IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8141 of 2017
WITH
CIVIL APPLICATION NO.1683 OF 2017

Sanjivkumar Surajprakash Aggarwal **...Petitioner**

Versus

State Bank of India & Ors. **...Respondents**

Mr. Sanjay Jain i/b Ms. Harshada N. Kamble, for the Petitioner.

Mr. Vyankatesh Dhond, Senior Advocate a/w Mr. R. J. Singh and Manoj Kumar, for the Respondent No.1 S.B.I.

CORAM : B.R. GAVAI AND RIYAZ I. CHAGLA, JJ.

DATE : 24 July 2017

<u>JUDGMENT</u> : (Per Riyaz I. Chagla, J.)

1. The Petitioner by the present Petition is challenging impugned orders dated 19th August 2016 and 16th February

2017 passed by the learned Chief Metropolitan Magistrate, Esplanade, Mumbai. The Petitioner is also challenging the subsequent impugned order dated 20th June 2017 passed by the Debts Recovery Tribunal- II, Mumbai.

2. The Petitioner claims to be a tenant in respect of the subject flat. Respondent No.2 is a borrower from Respondent No.1. Upon non-payment of dues, Respondent No.1 issued demand notice dated 3rd May 2013 on Respondent No.2 calling upon them to pay the outstanding dues. Respondent No.1 on 14th August 2014 filed Miscellaneous Application bearing No.388/SA/2014 before the learned Chief Metropolitan Magistrate, Mumbai under Section 14 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the 'SARFAESI' Act). The Petitioner had filed Miscellaneous Application for intervention on 17th October 2014 before the learned Chief Metropolitan Magistrate, Mumbai. The learned Chief Metropolitan Magistrate, Mumbai by an order dated 12th January 2015 rejected the Miscellaneous

Application of the Petitioner. The learned Chief Metropolitan Magistrate, Mumbai by an order dated 10th June 2015 allowed the Miscellaneous Application No.388/SA/2014 under Section 14 of the 'SARFAESI' Act. The Petitioner filed Writ Petition before this Court claiming to be a tenant and relying upon a decree passed by the Small Causes Court at Mumbai which according to the Petitioner entitled the Petitioner to get a hearing before the learned Chief Metropolitan Magistrate, Mumbai. The decree declaring the Petitioner to be a tenant was passed on 20th August 2014. This Court by an order dated 25th June 2015 dismissed Writ Petition No.5612 of 2015 filed by the Petitioner and reserved the right of the Petitioner to file Appeal under Section 17 of the 'SARFAESI' Act from the impugned order of the learned Chief Metropolitan Magistrate, Mumbai. The Petitioner being aggrieved by the order of this Court dated 12th June 2015 filed Special Leave Petition before the Supreme Court of India and by an order dated 20th July 2015 the Supreme Court of India remanded the matter back to the learned Chief Metropolitan Magistrate, Mumbai directing him to conduct enquiry regarding tenancy. The learned Chief Metropolitan Magistrate, Mumbai conducted an inquiry into the alleged tenancy and by the detailed order dated 19th August 2016 observed that the tenancy of the Petitioner is not genuine. The learned Chief Metropolitan Magistrate, Mumbai observed that the Judgment and Decree of the Small Causes Court was a collusive decree. The Petitioner thereafter filed Securitisation Application before Debts Recovery Tribunal on 14th August 2016 challenging the impugned order of the learned Chief Metropolitan Magistrate, Mumbai. On 16th February 2017, the learned Chief Metropolitan Magistrate, Mumbai passed further order under Section 14 to appoint an Advocate Commissioner to take possession of the subject flat. The Petitioner being aggrieved by the impugned orders of the learned Chief Metropolitan Magistrate, Mumbai filed the present Petition. The Petitioner also thereafter amended the Petition by challenging the order dated 20th June 2017 passed by the Debts Recovery Tribunal- II.

3. Shri. Sanjay Jain, learned counsel appearing for the Petitioner has submitted that the impugned order passed by the learned Chief Metropolitan Magistrate, Mumbai is contrary to the decree passed by the Small Causes Court at Mumbai, which had decreed the declaratory suit of the Petitioner declaring him to be tenant in respect of the subject flat. Shri. Jain submitted that the learned Chief Metropolitan Magistrate, Mumbai has ignored material facts such as the agreement for tenancy entered into between the Petitioner and the Mother of Respondent No.3. This had not been disputed by Respondent No.3. Shri. Jain has further contended that under Section 17 (4A) of the 'SARFAESI' Act, the Debts Recovery Tribunal ought to have decided the issue of tenancy in accordance with decree passed by the Small Causes Court and quashed and set aside the impugned orders of the learned Chief Metropolitan Magistrate, Mumbai. Shri. Jain has contended that the impugned order of the Debts Recovery Tribunal dated 20th June 2017 is erroneous in not granting the relief claimed by the Petitioner in the Securitisation Application and dismissing the same with a cost of

Rs.15,000/- payable by the Petitioner to the Respondent No.1, Bank and vacating the interim stay granted to the Petitioner. Shri. Jain has contended that the learned Chief Metropolitan Magistrate, Mumbai had by impugned order dated 16th February 2017 appointed an Advocate as Court Commissioner for taking possession of the subject flat. This order according to Shri. Jain was illegal as the learned Chief Metropolitan Magistrate, Mumbai Court could have appointed only a subordinate officer and not an Advocate as a Court Commissioner. Shri. Jain submitted that this Court stay the impugned orders and that the possession of the Petitioner as tenant in respect of subject flat be continued.

4. Shri. Dhond, learned senior counsel appearing for Respondent No.1 submitted that the decree passed by the Small Causes Court is a collusive decree and that the decree had been passed on unchallenged testimony as well as there being no documentary evidence in support of the tenancy. Shri. Dhond submitted that the detailed enquiry had been conducted by the

learned Chief Metropolitan Magistrate, Mumbai and upon which the learned Chief Metropolitan Magistrate, Mumbai had come to the conclusion that the tenancy created in favour of the Petitioner was not a genuine tenancy.

5. After hearing the argument, we are of the considered view that the learned Chief Metropolitan Magistrate, Mumbai has passed a detailed order after considering all the documents on record and has held the tenancy of the Petitioner to be not genuine. This enquiry conducted by the learned Chief Metropolitan Magistrate, Mumbai is as per the directions of the Apex Court. We are of the considered view that the decree passed by the Small Causes Court has been passed on unchallenged testimony and without relying upon the documentary evidence in support of the tenancy which Petitioner had claimed. We are of the view that there is no infirmity in the impugned orders passed by the learned Chief Metropolitan Magistrate, Mumbai and the Debts Recovery Tribunal, and they had been passed in accordance with law.

6. We, accordingly, dismissed the Petition with costs quantified at Rs.1 lacs payable to the Maharashtra State Legal Services Authority.

[RIYAZ I. CHAGLA J.] **[B.R. GAVAI, J.]**