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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 18.07.2016

+ CM(M) 671/2016

JOGINDER SINGH

..... Petitioner

Through Dr. Jose P. Verghese, Mr. Dhruv Jose
and Mr. Jankhan Singh, Advocates.

versus

REKHA GUPTA & ORS

..... Respondents

Through Mr. Sanjeev Bhandari and
Mr. Dhananjay Kumar Singh, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No. 24726/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 671/2016 and CM No. 24725/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 12.07.2016 passed by the court of Chief Metropolitan Magistrate dismissing the application filed by the petitioner seeking review of the order dated 30.01.2016. By the said order dated 30.01.2016 the CMM had decided an application under Section 14 of the SARFAESI Act, 2002 and allowed the same by appointing a Receiver to take possession of the property in question, namely, 3rd Floor, B-56, CC Colony, GT Karnal Road, Delhi.
2. By the impugned order, the CMM held that the earlier order dated 30.01.2016 appointing a Receiver is final and Cr.P.C. does not vest power

with the CMM to review its order. The only remedy available to the petitioner was held to approach this Court. The impugned order further held that even otherwise, the petitioner has failed to show any cogent document to establish that he was a tenant in the property prior to the creation of the mortgage and is entitled to protection in terms of the judgment of the Supreme Court in the case of ***Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Ltd. & Ors.***, (2014) 6 SCC 1. It was the contention of the petitioner/the objector before the CMM in his objections, that he was inducted as a tenant on 20.09.2011 by one Shri Manish Gupta. The impugned order notes that the ownership vests in Smt. Rekha Gupta vide sale deed dated 05.10.2011 and not with Shri Manish Gupta. The alleged induction of the objector/petitioner into the concerned property was by way of an oral lease. The impugned order also notes that the objector has placed on record alleged receipts of payment of the year 2015-16 and not of 2011. The court also observed that the objector/petitioner had approached the court only four days before the day scheduled for recovery of possession. The order concludes that the objections appear to have been filed to stall recovery proceedings filed before the DRT and that the petitioner cannot be said to be a bona fide protected tenant entitled to protection of law as laid down by the Supreme Court. The court further held that the judgment relied upon of the Hon'ble Supreme Court deals with the protected tenants and as such would not affect the petitioner. Accordingly the objections/application for review filed by the petitioner was dismissed.

3. Learned counsel appearing for the petitioner has before this court reiterated his submissions which are dealt with in the impugned order. He admits that he was inducted into the property in question by an oral tenancy

in September 2011. It is further urged that the tenancy was subsequently reduced in writing vide document dated 15.04.2014 and the agreed rent was Rs.10,000/- per month. It is further urged that various payments have been made to Shri Manish Gupta who is the son of Smt. Rekha Gupta and is said to be a joint owner with Smt. Rekha Gupta. He has pointed out that lacs of rupees have been paid to Shri Manish Gupta including a cheque of Rs.80,25,000/- which is said to have been given on 30.01.2016. This payment was said to be for sale of the property to the objector.

4. On a question posed by the court, it was confirmed that the cheque for the sum of Rs.80,25,000/- was never encashed by Shri Manish Gupta and it is urged that in fact, the petitioner had stopped the payment of the said cheque. However, learned counsel for the petitioner submits that Rs.20 lacs has been received by Shri Manish Gupta as alleged advance payment.

5. Learned counsel for the petitioner relies on the judgment of the Supreme Court in the case of *Vishal N.Kalusarai vs. Bank of India & Ors. (2016) 3 SCC 762* to support his case.

6. Learned counsel appearing for respondent No. 2 has pointed out that the owner of the property in question, namely, Smt.Rekha Gupta had before DRT given undertakings twice to handover physical vacant possession to the Receiver confirming that they are in physical possession of the suit property and that they have no other residential accommodation available with them. These orders he submits have been suppressed from this Court. He has strongly submitted that the entire exercise has been conducted to try and delay the proceedings under the SARFAESI Act on account of the default committed by the owner.

7. A perusal of the facts clearly shows that the contentions of the

petitioner completely lack bona fide. The recorded owner of the property as per the sale deed dated 5.10.2011 is Smt. Rekha Gupta. The transactions alleged by the petitioner with Shri Manish Gupta, son of Smt. Rekha Gupta would not confer any right on the petitioners. The claim of the petitioner about Mr. Manish Gupta being a co-owner of this property is not supported by the records. The title document only refers to Smt. Rekha Gupta. Nothing else is placed on record to show what rights, if any, Shri Manish Gupta has in the property in question.

Further, the alleged tenancy relied upon by the petitioner is an oral tenancy allegedly of 2011. No cogent receipts of banking transactions are placed on record to show regular payment of rent. The rent agreement placed on record is dated 08.06.2015. It states the rent to be Rs.10,000/- per month. It further states that the tenancy shall commence from 01.04.2014 and is for a period of 11 months ending on 28.02.2015. Surprisingly the agreement is said to be made on 8.6.2015. Hence, on the date of execution the term of the tenancy had expired. This rent agreement is not registered or notarised and hence, does not inspire any confidence. Similarly two more rent agreements dated 08.06.2015 and 27.02.2016 have been placed on record which also do not inspire any confidence.

It may further be noted that the learned counsel for respondent No.2 has pointed out that the owner of the property in question, namely, Smt. Rekha Gupta had before the DRT given an undertaking twice to handover physical vacant possession to the Receiver confirming that they were in physical possession of the suit property. The only order placed on record by the petitioner before this court is an order dated 30.05.2016 of the DRT by which order it disposed of an application filed by the applicant. The order

notes the submission of the applicant that he will deposit Rs.3 lacs with the bank that day itself. The order further directs that in case balance notice amount is not deposited within 30 days, the applicant shall handover possession of the property in question to the Registrar of the Tribunal.

8. Order dated 30.05.2016 of DRT reads as follows:-

“IA No. 982/2016

The present application is filed by the applicant requests for extension of time of 45 days for balance 25% of the notice amount in terms of order dated 07.03.2016.

The learned counsel for applicant submits that due to some personal difficulty he could not deposit the aforesaid amount and today he will deposit a sum of Rs.3.00 lacs with the bank and balance notice amount shall be deposited within 30 days which is strongly opposed by other side.

In the interest of justice, the applicant is hereby directed to deposit a sum of Rs.3.00 lacs with the bank today itself and balance notice amount shall be deposited within 30 days; failing which the applicant shall handover the possession of the property in question to the Registrar of this Tribunal within week's time after default.

Till then the parties are hereby directed to maintain status quo in respect of the property in question and applicant shall not create any third party interest without prior permission of this Tribunal.”

9. The above order shows that the owner of the property does not dispute her possession of the property. It is apparent that the petitioner has not placed the full facts before this court. The documents placed on record do not inspire confidence.

10. Even otherwise, the reliance of the petitioner on the judgment of the Supreme Court in *Vishal N. Kalsarai vs. Bank of India & Ors., (supra)* is misplaced. The judgement itself clearly states that the broad point which requires consideration in the matter is whether a ‘protected tenant’ under the Maharashtra Rent Control Act, 1999 can be treated as a lessee and whether the provisions of the SARFAESI Act will override the provisions of the Rent Control Act. In the present case the Delhi Rent Control Act will not be applicable as the rent of the property in question is said to be Rs.10,000/- per month. Accordingly, the petitioner cannot claim to be a protected tenant under any Rent Control Act and cannot claim any protection under the judgment of the Supreme Court in the case of *Vishal N.Kalsarai vs. Bank of India & Ors. (supra)*. There are no merits in the contentions of the learned counsel for the petitioner.

11. The petition is dismissed.

JAYANT NATH, J

JULY 18, 2016

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