

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.386 of 2019

M/s. New G-0, Gift and Flowers, Nagpur, Smt. Shabeen w/o Ashfaq Patel

Versus

The Authorised Officer cum Manager, Dena Bank, Nagpur, and another.

Office Notes, Memoranda of Coram,
 appearances, Court's orders or directions Court's or Judge's orders
 and Registrar's order

Shri R.R. Gour, Advocate for Petitioner.

Shri S.D. Khatri with Shri Fuladi, Advocates for Respondents.

Coram : R.K. Deshpande & Vinay Joshi, JJ.

Dated : 29th January, 2019

The petitioner claims to be the tenant in respect of the premises, which are mortgaged with the respondent No.1-Bank. An agreement is placed on record, executed and notarized on 24-9-2013, creating a tenancy with effect from 1-4-2013, showing the rent of Rs.5,000/- per month in respect of the premises leased out. The rent receipts are produced on record showing the payment of Rs.55,000/- per month. Shri Gour, the learned counsel appearing for the petitioner, submits that the entire building has been let out by the landlord. The landlord is the respondent No.2, who is the borrower of loan from the respondent No.1.

The reliance is placed on the decision of the Apex Court in the case of *Vishal N. Kalsaria v. Bank of India and others*, reported in 2016(5) *Mh.L.J.* 321, and the protection is claimed from this Court in respect of the possession of the petitioner over the

property.

Our attention is invited by Shri Khati, the learned counsel appearing for the respondents, to the decision of the learned Single Judge of this Court delivered on 26-9-2018 in Civil Revision Application No.80 of 2018 [*Dena Bank v. Pravin Vitthalrao Dorkhande and another*]. In Paragraphs 9 and 10 of the said decision, the learned Single Judge has dealt with the amended provision of sub-section (4-A) of Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [“the Act of 2002”]. The said paragraphs are reproduced below :

“9. The provisions of Section 17 of the Act of 2002 have been amended by Act No.44 of 2015 and sub-section 4(A) has been added to Section 17. As per this provision, any person including a borrower, who is aggrieved by any of the measures referred to in Section 13(4) of the Act of 2002 being taken by a secured creditor can approach the Debts Recovery Tribunal and can raise grievance in that regard. A person claiming tenancy or leasehold rights is also entitled to make such application under Section 17 of the Act of 2002. As per the provisions of Section 34 of the Act of 2002, the Civil Court has no jurisdiction to entertain any suit or proceedings with regard to any matter which the

Debts Recovery Tribunal is empowered under the Act of 2002 to adjudicate. Thus, on reading of the provisions of Section 17(4-A) and Section 34 of the Act of 2002, it becomes clear that a person claiming tenancy or leasehold rights with regard to a secured asset if aggrieved by any measure taken under Section 13(4) of the Act of 2002 can approach the Debts Recovery Tribunal and seek relief. To that extent, the jurisdiction of the Civil Court has been excluded. On a plain reading of the plaint, it is obvious that the plaintiff seeks to restrain the defendant no.2 from evicting him on the basis of the order dated 31.07.2017 that is passed by the Additional Collector in exercise of the powers under Section 13 of the Act of 2002 at the instance of the defendant no.2.”

“10. The decision in Vishal N. Kalasaria (supra) was rendered on 20.01.2016. As noted above, the provisions of Section 17(4-A) of the Act of 2002 have been amended on 01.09.2018 and hence in view of the amended provisions, the ratio of aforesaid decision cannot be made applicable to the case in hand. The trial Court without considering the provisions of Section 17(4-A) of the Act of 2002, rejected the application below Exhibit 18 and thus committed jurisdictional error.”

We have no hesitation to express complete agreement with the aforesaid view taken by the learned Single Judge. In view of this decision, the petitioner, claiming to be the tenant, has an alternate remedy of approaching the Debts Recovery Tribunal under the provision of Section 17(4-A) of the Act of 2002. We, therefore, do not find any reason to entertain this petition.

The petition is dismissed. All the questions are left open to be agitated in appropriate proceedings.

(Vinay Joshi, J.)

(R.K. Deshpande, J.)