

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7745 OF 2016

ATUL DAULATRAI DESAI

)...PETITIONER

V/s.

STATE OF MAHARASHTRA & ORS.

)...RESPONDENTS

Mr.Indra B. Singh, Advocate for the Petitioner.

Ms.Sushma Bhende, AGP for Respondent No.1.

Mr.Anant B. Shinde i/b. Mr.Anant B. Shinde & Co., Advocate for Respondent No.2.

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

DATE : 7th JULY 2016.

P.C. :

1 The petitioner has moved this court challenging the order passed by the learned Chief Metropolitan Magistrate, Mumbai, dated 14th October 2014, in terms of powers conferred in him by Section 14(c) and 1(A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, (SARFAESI Act).

2 The only contention raised before us is that the petitioner was unaware of this order which is impugned in this petition. It is only when the petitioner apprehended physical dispossession at the instance of the Bank of Baroda – respondent no.2, that he has filed the present petition.

3 The petitioner claims to be a lawful tenant and inducted by the principal borrower M/s.Rolson International. Surprisingly, the landlord through whom the petitioner claims as tenant is not impleaded as a party respondent. We do not know as to how suddenly the petitioner becomes aware of a financial dealing between the said Rolson International and Bank of Baroda. The petition makes a guarded reference to the facilities obtained by the said landlord / owner / principal borrower in or about 2012. The facilities are stated to be working capital loan. It is then stated that there was a mortgage created in favour of the bank by the owner of the entire premises which are two office premises bearing gala nos.343 and 344.

4 When enquired from the petitioner's advocate as to why an order passed on 14th October 2014 is now impugned and belatedly, it is stated that it is only when the petitioner received a letter dated 16th May 2016, copy of which is at “Annexure D”, page 22, that the petitioner became aware of the dealings and the order under Section 14. It is stated in the writ petition itself that the petitioner along with his family members and staff is carrying on business from the office premises and if they are dispossessed, they would have no other business premises / office so as to carry on their lawful activities. Surprisingly, in the petition there is a reference made to a letter dated 21st June 2016 which is issued by third respondent to this writ petition requesting N.M.Joshi Marg Police Station to render police assistance for taking possession of the premises on 11th July 2016 at 12 noon.

5 It is stated that respondent nos.2 and 3 would be dispossessing the petitioner, although they have suppressed from the Chief Metropolitan Magistrate, the relevant and material fact about the petitioner's tenancy.

6 It is only in order to satisfy ourselves as to whether this is a genuine and bonafide case of tenancy and deserves to be protected even belatedly, that we called upon the petitioner's advocate to produce the original written agreement of tenancy, copy of which has been annexed to the writ petition as "Annexure A."

7 We have perused that original agreement and we find that though it is on a stamp paper of Rs.100/-, that is stated to be not purchased by any of the parties to this agreement, but by an advocate. That is stated to have been purchased from the court at Bandra, Mumbai, on 12th January 2010. Our attention has been invited to the provisions of Maharashtra Stamps Act, which requires the stamp duty to be paid by the person executing the instrument. In other words, if the Maharashtra Rent Control Act, 1999, requires a license agreement to be registered, then, the agreement as above, on a stamp paper of Rs.100 does not meet the requirement in law. It may be that the borrower landlord made no attempt to comply with Section 55 thereof and pay the

stamp duty on leave and license agreement, there is no pleading to this effect. There is no record of the same either.

8 It is submitted that ordinarily, therefore, stamp paper would have been obtained by either the petitioner or the partnership firm namely M/s.Rolson International (principal borrower). Apart therefrom, we find from the frame of this agreement that though the agreement in the second recital states that it is in respect of Unit nos.343 and 344 in Keval Industries Estate, Senapati Bapat Marg, Lower Parel, Mumbai – 400 013, but that is not a complete description thereof. The recital is that a more particular description of the premises is to be found in the Schedule to this agreement. Surprisingly, the copy annexed of this agreement does not contain any such Schedule. Secondly, we enquired from the petitioner's counsel as to how, when the agreement is to pay monthly rent in respect of the commercial premises and on the footing that the petitioner is a monthly tenant, the date of commencement of the tenancy is left blank. If the premises are stated to be in possession of the petitioner and

with separate electricity meter, then when was that provided, by which entity and whether any charges have been paid for the use of such electrical energy for all these years. In the writ petition a solemn statement is made that the tenancy has commenced from 12th January 2010. However, in the agreement, the date of commencement is left blank. It is common ground that M/s.Reliance Energy Limited is not ordinarily providing electrical energy to units, structures or buildings in island city of Mumbai. The premises are said to be situated in the island city. Secondly, the petition proceeds on the footing that the monthly rent payable by the petitioner / tenant is Rs.4,000/- per month. The premises are in the heart of the city. A more particular description or the Schedule to the agreement being missing we do not know the carpet area, but we are sure that residential and commercial units in the heart of this city and particularly office premises fetch much more than Rs.4,000/- per month. We have on record what are stated to be copies of the rent receipts at Annexure B. However, the first document of Annexure B at page 17 is stated to be a receipt dated 13th February 2010 and another at page 18 is of

13th May 2016 evidencing payment of rent for April 2016. There is no pleading about payment of rent from January 2010 to April 2016 nor is there any document in relation thereto. Further, we do not have before us any proof of consumption of electricity. It is stated that the rent does not include the taxes, charges, cess, including ground rent of the land leviable and payable in respect of the premises. We have no proof of any such payment either. These are popularly known as permitted increases and the rent charged was exclusive thereof or otherwise has not been indicated.

9 It is, in such circumstances, that there is a grave and serious doubt about this claim of tenancy. It is evidently bogus and sought to be supported by a got up document. This document is prepared possibly on a pre-dated stamp paper and on the eve of institution of this writ petition. This becomes more apparent when the advocate appearing for the second respondent – bank, on notice before us, has stated that, it is the partner of M/s.Rolson International Shri Kewalchand Jain, who has handed over

symbolic possession of the premises pursuant to the notice under Section 13 of SARFAESI Act, to the bank. He has produced a set of documents which are copies of the notice under Sections 13(2) and 13(4) and the acknowledgment thereof by the borrower firm and the panchnama which was drawn at the time of handing over symbolic possession. The panchnama is dated 21st October 2013. Even the copy of the possession notice, and addressed to the borrower, containing a description which is identical to the tenancy agreement, has been received, but there is no indication in any of these that the premises were occupied by the petitioner. It is, in these circumstances, that we do not think that the petitioner can rely on the judgment of the Supreme Court of India and the principle therein (**Vishal N. Kalsaria vs. Bank of India and Ors. reported in AIR 2016 SC 530**).

10 We do not think that any claim of tenancy vaguely set up and without any proof or contemporaneous record of its creation and continuance is protected and with greatest respect by the judgment of the Hon'ble Supreme Court. A judgment cannot

be read like statutes. Eventually if the Rent Control Legislation and the benefit thereof can be availed off by tenants and occupants, the initial burden is on them to establish and prove the existence of a tenancy and that will be in jeopardy by the act of either the principal borrower or the bank. In the present case, we do not think any such proof is forthcoming, more so, when the challenge to the order passed under Section 14(1) is a clear afterthought. It is also apparent that parties like the petitioner would have to establish that the mortgagor and mortgagee were aware of the creation of the tenancy in the sense it is subsequent to the mortgage or otherwise. If it is subsequent, then, the creditor's consent has been taken. If it is prior, then, the tenant on becoming aware of the bank's action has filed legal proceedings claiming a declaration that the tenancy is valid, subsisting and binding and that his physical possession be protected by a prohibitory and injunctive order. Vishal (supra) was decided in the following facts and circumstances :

Paragraphs 3, 4, 5, 6, 10, 11, 13, 14, 24, 25, 26, 27, 28, 29, 30 of the judgment read as under :

“3 In the present batch of appeals, the broad point which requires our attention and consideration is whether a ‘protected tenant’ under The Maharashtra Rent Control Act, 1999 (in short the ‘Rent Control Act’) can be treated as a lessee, and whether the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, the ‘SARFAESI Act’) will override the provisions of the Rent Control Act. How can the right of the ‘protected tenant’ be preserved in cases where the debtor-landlord secures a loan by offering the very same property as a security interest either to Banks or Financial Institutions, is also the essential legal question to be decided by us.

4 In all the appeals, the same question of law would arise for consideration. For the sake of convenience and brevity, we would refer to the relevant facts from the appeal arising out of S.L.P. (CrI.) No.8060 of 2015, which has been filed against the impugned judgment and order dated 29.11.2014 in M.A.No. 123 of 2011 in Case No.237 of 2010 passed by the learned Chief Metropolitan Magistrate, Esplanade, Mumbai, wherein the application of the appellant herein for impleadment as intervenor as well as stay of the order dated

08.04.2011 passed in Case No.237 of 2010 by the learned Magistrate, Esplanade, Mumbai, was dismissed.

5 Respondent Nos. 4 and 5 had approached the Bank of India (Respondent No.1) (in short “the respondent Bank”) for a financial loan, which was granted against equitable mortgage of several properties belonging to them, including the property in which the appellant is allegedly a tenant. The respondent nos. 4 and 5 failed to pay the dues within the stipulated time and thus, in terms of the SARFAESI Act, their account became a nonperforming asset. On 12.03.2010, the respondent-Bank served on them notice under Section 13(2) of SARFAESI Act. On failure of the respondents to clear the dues from the loan amount borrowed by the above respondent nos. 4 and 5 within the stipulated statutory period of 60 days, the respondent-Bank filed an application before the Chief Metropolitan Magistrate, Mumbai under Section 14 of the SARFAESI Act for seeking possession of the mortgaged properties which are in actual possession of the Appellant. The learned Chief Metropolitan Magistrate allowed the application filed by the respondent-Bank vide order dated 08.04.2011 and directed the Assistant

Registrar, Borivali Centre of Courts to take possession of the secured assets. On 26.05.2011, the respondent no.4 served a notice on the appellant, asking him to vacate the premises in which he was residing within 12 days from the receipt of the notice. The appellant fearing eviction, filed a Rent Suit R.A.D. Suit No. 913 of 2011 before the Court of Small Causes, Bombay. Vide order dated 08.06.2011, the Small Causes Court allowed the application and passed an ad interim order of injunction in favour of the appellant, restraining respondent no.4 from obstructing the possession of the appellant over the suit premises during the pendency of the suit. In view of the order dated 08.06.2011, the appellant then filed an application as an intervenor to stay the execution of the order dated 08.04.2011 passed by the Chief Metropolitan Magistrate. The learned Chief Metropolitan Magistrate vide order dated 29.11.2014 dismissed the application filed by the appellant by placing reliance on a judgment of this Court rendered in the case of Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd. & Ors. (2014) 6 SCC 1. Dismissing the application, the learned judge held as under :

“3.....the Hon’ble Supreme Court has held that the alleged tenant 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.

4 It is to be highlighted that the intervener did not place on record any registered instrument to fulcrum his contention. So, in view of the ratio laid down in Harshad Sondagar's case (cited supra), I hold that the intervener is not entitled to any protection under the law."

6 The learned Chief Metropolitan Magistrate further held that when the secured creditor takes action under Section 13 or 14 of the SARFAESI Act to recover the possession of the secured interest and recover the loan amount by selling the same in public auction, then it is not open for the Court to grant an injunction under Section 33 of the Rent Control Act. The learned

Chief Metropolitan Magistrate further held that the order dated 08.06.2011 passed by the Small Causes Court, Mumbai cannot be said to be binding upon the respondent-Bank, especially in the light of the fact that it was not a party to the proceedings. Hence the present appeal filed by the appellant.

10 The SARFAESI Act enacted under List I of the Constitution of India thus, seeks to regulate asset recovery by the Banks. It becomes clear from a perusal of the Statements of Objects and Reasons of the Rent Control Act and the SARFAESI Act that the two Acts are meant to operate in completely different spheres. So far as residential tenancy rights are concerned, they are governed by the provisions of the Rent Control Act which occupies the field on the subject.

11 The controversy in the instant case arises squarely out of the interpretation of a decision of this Court in the case of Harshad Govardhan Sondagar (supra). The fact situation facing the court in that case was similar to the one in the instant case. The premises which the appellants therein claimed to be the tenants of had been mortgaged to different banks as collateral security to such borrowed amount by the landlord/debtor.

On default of payment of the borrowed amount by the landlords/debtors, the banks made application under Section 14(1) of the SARFAESI Act to the Chief Metropolitan Magistrate, praying that the possession of the premises be handed over to them in accordance with the provisions of the SARFAESI Act. This Court in the case of Harshad Govardhan Sondagar (supra) held as under :

“34.....In our view, therefore, the High Court has not properly appreciated the judgment of this Court in Transcore (AIR 2007 SC 712) (supra) and has lost sight of the opening words of sub-section (1) of Section 13 of the SARFAESI Act which state that notwithstanding anything contained in Section 69 or Section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of the Act. The High Court has failed to appreciate that the provisions of Section 13 of the SARFAESI Act thus override the provisions of Section 69 or Section 69A of the Transfer of Property Act, but does not override the provisions of the Transfer of Property Act relating to the rights of a lessee under a lease

created before receipt of a notice under sub-Section (2) of Section 13 of the SARFAESI Act by a borrower. Hence, the view taken by the Bombay High Court in the impugned judgment as well as in M/s Trade Well (2007 Cri LJ 2544 (Bom)(supra) so far as the rights of the lessee in possession of the secured asset under a valid lease made by the mortgagor prior to the creation of mortgage or after the creation of mortgage in accordance with Section 65A of the Transfer of Property Act is not correct and the impugned judgment of the High Court insofar it takes this view is set aside.”

(emphasis laid by this Court)

13 The learned senior counsel contends that it is a settled position of law that in the absence of a valid document of lease for more than one year or in case of an invalid lease deed, the relation of tenancy between a landlord and the tenant is still created due to delivery of possession to the tenant and payment of rent to the landlord-owner and such tenancy is deemed to be a tenancy from month to month in respect of such property. The learned senior counsel further places reliance on a three Judge Bench decision of this Court in Anthony v. K.C. Ittoop & Sons & Ors. (2000) 6 SCC 394 : (AIR

2000 SC 3523), wherein it was held as under :

“....so far as the instrument of lease is concerned there is no scope for holding that appellant is a lessee by virtue of the said instrument. The court is disabled from using the instrument as evidence...

But this above finding does not exhaust the scope of the issue whether appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created....Thus, de hors the instrument parties can create a lease as envisaged in the second paragraph of Section 107 which reads thus: All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

When lease is a transfer of a right to enjoy the property and such transfer can be made

expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed.”

(emphasis laid by this Court)

14 The learned senior counsel further contends that where a lease deed or document of tenancy in respect of the property in question is for a period exceeding one year, but such document has not been registered, then, by virtue of payment of rent, the relationship of tenancy between a landlord and the tenant comes into existence and in such cases, the tenant must be deemed to be a tenant from month to month and the same would amount to a tenancy from month to month. Thus, in the instant case, the tenancy of the appellants in respect of the property in question which is the secured asset of the Bank being from month to month would also be protected under the provisions of the Rent Control Act.

24 When we understand the factual matrix in the backdrop of the objectives of the above two legislations, the controversy in the instant case assumes immense significance. There is an interest

of the bank in recovering the Non Performing Asset on the one hand, and protecting the right of the blameless tenant on the other. The Rent Control Act being a social welfare legislation, must be construed as such. A landlord cannot be permitted to do indirectly what he has been barred from doing under the Rent Control Act, more so when the two legislations, that is the SARFAESI Act and the Rent Control Act operate in completely different fields. While SARFAESI Act is concerned with Non Performing Assets of the Banks, the Rent Control Act governs the relationship between a tenant and the landlord and specifies the rights and liabilities of each as well as the rules of ejectment with respect to such tenants. The provisions of the SARFAESI Act cannot be used to override the provisions of the Rent Control Act. If the contentions of the learned counsel for the respondent Banks are to be accepted, it would render the entire scheme of all Rent Control Acts operating in the country as useless and nugatory. Tenants would be left wholly to the mercy of their landlords and in the fear that the landlord may use the tenanted premises as a security interest while taking a loan from a bank and subsequently default on it. Conversely, a landlord would simply have to give up the tenanted premises as a security interest to the creditor banks

while he is still getting rent for the same. In case of default of the loan, the maximum brunt will be borne by the unsuspecting tenant, who would be evicted from the possession of the tenanted property by the Bank under the provisions of the SARFAESI Act. Under no circumstances can this be permitted, more so in view of the statutory protections to the tenants under the Rent Control Act and also in respect of contractual tenants along with the possession of their properties which shall be obtained with due process of law.

25 The issue of determination of tenancy is also one which is well settled. While Section 106 of the Transfer of Property Act, 1882 does provide for registration of leases which are created on a year to year basis, what needs to be remembered is the effect of non-registration, or the creation of tenancy by way of an oral agreement. According to Section 106 of the Transfer of Property Act, 1882, a monthly tenancy shall be deemed to be a tenancy from month to month and must be registered if it is reduced into writing. The Transfer of Property Act, however, remains silent on the position of law in cases where the agreement is not reduced into writing. If the two parties are executing their rights and liabilities in the nature of a landlord-tenant

relationship and if regular rent is being paid and accepted, then the mere factum of nonregistration of deed will not make the lease itself nugatory. If no written lease deed exists, then such tenants are required to prove that they have been in occupation of the premises as tenants by producing such evidence in the proceedings under Section 14 of the SARFAESI Act before the learned Magistrate. Further, in terms of Section 55(2) of the special law in the instant case, which is the Rent Control Act, the onus to get such a deed registered is on the landlord. In light of the same, neither the landlord nor the banks can be permitted to exploit the fact of non registration of the tenancy deed against the tenant. Further, the learned counsel for the appellants rightly placed reliance on a three Judge Bench decision of this Court in Anthony (AIR 2000 SC 3523)(supra). At the cost of repetition, in that case it was held as under :

“But the above finding does not exhaust the scope of the issue whether the appellant was a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision

says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first paragraph has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third paragraph can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second paragraph. Thus, de hors the instrument parties can create a lease as envisaged in the second paragraph of Section 107 which reads thus: All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

26 It further saddens us to see the manner in which the decision in the case of Harshad Govardhan Sondagar (supra) has been misinterpreted to create this confusion. Random sentences have been picked up from the judgment

and used, without any attempt to understand the true purport of the judgment in its entirety.

27 It is a well settled position of law that a word or sentence cannot be picked up from a judgment to construe that it is the ratio decidendi on the relevant aspect of the case. It is also a well settled position of law that a judgment cannot be read as a statute and interpreted and applied to fact situations. An eleven Judge Bench of this Court in the case of H.H.Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior & Ors. v. Union of India (1971) 1 SCC 85 : (AIR 1971 SC 530) held as under :

“It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment.”

The same view was reiterated by a Division Bench of this Court in the case of Commissioner of Income Tax v. Sun Engineering Works (P) Ltd. (1992) 4 SCC 363 : (AIR 1993 SC 43). Further, a three Judge Bench of this Court in the case of Union of India v. Dhanawanti Devi & Ors. (1996) 6 SCC 44 : (1996 AIR SCW 4020) held as under :

“9 It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a judge’s decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be

found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of

the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

10 Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in

the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents.....”

(Emphasis laid by this Court)

28 The decision of this Court rendered in the case of Harshad Govardhan Sondagar (supra) cannot be understood to have held that the provisions of the SARFAESI Act override the provisions of the Rent Control Act, and that the Banks are at liberty to evict the tenants residing in the tenanted premises which have been offered as collateral securities for loans on which default has been done by the debtor/landlord.

29 As far as granting leasehold rights being created after the property has been mortgaged to the bank, the consent of the creditor needs to be taken. We have already taken this view in the case of Harshad Govardhan Sondagar (supra). We have not stated anything to the effect that the tenancy created after mortgaging the property must

necessarily be registered under the provisions of the Registration Act and the Stamp Act.

30 It is a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant. A non obstante clause (Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested on the tenants under the Rent Control Act. The expression ‘any other law for the time being in force’ as appearing in Section 35 of the SARFAESI Act cannot mean to extend to each and every law enacted by the Central and State legislatures. It can only extend to the laws operating in the same field. Interpreting the non obstante clause of the SARFAESI Act, a three Judge Bench of this Court in the case of *Central Bank of India v. State of Kerala & Ors.* (2009) 4 SCC 94 : (2010 AIR SCW 2436, para 15) has held as under :

“**18** The DRT Act and Securitisation Act were enacted by Parliament in the backdrop of recommendations made by the Expert

Committees appointed by the Central Government for examining the causes for enormous delay in the recovery of dues of banks and financial institutions which were adversely affecting fiscal reforms. The committees headed by Shri T. Tiwari and Shri M. Narasimham suggested that the existing legal regime should be changed and special adjudicatory machinery be created for ensuring speedy recovery of the dues of banks and financial institutions. Narasimham and Andhyarujina Committees also suggested enactment of new legislation for securitisation and empowering the banks etc. to take possession of the securities and sell them without intervention of the Court.

XXX XXX XXX

110 The DRT Act facilitated establishment of two-tier system of Tribunals. The Tribunals established at the first level have been vested with the jurisdiction, powers and authority to summarily adjudicate the claims of banks and financial institutions in the matter of recovery of their dues without being bogged down by the technicalities of the Code of civil Procedure. The Securitisation Act drastically changed the scenario inasmuch as it enabled banks, financial institutions and other secured creditors to

recover their dues without intervention of the Courts or Tribunals. The Securitisation Act also made provision for registration and regulation of securitisation/reconstruction companies, securitisation of financial assets of banks and financial institutions and other related provisions.

111 However, what is most significant to be noted is that there is no provision in either of these enactments by which first charge has been created in favour of banks, financial institutions or secured creditors qua the property of the borrower.

112 Under Section 13(1) of the Securitisation Act, limited primacy has been given to the right of a secured creditor to enforce security interest vis-a-vis Section 69 or Section 69A of the Transfer of Property Act. In terms of that sub-Section, a secured creditor can enforce security interest without intervention of the Court or Tribunal and if the borrower has created any mortgage of the secured asset, the mortgagee or any person acting on his behalf cannot sell the mortgaged property or appoint a receiver of the income of the mortgaged property or any part thereof in a manner which may defeat the right of the secured creditor to enforce security

interest. This provision was enacted in the backdrop of Chapter VIII of Narasimham Committee's 2nd Report in which specific reference was made to the provisions relating to mortgages under the Transfer of Property Act.

113 In an apparent bid to overcome the likely difficulty faced by the secured creditor which may include a bank or a financial institution, Parliament incorporated the non obstante clause in Section 13 and gave primacy to the right of secured creditor vis a vis other mortgagees who could exercise rights under Sections 69 or 69A of the Transfer of Property Act. However, this primacy has not been extended to other provisions like Section 38C of the Bombay Act and Section 26B of the Kerala Act by which first charge has been created in favour of the State over the property of the dealer or any person liable to pay the dues of sales tax, etc.....

116 The non obstante clauses contained in Section 34(1) of the DRT Act and Section 35 of the Securitisation Act give overriding effect to the provisions of those Acts only if there is anything inconsistent contained in any other law or instrument having effect by virtue of any other law. In other words, if there is no provision in the other enactments which are

inconsistent with the DRT Act or Securitisation Act, the provisions contained in those Acts cannot override other legislations.”

(emphasis laid by this Court)

11 We would, therefore, dismiss this petition at the threshold. The respondent no.2 – bank can proceed to take physical possession of the premises in accordance with the notice issued on 11th July 2016. The bank official shall be rendered the necessary assistance by the nearest police station and the respondent no.3 should take all the steps for obtaining the police assistance. Any resistance should be met with such force as is necessary and permissible in law. The original agreement is impounded by the court in the light of the above. It shall be accordingly placed in the safe custody of the Registrar (Judicial) of this court. The further steps, as are necessary by law, so as to prosecute the litigants who produce such documents and raise a false and bogus claim, needs to be sternly and strictly dealt with. The Registrar (Judicial) shall take necessary steps in accordance with law.

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