

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2190 OF 2017

Shethia Industries
Proprietorship firm through
its Proprietor Mr. Priyang Shethia.

.... Petitioner

Versus

Shantilal B. Shah & Ors.

.... Respondents

Mr. Mathews J. Nedumpara a/w Mr. R.R.Nair for Petitioner.
Mr. Vivek S. Sawant for Respondent No.3.

**CORAM : R. M. BORDE AND
 A. S. GADKARI, JJ.
DATE : FEBRUARY 16, 2017.**

P.C.

. This petition can be disposed of by granting limited protection from eviction, since the Petitioner is threatened with dispossession in pursuance to the proceedings initiated at the instance of Respondent – Bank.

2. The learned Counsel for Petitioner invited our attention to the documents annexed at Exhibit B, whereunder the request made by the Respondent – Bank for extending police

protection has been considered favourably and it is apprehended by Petitioner that the possession of the premises would be taken over on 17th February, 2017. The Petitioner who claims to be the licensee, on the basis of the documents executed by the owner of the property in its favour, claims protection from dispossession. Admittedly, the landlord/owner of the premises is defaulter of the Respondent – Bank and in the proceedings for execution of possession of the premises i.e. Gala at Plot No. 93, Sector No. 19A, CIDCO, Opp. Dudhpandhari, Vashi, Navi Mumbai is being taken over.

3. The Petitioner has approached to the Debts Recovery Tribunal claiming protection for dispossession. An application tendered by the Petitioner for grant of interim protection has been turned down by the Debts Recovery Tribunal in view of the order passed on 10th February, 2017. The Debts Recovery Tribunal has primarily turned down the application filed by Petitioner on the ground that he failed to substantiate that he is the licensee in respect of premises. It is observed by the Tribunal in the order that the Petitioner herein has placed on record only a photostat copy of Leave and Licence Agreement whereunder he claims entitlement to continue to occupy the premises till 17th February, 2018. The Tribunal refused to place reliance on the Photostat copy of the unregistered Leave and Licence Agreement and declined to grant protection. It does appear that the Petitioner

failed to substantiate his right to remain in possession of the premises by producing cogent evidence.

4. The Petitioner has presented Photostat copies of the Licence in Form-C issued under the provisions of the Food Safety and Standards Act, 2006, Certificate of Registration under the Central Sales Tax Act, copy of the Registration Certificate issued by Navi Mumbai Municipal Corporation under Local Body Tax Act, the Bill in respect of Property Tax and the copies of Telephone Bill, Electricity Bill along with the Petition. We have not verified the authenticity of the Photostat copies of the aforesaid documents annexed to the petition. It would be open for the Appellate Forum to whom the Petitioner has already approached, to verify the genuineness of the documents.

5. It has been pointed out by the learned Counsel for Petitioner that he has approached to the Appellate Forum by presenting an appeal challenging the order passed by the Debts Recovery Tribunal, refusing to grant interim protection. It is further informed that the appeal has not been taken up for consideration for grant of interim relief as claimed by the petitioner, looking to the urgency of the situation, we deem it appropriate to grant indulgence in favour of the Petitioner and entertain the petition only for the limited purpose of allowing breathing time to facilitate the Petitioner to approach the Appellate Forum and pray for grant

of interim protection. In view of the facts and circumstances enumerated above, we direct the Respondent – Bank not to take coercive action for a period of 15 days from today. It would be open for the Petitioner to approach the appellate forum i.e. the Debts Recovery Appellate Tribunal for redressal of his grievance.

6. It is clarified that this Court has not considered merits of the contentions raised by the Petitioner and only on prima facie perusal of Photostat copies of the documents, protection for limited period has been granted in favour of the Petitioner. It would be open for the Appellate Forum to consider the appeal and the application of the Petitioner on its own merits, without being influenced by the limited interference caused by this Court in this instant writ petition. It is further clarified that 15 days' time granted by this Court shall not be extended, in the event, the Petitioner fails to approach and press his claim before the Appellate Forum.

7. In view of above, writ petition stands disposed of.

[A. S. GADKARI, J.]

[R. M. BORDE, J.]