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

WRIT PETITION NO. 4270/2023

(ANILKUMAR NANDKUMAR HARCHANDANI & ANOTHER **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

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

Shri D.V. Chauhan with Shri Chaitanya Dhruv, counsel for the petitioners.
Shri A.A. Madiwale, Assistant Government Pleader for the respondent nos.1 and 2.
Shri Vandan Gadkari, counsel for the respondent no.3.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
DATE : JULY 12, 2023.

Heard.

2. The challenge raised in this writ petition is to the communication dated 28.06.2023 that has been issued by the Tahsildar and Taluka Magistrate, Nagpur to the Deputy Commissioner of Police in which it has been stated that on 12.07.2023 steps would be taken to enforce the order dated 05.07.2022 passed by the Collector and District Magistrate, Nagpur in the proceedings under Section 14(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act of 2002').

3. It is the case of the petitioners that the petitioner no.1 is in possession of area admeasuring 2850 square feet of Bungalow No.24, Poonam Aishwarya, Chhindwara Road, Nagpur as a tenant since the year 2014. The tenancy has been created by the owner of the said property namely Tribhovandas Bhimji Zaveri & Sons Retail Private Limited. The tenancy is stated to be monthly in nature and the petitioners have been paying lease rent to the owner of the property regularly. The petitioners claim that the owner of the said property had obtained financial assistance from the respondent no.3-Bank but failed to clear the dues. The notice under Section

13(2) of the Act of 2002 came to be issued on 14.08.2020 which was subsequently followed by an order under Section 14(2) of the Act of 2002 dated 05.07.2022. The proceedings with regard to the aforesaid outstanding dues are pending before the Debts Recovery Tribunal, Nagpur to which the petitioners are not the parties. On getting knowledge of the issuance of the communication dated 28.065.2023 the petitioners have filed this writ petition raising a challenge to the said communication alongwith a declaration that the petitioners are not liable to be dispossessed from the premises in question in a manner contrary to law.

4. The learned counsel for the petitioners submitted that without complying with the provisions of Section 13(4) of the Act of 2002 it was not open for the Taluka Magistrate to have sought to take over physical possession of the premises in question. The petitioner no.1 had tenancy rights in the said premises by virtue of the tenancy agreement entered into with the borrower in 2014. He invited attention to the bank statements of the petitioner no.1 to indicate that the lease rent was being regularly paid to the owner of the property-borrower and that the borrower had continued such tenancy. Without determining the tenancy rights of the petitioner no.1 it was not permissible for the respondent no.3-Bank to forcibly take possession. In that regard the learned counsel placed reliance on the decision in *Vishal N. Kalsaria Versus Bank of India & Others* [**(2016) 3 SCC 762**]. It was then submitted that the petitioners had offered to purchase the property in question that was occupied by the petitioner no.1 as tenant. The initial offer made by the petitioners was for Rs.1,23,20,000/- (One Crore Twenty Three Lakhs Twenty Thousand) which was subsequently increased to Rs.1,35,00,000/- (Rupees One Crore Thirty Five Thousand). After the respondent no.3-Bank sent its reply on 28.11.2022 that it could not sell the mortgaged property for an amount lesser than Rs.2,50,00,000/- (Rupees Two Crore Fifty Lakhs) a further offer for the entire premises which included the commercial premises was given at Rs.4,00,00,000/- (Rupees Four Crores).

The respondent no.3-Bank however arbitrarily termed the petitioner no.1 as an illegal occupant and sought possession of the said property. In the proceedings initiated by the respondent no.3-Bank being Writ Petition No.2870 of 2023 the present petitioners were not impleaded as parties and in view of the order dated 22.06.2023 passed therein, the Taluka Magistrate had issued the impugned communication. It was thus prayed that the possession of the petitioner no.1 be protected till the tenancy rights were determined in accordance with law.

5. The aforesaid submissions were opposed by the learned counsel for the respondent no.3-Bank. It was submitted that except for a statement that the tenancy had been created in 2014 the petitioners had not placed on record any details in that regard. The bank statements referred to by the petitioners were of a period after creation of the mortgage and hence the same did not support the case of the petitioners. Inviting attention to the judgment of the Hon'ble Supreme Court in *Hemraj Ratnakar Salian Versus HDFC Bank Ltd. & Others* [**AIR 2021 SC 3880**] it was submitted that in absence of a registered instrument indicating creation of tenancy, the claim of the petitioners did not warrant consideration. The respondent no.3-Bank was taking steps in accordance with law and in view of the order passed under Section 14(2) of the Act of 2002, it was entitled to take possession of the mortgaged property.

6. Having heard the learned counsel for the parties and having perused the documents on record, we find that the petitioners have not made out any case for grant of the prayers made in the writ petition. The petitioners have pleaded that the tenancy in favour of the petitioner no.1 was created by the owners of the property in 2014. It is further pleaded that the tenancy is monthly in nature. It is however seen that except for these statements the petitioners have not placed on record copy of any lease agreement to indicate creation of such tenancy in favour of the petitioner no.1. Since it has been pleaded that the petitioner no.1 is occupying the premises as a tenant since 2014 there is a presumption that it is a yearly tenancy. In such situation

therefore it is expected that the tenancy agreement would be duly registered. In this context, reference can be made to the observations of the Hon'ble Supreme Court in *Bajrang Shyamsunder Agarwal Versus Central Bank of India & Another* [**(2019) 9 SCC 94**] wherein in paragraph 24.3 it has been observed as under :-

> "*24.3 In any case, if any of the tenants claim that he is entitled to possession of a secured asset for a term of more than a year, it has to be supported by the execution of a registered instrument. In the absence of a registered instrument, if a tenant relies on an unregistered instrument or an oral agreement accompanied by delivery of possession, the tenant is not entitled to possession of the secured asset for more than the period prescribed under Section 107 of the TP Act.*"

The aforesaid decision rendered by a Bench of three learned Judges has been subsequently followed in the decision in *Hemraj Ratnakar Salian* (supra) by observing that when a tenancy is pleaded for a period exceeding one year it ought to be supported by a registered instrument. In the present case the copy of the lease agreement itself is not placed on record. Hence there is no material on record to hold that the petitioner no.1 is occupying the premises as a tenant on the strength of a registered lease agreement. It was necessary for the petitioners to have placed on record the tenancy agreement to substantiate their claim that the petitioner no.1 was in occupation of the said premises from August-2014.

7. Coming to the bank statements relied upon by the petitioners it can be seen that the said bank statements pertain to the financial year 2020-21 and 2021-22. Since equitable mortgage in question is stated to have been created in the year 2018 the said bank statements of the subsequent period would not be of much assistance to the petitioners. In these facts therefore, we do not find that the ratio of the decision in *Vishal N. Kalsaria* (supra) would support the case of the petitioners.

8. Since it is found that the impugned communication dated 28.06.2023 has been issued pursuant to the order dated 05.07.2022 passed under Section 14(2) of the Act of 2002 and there is no material on record to indicate the tenancy rights of the petitioner no.1, we do not find any case made out to interfere in exercise of the writ jurisdiction under Article 226 of the Constitution of India. The writ petition is dismissed with no order as to costs by clarifying that it would be open for the petitioner no.1 to seek a declaration as regards his tenancy rights by initiating appropriate proceedings in that regard. The observations made in this order are only for the purposes of considering the legality of the impugned communication dated 28.06.2023 and the same would not come in way of the petitioners if they seek determination of their tenancy rights.

Order accordingly.

(MRS. VRUSHALI V. JOSHI, J.) **(A. S. CHANDURKAR, J.)**

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