IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5495 OF 2016

Mahendra Hemandas Khubhandani } **Petitioner**
versus
Union Bank of India and Ors. } **Respondents**

Mr. Navaneetha Krishnan T. i/b. Mr.Sandeep Kumar Singh for the petitioner.

Mr. R. R. Singh for respondent no. 1.

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

DATED :- MAY 6, 2016

P.C. :-

1) By this petition under Article 226 of the constitution of India, the petitioner claims that he is the tenant and lawfully inducted in the premises belonging to respondent no. 3. Respondent no. 3 in para 1 of the petition is styled as purported borrower. He was sanctioned a loan by the Union Bank of India respondent no. 1 bank. Since there was a default, the bank took measures under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"). After issuance of the notice under section 13(2) and non compliance therewith, the measures

under section 13(4) thereof were initiated. Based on such measures, an application was made before the Collector and District Magistrate, Thane, being S. A. No. 05 of 2015, on which the impugned order is passed.

2) It is urged that there is a clear reference to a person in possession and occupation styled as third party in the operative order at page 27. That would reflect that the bank was aware of the petitioners' possession and that too as a tenant.

3) The petitioner's counsel was repeatedly questioned as to what is the proof of tenancy and he would rely upon the receipt at page 25 of the paper book. It is stated that the rent payable is month to month, but the petitioner paid the yearly rent in advance and these receipts would evidence the same. On a specific query raised and with regard to the averment in the petition that when the petitioner was inducted as tenant on 1st November, 2008 and till date he continues to be in absolute possession and enjoyment of the property, then, where is the proof of such absolute possession and enjoyment, the petitioner's counsel states that for the electricity supply, the bill is raised in the name of the owner. Therefore, the petitioner will not be able to produce copy of such a bill. However, there is no proof forthcoming of the physical possession of the petitioner either in

the form of installation of a telephone connection or a gas cylinder, ration card etc. or any other document. We do not have anything before us and which can be taken as a *prima facie* proof of the possession of the petitioner.

4) In these circumstances, we do not think that the bank's application under section 14(1) was deficient or did not meet the requirement of amended section 14(1) of the SARFAESI Act. It is not for the bank to spell out the nature of the occupation. Once the bank is not aware of any claim or any physical possession and the proof in that regard is also not produced before us, then, this is not a fit case to interfere in our extraordinary and equitable jurisdiction under Article 226 of the Constitution of India. The writ petition is devoid of merits and is dismissed. No costs.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)