

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

WRIT PETITION NO.5117 OF 2023

(Shri Nagendra s/o Gomarao Athankar vs. Union Bank of India and others)

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

Shri S.D. Chande, Advocate for petitioner.

Shri S.D. Ingole, Advocate for respondent no.1.

Shri A.M. Deshpande, In-charge Government Pleader for
respondent nos.4 and 5.

CORAM : A.S. CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.

DATED : AUGUST 10, 2023

The challenge raised in the present writ petition is to the sale notice dated 12/7/2023 that has been published at the behest of the respondent no.1-creditor seeking to sell the property mortgaged with it. The petitioner claiming to be a tenant of the respondent nos.2 and 3 has sought to challenge the said sale notice by urging that since he occupies the said property as a tenant, such notice could not have been issued without first taking steps to evict the tenant from the said property. It is also the case of the petitioner that the sale notice has been issued without complying with the statutory requirements in that regard.

2) After hearing learned Counsel for the petitioner, learned Counsel for the respondent no.1 and learned In-charge Government Pleader for the respondent nos.4 and 5, we find that the petitioner had filed Regular Civil Suit No.1118/2022

against the Bank seeking a declaration that the sale notice dated 30/7/2022 was illegal and invalid. Though the petitioner claims to be a tenant pursuant to the lease deed executed on 18/7/2019, there are no averments in the aforesaid suit that the petitioner is a tenant in the said premises. It was necessary for the petitioner to have pleaded his tenancy in the suit filed subsequent to execution of the Lease Deed. The petitioner seeks to rely upon the decision in **Vishal N. Kalsaria vs. Bank of India and others** (AIR 2016 SC 530) to urge that his tenancy rights cannot be whittled away in such manner by selling the mortgaged property.

3) It is seen that the aforesaid decision of two learned Judges of the Hon'ble Supreme Court has been explained in the subsequent decision of larger Bench in **Criminal Appeal No.1371/2019 (Bjarang Shyamsunder Agarwal vs. Central Bank of India and another)**. It has been held therein that if a tenant claims entitled to possession of a secured asset for more than a year, it should be supported by a registered instrument. In the present case, though the lease deed is for a period of eleven months and has been extended from time to time, same is not duly registered.

4) In absence of the petitioner pleading existence of such lease agreement at the first available instance, the locus of the petitioner to challenge the sale notice is under cloud. The claim of the petitioner does not inspire confidence. We are, therefore, not inclined to entertain the writ petition. For the same reason, there is no reason to interfere with the possession

letter dated 4/8/2023 that has been issued by the Executive Magistrate seeking to take possession of the said property. By clarifying that the petitioner is free to take such other steps as are permissible in law, the writ petition is dismissed with no order as to costs.

JUDGE

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