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

WRIT PETITION (ST) NO. 18189 OF 2017

1. Shri Jyoti Kailash Elag

Age 43, Occ. Business, R/at. B-18,
Nandkishore Industrial Estate, Mahakali
Caves Road, Andheri (East), Mumbai 93

...Petitioner

Versus

1. Bank of India

Having its Branch office at Star House,
Bandra Kurla Complex, Bandra (E),
Mumbai 400 051. Also at Bank of India
Assets Recovery Management Branch,
Bank of India Blog, Ground Floor, 28, S.V.
Road, Andheri (East), Mumbai 400 058.

2. M/s. Chepar Plastics Pvt. Ltd.

Through its Director,

Shri Chetan Dhirajlal Parekh

Age 55 yrs., Occu. Business, R/at. 201,
Neelmani No. 2, D.P. Road, Vile Parle,
Mumbai 400 056.

3. The State of Maharashtra,

High Court, Bombay.

...Respondents

Mr. Ravindra M. Pande, Adv. for the Petitioner.

Mr. Anant B. Shende, Adv for Respondent No.1 Bank of India.

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

DATED: 31st July 2017

J U D G M E N T :- (Per Riyaz I. Chagla J.)

1. The Petitioner by the present Petition is challenging the possession warrant dated 21st June 2017 issued by the Assistant Registrar, Bandra Centre of Court pursuant to the order dated 17th June 2014 passed by the Chief Metropolitan Magistrate (“**C.M.M.**”) in S.A. No. 202 of 2014. The Petitioner has also challenged the order dated 4th July 2017 passed by Debts Recovery Tribunal, II (“**DRT-II**”), which has dismissed the Securitisation Application No. 266 of 2016 with I.A. No. 1057 of 2016 preferred by the Petitioner.

2. The Petitioner claims to be a tenant in respect of the secured property since 1st April 2011. The Petitioner had filed R.A.D. Suit before the Small Causes Court at Bandra for declaration of tenancy on 2nd December 2015. Prior to the filing of the RAD Suit, an application had been preferred by Respondent No.1 before the CMM against Respondent No.2 and its directors for non-payment of the credit facility, which Respondent No.1 had extended. The CMM had passed an

order on 17th June 2014 directing the Assistant Registrar to take possession of the secured property viz. Gala B-18 at Nandkishore Industrial Estate, Off Mahakali Caves Road, MIDC, Andheri (East), Mumbai 400 093 (**hereinafter called as subject property**). The Petitioner had filed Securitisation Application No. 266 of 2016 before the DRT-II in November 2016. On 21st June 2017, the Assistant Registrar, Bandra Centre of Court of Mumbai, issued possession warrant in respect of the subject property. The DRT-II by impugned order dated 4th July 2017 (tendered in Court) has rejected the interim application filed by the Petitioner for restraining the Respondent No.1 from taking physical possession of the subject property and has dismissed the Securitisation Application. The DRT II has observed that the Petitioner had in collusion with the borrower i.e. Respondent No.2 created bogus tenancy in respect of the subject property. The Petitioner is aggrieved by the impugned order.

3. Shri Pande, learned Advocate for the Petitioner has contended that the Petitioner is a tenant in respect of the subject property and the Respondent No.1 cannot evict a

tenant under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (“**SARFAESI Act**”). Shri Pande has contended that the Petitioner has been proceeded against by issuance of possession warrant without following the principles of natural justice and Respondent No.1 bank has suppressed the fact that the Petitioner is a tenant in respect of the subject property and the Petitioner ought to have been made a party to the Securitisation Application filed before the CMM. Shri Pande has also contended that the impugned order of the Presiding Officer of the DRT-II has erroneously held that there was a bogus tenancy created by the borrower, Respondent No.2, in collusion with the Petitioner in respect of the subject property. Shri Pande has contended that the subject property is required to be protected by orders passed by this Court and that the impugned orders as well as the possession warrant be set aside.

4. Shri Shende, learned Advocate for the Respondent No.1 has submitted that the Petitioner had although filing RAD suit in the Small Causes Court had not obtained a stay

of the impugned order dated 17th June 2014 passed by the CMM. Shri Shende has contended that the tenancy is a bogus tenancy created in collusion between the Petitioner and Respondent No.2. The DRT – II has justifiably observed the bogus tenancy by placing reliance upon a similar Securitisation Application filed by one Ashwin J. Vora, who also claimed to be a tenant in respect of Flat No. 304, i.e. another of the secured properties, which claim was rejected by the DRT-II vide its order dated 3rd July 2017. The application before the DRT-II in the present matter was similar in the case of Ashwin J. Vora. Shri Shende has contended that the DRT-II is justified in dismissing the interim application seeking protection of the subject property and the Securitisation Application filed by the Petitioner.

5. We are of the considered view that the Petitioner having not obtained a stay of the impugned order passed by the CMM in the RAD Suit filed in the Small Causes Court is not entitled to any protection of the subject property. We are of the view that, the Petitioner has an alternate remedy available to him under the SARFAESI Act and that if the

Petitioner is at all aggrieved by the impugned order dated 4th July 2017 passed by the DRT-II, the appropriate remedy would be under Section 17 of the SARFAESI Act before the Debts Recovery Appellate Tribunal (“**DRAT**”). The Petitioner has filed this Petition belatedly i.e. on 1st July 2017, particularly when the possession warrants were issued on 21st June 2017 and possession of the subject property is to be taken on 5th July 2017. We find no infirmity in the impugned orders.

6. We accordingly dismiss this Petition. There shall be no order as to costs.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)