IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.4160 OF 2018

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Deutche Bank A.G. ....Petitioner
V/S
Avinash Govindrao Adik & Ors. ....Respondents

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Mr. Rafiq Peermohideen with Mr. Ravi Goenka and Mr. Narendra Devansh i/b M/s. Goenka Law Associates for the Petitioners.
Mr. V.A. Thorat, Senior Advocate I/b Mr. Pradeep J. Thorat for Respondent No.1.
Mr. Rumi Mirza, Mr. Kaushal Thakker I/b Mr. Ronnie H. Mirza for Respondent Nos.2 to 4.

CORAM : A.A. SAYED &
RIYAZ I. CHAGLA, JJ.
DATE : 11 JANUARY 2019

ORDER:

1 By this Petition is filed under Articles 226 and 227 of the Constitution, the Petitioner Bank has impugned the order dated 30 November 2018 passed by the DRAT in M.A. No.733 of 2018 in Appeal No. 66 of 2018. The order impugned in the Appeal was that of DRT dated 22 October 2018 dismissing the said Securitisation Application No.349 of 2018 on the ground that the Respondent No.1 is a licensee and he has no protection like bonafide tenant or lessee under the SARFAESI Act, 2002 and the Respondent No.1 is not entitled to retain possession of the flat in question.

2 Respondent Nos.2 to 4 are the heirs of one Anil Kapoor who was the owner of Flat No.2A on the Second Floor of the Building 'Girnar', Nargis

Dutt Road, Pali Hill, Bandra (West), Mumbai - 400 050 (hereinafter referred to as the said flat). The said flat was mortgaged and is a secured asset of the Petitioner Bank in respect of financial facilities availed of by the said Anil Kapoor in the year 2013 and 2015. The Respondent No.1 had entered into a Leave and License Agreement dated 6 July 2011 with the said Anil Kapoor in respect of the said flat. The Leave and License Agreement commenced from 1 July 2011 and has expired on 30 June 2016. An amount of Rs. 85,00,000/- was paid as security deposit and the monthly compensation was Rs.3,100/-.

3 The Leave and License Agreement is registered. The Leave and License Agreement makes it clear that the said flat is granted on temporary license basis and Respondent No.1 as Licensee shall not have any right, title or interest or any other right in respect of the said flat. The Respondent No.1 has filed a suit in the Small Causes Court, Mumbai, against the owners seeking a declaration that the owners have no right to dispossess him except by due process of law and in the alternative for a declaration that he is a tenant of the said flat.

4 We find that the Respondent No.1 is a licensee under the registered Leave and License Agreement which has expired way back on 30 June 2016. The Respondent No.1 being a licensee under a registered Leave and Licence Agreement which has expired cannot claim any right, title or

interest in the said flat. The pendency of the suit in Small Causes Court is of no consequence as far as the Petitioner Bank is concerned. We do not see how the Respondent No.1 can claim protection or continue to remain in possession of the said flat notwithstanding the fact that the Leave and Licence Agreement (which has expired) was prior to the mortgage. By the impugned order, though the DRAT has permitted the Petitioner Bank to sell the said flat, it seems to have allowed Respondent No.1 to remain in possession on the said flat. The learned Counsel for the Petitioner Bank is right in contending that if the flat is sold in public auction with the Respondent No.1 continuing in occupation of the said flat, the said flat would not fetch its potential market value and hardly any bidder would come forward to bid for the said flat.

5 In our view, the DRAT was not right in permitting the Respondent No.1 who has no right, title or interest, to remain in occupation of the said flat. It is an admitted position that the Petitioner Bank has obtained an order dated 13 April 2018 from the Chief Metropolitan Magistrate for taking the physical possession of the said flat under section 14 of the SARFAESI Act. We are mindful of the fact that the Appeal before the DRAT is pending and is due to come up on 6 February 2019. However, we find that the Respondent No.1 who is occupying the said flat under a registered Leave

and License Agreement which has already expired would have no right to continue to remain in occupation of the said flat particularly when the Petitioner Bank has obtained order under section 14 of the SARFAESI Act. It is required to be noted that the borrower or his heirs (Respondent Nos. 2 to 4) have not filed any proceedings before the DRT challenging the measures adopted by the Petitioner Bank.

6 The amount of security deposit of Rs.85,00,000/- paid under the Leave and License Agreement to the borrower would at the highest be a money claim and the remedy of the Respondent No.1 in that regard is kept open. As stated earlier, the registered Leave and License Agreement has expired way back on 30 June 2016 and the Respondent No.1 would not be entitled to any protection and seek any relief to retain possession of the said flat.

7 In the circumstances, we modify the impugned interim order of DRAT by directing that the Petitioner Bank would free to sell the said flat in accordance with law after taking physical possession of the said flat pursuant to the order of the Chief Metropolitan Magistrate under section 14 of the SARFAESI Act and the Respondent No.1 shall not be entitled to create any obstruction in respect thereof.

8 We record the statement of the learned Counsel for the Petitioner Bank that before taking possession of the said flat, the Court Commissioner shall give prior notice of two weeks to the Respondent No.1.

9 The Petition is allowed in the aforesaid terms.

(RIYAZ I. CHAGLA, J.) **(A.A. SAYED, J.)**

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