

Kamal Bhogilal Mehta	}	Petitioner
versus		
Authorized Officer,	}	
under SARFAESI Act	}	
and Ors.	}	Respondents

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

P.C. :-

- Page 1 of 3

3. Mr. Sampat appearing for the petitioner submits that a very valuable immovable property is involved. The petitioner is a genuine and *bonafide* tenant. In the light of the SARFAESI Act and the so called remedy thereunder, it will not be possible to resolve the issue as raised in the writ petition. The petitioner, therefore, seeks to challenge the constitutional validity also of some provisions and therefore, leave to amend be granted.

4. We have seen that the petitioner's application as intervener and with a view to restrain the bank from taking possession of the premises was rejected on 6th October, 2015. It is that order and coupled with the assistance rendered to the bank by the learned Chief Metropolitan Magistrate, Esplanade, Mumbai for taking possession of the flat are the actions and proceedings challenged in this writ petition.

5. Having held in several matters that these are factual issues that whether the agreement of tenancy or tenants are genuine or not are factual issues and would require evidence to be recorded, we do not think that the writ petition should be kept pending. More so, when this court has not protected the petitioner against dispossession. We are of the view that the petitioner has

alternate and equally efficacious remedies under the SARFAESI Act and particularly after the amendments carried out thereto by Act 44 of 2016 [(see section 17(4))].

6. Keeping alive the constitutional challenge and without prejudice to the rights and contentions of the parties in that regard, we are of the opinion that the petitioner can avail of those remedies and seek all reliefs as are permissible in law. Granting that liberty and keeping the constitutional challenge open, we dispose of this writ petition.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)