

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.195 OF 2018

Amit Mohan Bhatia	 Petitioner
V/s.	
Maratha Sahkari Bank Ltd. & Ors.	 Respondents

Dr. Birendra Saraf, a/w. Mr. Vishal Kanade and Mr. Girish Thakur, for the Petitioner.

Mr. K.S. Dewal, i/by Mr. J.M. Joshi, for Respondent No.1.

Ms. Kavita N. Solunke, A.G.P., for the Respondent-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 23RD JANUARY 2018.

P.C. :

1. Heard Dr. Saraf, learned counsel for the Petitioner, and Mr. Dewal, learned counsel for Respondent No.1.

2. By this Petition, the Petitioner is challenging the order dated 29th December 2017 passed by the Chief Metropolitan Magistrate, Mumbai, below "Exhibit-9" in Case No.73/SA/2017. By the said order, the learned Magistrate Court has rejected the application at "Exhibit-9", which was preferred by the present Petitioner, claiming himself to be a tenant in secured asset and seeking intervention and opportunity of hearing in the matter.

3. The perusal of the impugned order shows that, the learned counsel for the Petitioner has brought to the notice of the learned Magistrate Court, the order of this Court in the case of *Rakesh Chandrakant Mohite Vs. The Kurla Nagrik Sahakari Bank Ltd. (in Writ Petition No.636 of 2016, along with connected Writ Petition No.694 of 2016, order dated 3rd August 2016)*, wherein, it was held that, “as the eviction order passed under Rule 107 of the Maharashtra Co-operative Societies Rules, in pursuance of adjudication of the Bank's claim, is similar to the provisions of law, as laid down in SARFAESI Act, the matter requires consideration and pending such consideration, the Writ Petition was admitted and the interim relief was also granted”.

4. It was pointed out to the learned Magistrate that, in view of this order and the Judgment of the Apex Court in the case of *Vishal N. Kalsaria Vs. Bank of India & Ors., AIR 2016 SC 530*, the claim of tenancy made by the Petitioner needs to be heard and adjudicated. The learned Magistrate has, however, not given such opportunity and simply rejected the application holding that, if Petitioner is seeking protection of his tenancy, then, the said issue has to be decided by the Debt Recovery Tribunal and he is not required to look into that issue.

5. Hence, considering the order of this Court in the case of *Rakesh Chandrakant Mohite (Supra)*, the interest of justice required that the

learned Magistrate should have given an opportunity of hearing to the Petitioner, in order to enable him to prove his claim of tenancy and his ground for intervention. As the said objection is not at all considered and not heard, nor adjudicated, the impugned order passed by the learned Magistrate needs to be quashed and set aside, remanding the matter to the Trial Court for fresh hearing on the application at “Exhibit-9”.

6. Accordingly, the Writ Petition is allowed. The impugned order passed by the learned Magistrate is quashed and set aside. Learned Magistrate is directed to hear the application at “Exhibit-9” afresh, after giving opportunity of hearing to both the parties on all the aspects, including the issue of tenancy.

7. All the contentions raised by the parties are expressly kept open.

8. Learned Magistrate to decide the application at “Exhibit-9” within a period of three weeks from the date of receipt of a copy of this order.

9. Learned counsel for both the parties submit that, the parties will remain present before the learned Magistrate on 30th January 2018, with all the documents and material in their possession.

10. Writ Petition is disposed of in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]