is dismissed.

2. Ad interim orders granted by this Court on 3rd March, 2016, stands vacated forthwith.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]