IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 17508 OF 2024

Anila Santaram Mohinekar
Aged 64 years, Occ. Housewife
Room No. 213, 2nd Floor,
Shalimar Co-op. Housing Society,
Above Shalimar Shopping Centre,
Lala Nigam Road, Colaba,
Mumbai – 400 005. ...Petitioner

Versus

1. The Bharat Co-operative Bank (Mumbai) Ltd.
   Having its Registered Office,
   "Mohan Terrace", 64/72, Mody Street,
   Fort, Mumbai – 400 001.

2. Authorised Officer,
   The Bharat Co-operative Bank (Mumbai) Ltd.
   "Mohan Terrace", 64/72, Mody Street,
   Fort, Mumbai – 400 001. ...Respondents

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Mr. M. A. Adenwala for Petitioner.

Mr. Aayush Kothari a/w Ms Richa Shukla i/b Adv. Sanjana Ghogare for Respondent Bank.

Adv. Jyoti Suvarna (Bank Officer)

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CORAM : M. S. KARNIK &
N. R. BORKAR, JJ.

RESERVED ON : 11th AUGUST, 2025
PRONOUNCED ON : 17th OCTOBER, 2025
UPLOADED ON : 17th OCTOBER, 2025
(Through VC)

JUDGMENT :- (PER N.R. BORKAR, J.)

1. The Petitioner takes exception to Order dated 23.09.2024, passed by the Debt Recovery Appellate Tribunal (DRAT), Mumbai, in Appeal no. 11 of 2024 and consequently seeks to set aside Order dated 29.11.2023 passed by the Debt Recovery Tribunal ("DRT" for short) in S.A. no.10 of 2019 along with Order dated 30.05.2019 passed by the Ld. Magistrate in Case no. 301/SA/2019.

2. The secured asset in the present petition is Flat no. 213, Shalimar Building, Shalimar CHSL, Colaba, Mumbai – 400005. The erstwhile owner of the secured asset was one Porbanderwala. The Petitioner's brother-in-law Prabhu Mohinekar was the original tenant. The Petitioner along with her family has been residing in the secured asset since 1978 and as such claims to be a lawful monthly tenant. The Respondent no.1 is the Bank and the Respondent no.2 is the authorized officer of the said Bank,

seeking to dispossess the Petitioner under the provisions of sections 13(4) and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, for the loan obtained against the secured asset by the Landlord/Owner namely Sharnita Karunsagar.

3. Brief facts giving rise to the present petition are that, in 1978 the Petitioner's husband and her brother-in-laws were tenants with respect to Room no.1/A situated at Dhobi Chawl. Upon redevelopment, the present secured asset was allotted on tenancy basis to the Petitioner's brother-in-law Prabhu Mohinekar by the landlord Porbanderwala. Subsequent to the demise of Prabhu Mohinekar, the rent receipts were issued in the name of his brother Sharavan Mohinekar, who expired in 1982. The Petitioner's husband expired in 2001, after which the Petitioner filed a R.A.D. Suit no. 1740 of 2003 before the Ld. Court of Small Causes for declaration of tenancy rights, the same was dismissed on 29.10.2010 thereby dismissing the tenancy rights of the Petitioner in the secured asset. Thereafter in 2011, the rent receipts previously issued in the name of Sharavan, were issued in the name of his wife Devamma Sharavan Mohinekar. The Petitioner claims to have resided continuously along with her family as a joint tenant with the original tenant since 1978. On

02.09.2015, allegedly unbeknownst to the Petitioner, Devamma Mohinekar surrendered her tenancy rights in favour of Sharnita Gautam Karunsagar, her granddaughter. Thereafter on 15.10.2015, the landlord Porbanderwala sold the secured asset to Sharnita Gautam Karunsagar, thereby converting her tenancy into ownership.

4. Apprehending dispossession, the Petitioner and her son filed two suits, SC Suit no. 2976 of 2015 and SC Suit no. 92 of 2016 before the Small Causes Court, the same were dismissed in 2024. Subsequently in 2016, Sharnita mortgaged the said flat to Respondent no.1 and obtained a loan of Rs.50,00,000/- (Rupees Fifty Lakh Only). The borrower Sharnita filed a L.E.C. Suit No. 80 of 2016 against the Petitioner for eviction, the same is pending before the Ld. Small Causes Court. The repayment of the said loan was defaulted by the borrower, therefore, the account was classified as a non-performing asset (NPA) by Respondent no.1. Accordingly, proceedings under the relevant provisions of SARFAESI Act against the secured asset were initiated to recover the outstanding dues. Subsequently, the Respondent no.1 Bank issued a demand notice to the borrower under section 13(2) of SARFAESI for a sum of Rs.46,08,836/-, upon failure to acknowledge which, the Respondent no.1 Bank secured an order

in CC No.301/SA/2019 under section 14 of SARFAESI Act from the Ld. Court of CMM to obtain possession of the secured asset. Thereafter, the Petitioner filed a Misc. Application no.1253/M/2019 therein, which was dismissed upon the finding that the Petitioner had alternate remedy before the Ld. Debt Recovery Tribunal (DRT). Consequently, the Petitioner received a notice u/s. 13(4) of SARFAESI Act for possession of the secured asset. Therefore, the Petitioner filed S.A. no.10 of 2019 before the Ld. DRT, which was dismissed vide Order dated 30.05.2019. It was observed that the said SA was not maintainable as the declaratory suit filed by the Petitioner in 2003 was dismissed by the Ld. Small Causes Court, due to which she cannot sustain an Application under section 17(4A) of the SARFAESI Act. Aggrieved by the same, the Petitioner filed Regular Appeal no. 11 of 2024 before the Ld. Debt Recovery Appellate Tribunal (DRAT), which was dismissed by the impugned Order dated 23.09.2024, thereby upholding the order of the Ld. DRT.

5. The Counsel for the Petitioner submits that, the tenancy rights pertaining to the secured asset have devolved upon the Petitioner under section 5(11)C of the Bombay Rent Control Act as well as under section 7(15)(d) of Maharashtra Rent Control Act, according to which the tenancy rights devolve upon all the

members of the family of the deceased residing together at the time of death. It is submitted that the Petitioner along with her husband and children have been continuously residing in the secured asset during the lifetime of the tenants Prabhu and Sharavan, as such they are entitled to rights as joint tenants. In support of the submission, reliance is placed on the ruling of the Hon'ble Supreme Court in ***H.C. Pandy Vs. G.C. Paul***[1], whereby it is held as under;

> *"4. It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negativing or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable thereof. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants…."*

It is submitted that the borrower had filed a L.E.C. Suit No. 80 of 2016 against the Petitioner, thereby claiming the Petitioner to be a Licensee. It is therefore submitted that the Petitioner's possession would be protected under section 17(4A) of SARFAESI Act and the status of the Petitioner can only be decided by the Ld. Court of Small Causes. It is submitted that the Petitioner is not a tenant at sufferance because her tenancy has not been terminated by a decree of any Court. It is further submitted that it is not

[1] 1989(3) SCC 77

disputed that the Petitioner is not the borrower. The Ld. Counsel for the Petitioner submits that the tenancy rights of the Petitioner have subsisted prior to obtaining the loan, therefore, the Mortgage is subject to tenancy rights of the Petitioner. In support of the submission, reliance is placed on the ruling of the Hon'ble Supreme Court in ***Vishal Kalsaria Vs. Bank of India***[2], wherein their Lordships in paragraph Nos.35 and 37 have observed thus:

> *"35. The decision of this Court rendered in Harshad Govardhan Sondagar cannot be understood to have held that the provisions of the SARFAESI Act override the provisions of the Rent Control Act, and that the banks are at liberty to evict the tenants residing in the tenanted premises which have been offered as collateral securities for loans on which default has been done by the debtor/landlord.*
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> *36. ... .*
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> *... ....*
>
> *37. It is a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant. A non obstante clause (Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested in the tenants under the Rent Control Act. The expression "any other law for the time being in force" as appearing in Section 35 of the SARFAESI Act cannot mean*

[2] (2016) 3 SCC 762

> *to extend to each and every law enacted by the Central and State Legislatures. It can only extend to the laws operating in the same field."*
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> *(emphasis supplied)*

Hence, it is submitted that the impugned order 23.09.2024, passed by the Ld. Debt Recovery Appellate Tribunal (DRAT), Mumbai, in Appeal no. 11 of 2024 is liable to quashed and set aside.

6. Learned Counsel for the Respondents submits that the relevant observations made by the Ld. DRAT while passing the impugned order dated 23.09.2024, needs to be considered. It is submitted that the question as to in what capacity the Petitioner was residing in the secured asset/flat is required to be determined. The Learned Counsel argued in support of the impugned order.

7. Heard learned counsel. Perused the pleadings, the impugned order and materials on record.

8. We find from the materials on record as well as the impugned order that there is not a single rent receipt in favour of the Petitioner's husband and therefore there is no documentary evidence to prove tenancy of the Petitioner or her deceased husband. The last rent receipt was of 2011 in the name of

Devamma and subsequently she surrendered the tenancy, thus, the tenancy stood determined. The DRAT observed that there is no evidence of tenancy claimed by the Petitioner and hence, she cannot seek protection under Section 17(4A) of SARFAESI Act, 2002.

9. It is a settled principle of law that the tenancy for any term exceeding one year can only be made by a registered instrument. The ruling of the Hon'ble Supreme Court in *Harshad Govardhan Sondagar v. International Asset Reconstruction Company Limited* [3] supports this proposition, the relevant portion of which reads thus:-

> *"27. We may now consider the contention of the respondents that some of the appellants have not produced any document to prove that they are bona fide lessees of the secured assets. We find that in the cases before us, the appellants have relied on the written instruments or rent receipts issued by the landlord to the tenant, Section 107 of the Transfer of Property Act provides that a lease of immoveable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made 'only by a registered instrument' and all other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Hence, if any of the appellants claim that they are entitled to possession of a secured asset for any term exceeding one year*

[3] (2014) 6 SCC 1

from the date of the lease made in his favour, he has to produce proof of execution of a registered instrument in his favour by the lessor. Where he does not produce proof of execution of a registered instrument in his favour and instead relies on an unregistered instrument or oral agreement accompanied by delivery of possession, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, will have to come to the conclusion that he is not entitled to the possession of the secured asset for more than an year from the date of the instrument or from the date of delivery of possession in his favour by the landlord."

10. We do not find any error in the aproach of the DRAT that in absence of any rent receipts, at best, the Petitioner could be treated as "tenant-in-sufferance". The tribunal also placed reliance upon the decision of the Hon'ble Supreme Court of India in *Bajrang Shyamsunder Agarwal v. Central Bank of India*[4] , the relevant portion is reproduced under:-

"24. In our view, the objective of SARFAESI Act, coupled with the T.P. Act and the Rent Act are required to be reconciled herein in the following manner:

24.1. If a valid tenancy under law is in existence even prior to the creation of the mortgage, the tenant's possession cannot be disturbed by the secured creditor by taking possession of the property. The lease has to be determined in accordance with Section 111 of the TP Act for determination of leases. As the existence of a prior existing lease inevitably affects the

[4] (2019) 9 SCC 94.

risk undertaken by the bank while providing the loan, it is expected of Banks/Creditors to have conducted a standard due diligence in this regard. Where the bank has proceeded to accept such a property as mortgage, it will be presumed that it has consented to the risk that comes as a consequence of the existing tenancy. In such a situation, the rights of a rightful tenant cannot be compromised under the SARFAESI Act proceedings.

24.2 If a tenancy under law comes into existence after the creation of a mortgage, but prior to the issuance of notice under Section 13(2) of the SARFAESI Act, it has to satisfy the conditions of Section 65A of the T.P. Act.

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 the 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 T.P. Act.

32. In any case, considering the counterfactual pleaded by the appellant tenant himself, that he was a tenant who had entered into an oral agreement, such tenancy impliedly does not carry any covenant for renewal, as provided under Section 65A of T.P. Act. Therefore, in any case, Section 13 (13) SARFAESI Act bars entering into such tenancy beyond January, 2012. As the notice under Section 13 (2) SARFAESI Act was issued on 30.04.2011, subsequent reckoning of the tenancy is barred. Such person occupying the premises, when the tenancy has been determined, can only be treated as a *'tenant in sufferance'. We should note that such tenants do not have any legal rights and are akin to trespassers.*

35. The operation of the Rent Act cannot be extended to a 'tenant in sufferance' vis-a-vis the SARFAESI Act, due to the operation of Section 13(2) read with Section 13(13) of the SARFAESI Act. A contrary interpretation would violate the intention of the legislature to provide for Section 13(13), which has a valuable role in making the SARFAESI Act a self-executory instrument for debt recovery. Moreover, such an interpretation would also violate the mandate of Section 35, SARFAESI Act which is couched in broad terms."

11. Furthermore, the Hon'ble Supreme Court has reiterated the principles laid down in the aforementioned judgments in *PNB Housing Finance Limited v. Sh. Manoj Saha & Anr.*[5] The relevant portion of the judgment reads as follows:

"15. Rights of lessees/tenants in properties which are held by financial institutions as secured assets under SARFAESI fell for consideration in Harshad Govardhan Sondagar (supra). The Bench analyzed the impact of SARFAESI, particularly section 13 on the rights of lessees/tenants in the secured asset. The Bench held though section 13(13) of SARFAESI overrides section 65A of the Transfer of Property Act, 188211 and renders invalid any lease created by the borrower after issuance of notice under section 13(2) without taking written permission of the secured creditor, the said section does not determine a prior lease created by a registered instrument. However, if the lessee claims tenancy through an oral/unregistered agreement, the term of the lease cannot exceed one year and the lessee is not entitled to possession of the secured asset beyond a period of one year.

[5] Civil Appeal Civil Appeal No. 9492 of 2025 (Arising out of SLP (C) No.7288 of 2024)

17. Subsequently, a Three-Judge Bench in Bajarang Shyamsunder Agarwal v. Central Bank of India and Anr. differed from Vishal N. Kalsaria (supra) with regard to width of the non-obstante clause under section 35 of SARFAESI:
18. Noting the interplay between the objective of the SARFAESI vis-à-vis TF Act and rent laws, Bajarang Shyamsunder Agarwal (supra) clarified onus lies on tenants claiming through an oral/unregistered agreement to produce rent receipts, property/water taxes receipts, electricity charges, etc., to establish the creation of a valid tenancy. 14 Even then, such tenancies created through an oral/unregistered agreement would not continue beyond one year from issuance of notice under section 13(2) of SARFAESI and the tenant upon expiry of the said period shall be deemed to be a 'tenant in sufferance'."

12. We therefore find substance in the submission of learned counsel for the respondents that the petitioner failed to furnish the registered instrument on the basis of which she is claiming to be a tenant in the subject property. We do not see any reason to interfere with the order of the DRAT as there is no perversity or patent illegality in the impugned order.

13. We do not find any merit in this petition to warrant interference in the impugned order. The petition is dismissed. No costs.

(N.R. Borkar, J.) **(M.S. Karnik, J.)**