Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17000 OF 2025

Purvi Ronak Bafna & Anr. ... Petitioners
V/s.
State of Maharashtra & Ors. ... Respondents

Mr. Ankit Lohia with Mr. Dhrumil C. Shah i/by Lex Services for the petitioners.

Mrs. Pooja Patil,AGP for respondent Nos.1 to 3-State.

Mr. Niranjan Mogre with Mr. Amul Jawale for respondent Nos.4 and 5.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 16, 2025

P.C.:

1. The present petition calls in question the order dated 15 July 2023 passed by the Chief Metropolitan Magistrate while exercising powers under Rule 107(D-1)(vi)(a) of the Maharashtra Cooperative Societies Rules, 1961. The petitioners also challenge the notice dated 26 November 2025 issued by the Special Recovery Officer for taking possession of the subject premises, as well as the consequential communication dated 29 November 2025 issued by Respondent No.4.

2. The factual background is not in serious dispute. According to the petitioners, Respondent No.5 sanctioned two loan facilities of Rs.40,00,000 and Rs.30,00,000 in favour of Respondent No.8, with Respondent Nos.9 and 10 standing as guarantors. On 15 April

2015, Respondent No.8 executed two mortgage deeds in respect of office premises Nos.505 and 506 in favour of Respondent No.5. In the year 2017, Respondent No.6 terminated the tenancy of Respondent No.8 and called upon him to hand over possession. Respondent No.6 thereafter instituted RAE and R Suit No.1127 of 2017 seeking eviction of Respondent No.8 from the premises. Subsequently, Respondent No.8 approached Respondent No.6 with a proposal to surrender the tenancy. On 7 January 2020, Respondent No.7 was inducted as a tenant. Consequent thereto, RAE and R Suit No.1127 of 2017 came to be withdrawn on 5 February 2020.

3. In the meantime, on 27 October 2018, Respondent No.5 initiated recovery proceedings under Section 101 of the Maharashtra Cooperative Societies Act, 1960. Recovery certificates were issued on 18 January 2019. On 27 January 2021, Respondent No.5 issued demand notices to Respondent Nos.8 to 10. Notices of attachment followed on 2 June 2021. On 14 November 2022, Respondent No.5 issued a symbolic possession notice in respect of the mortgaged and tenanted premises. According to the petitioners, attachment on 30 November 2022 was effected only in respect of the mortgaged property, and symbolic possession thereof was taken on 23 December 2022. The impugned order of the Chief Metropolitan Magistrate came to be passed on 15 July 2023. Physical possession of the mortgaged premises was thereafter taken by Respondent Nos.4 and 5 on 23 August 2023. On 3 October 2024, Respondent Nos.6 and 7 executed a deed of transfer by which Respondent No.7 surrendered his tenancy rights and

Respondent No.6 created tenancy rights in favour of the petitioners.

4. On 6 November 2024, rent receipts were issued to the petitioners in respect of the tenanted premises. On 26 November 2025, Respondent Nos.4 and 5 visited the premises and affixed a notice fixing 18 December 2025 for taking possession. On 27 November 2025, the petitioners, through their Advocate, addressed objections to Respondent Nos.4 and 5 asserting their status as tenants in physical possession. By communication dated 29 November 2025, Respondent No.4 rejected the claim of the petitioners and proceeded to fix 8 December 2025 as the date for taking possession of the tenanted premises.

5. Mr. Lohiya, learned Senior Advocate appearing for the petitioners, placed reliance on the judgment of the Supreme Court in *Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and others, reported in (2014) 6 SCC 1.* He submitted that even under Section 14 of the SARFAESI Act, a lease created prior to the mortgage, or a lease created by the mortgagor during the subsistence of the mortgage in accordance with Section 65A of the Transfer of Property Act and prior to issuance of notice under Section 13(2) of the SARFAESI Act, enjoys statutory protection. He argued that possession of such a lessee cannot be disturbed. On that basis, he urged that the same principle must govern the present case.

6. On the other hand, Mr. Mogare, learned Advocate for the respondent bank, relied upon the judgment of this Court in *Amit*

Prakash Jori and another v. State of Maharashtra and others, decided on 4 February 2025 in Writ Petition No.1331 of 2025. He submitted that the power exercised under Rule 107(11)(d-1)(vi) is purely executionary. According to him, once the Special Recovery Officer makes a written request to the Chief Metropolitan Magistrate for assistance in taking possession, the Magistrate is not required to adjudicate upon rights or rival claims. The Magistrate is only required to facilitate execution as mandated by the Rules.

7. He further contended that the tenancy claimed by the petitioners came into existence after the order dated 15 July 2023 passed by the Chief Metropolitan Magistrate. Since that order forms the very subject matter of challenge, he submitted that no protection can be claimed on the basis of a subsequent tenancy. On these grounds, he sought dismissal of the petition.

8. The dispute before this Court turns on a narrow but important question. It concerns the right of a person claiming tenancy to resist possession sought by a secured creditor through the machinery of recovery under the Maharashtra Cooperative Societies Act and the Rules framed thereunder.

9. The petitioners have questioned three actions. First is the order dated 15 July 2023 passed by the Chief Metropolitan Magistrate under Rule 107(D-1)(vi)(a) of the Maharashtra Cooperative Societies Rules, 1961. Second is the notice dated 26 November 2025 issued by the Special Recovery Officer for taking possession. Third is the communication dated 29 November 2025 by which Respondent No.4 rejected the petitioners' objection and proceeded to take possession.

10. The material facts are largely undisputed. Respondent No.5 sanctioned two loan facilities to Respondent No.8. The loans were secured by mortgage of office premises Nos.505 and 506. The mortgage was created on 15 April 2015. Respondent Nos.9 and 10 stood as guarantors. Default followed. Recovery proceedings under Section 101 of the Maharashtra Cooperative Societies Act were initiated. Recovery certificates were issued. Demand notices and attachment notices followed in due course. Symbolic possession of the mortgaged property was taken. Thereafter, the Chief Metropolitan Magistrate passed the order dated 15 July 2023 on the request of the Special Recovery Officer. Physical possession of the mortgaged premises was taken on 23 August 2023.

11. Parallel to these events, there were developments relating to tenancy. Respondent No.8 was the original tenant. His tenancy was terminated in 2017. Eviction proceedings were filed. Those proceedings were later withdrawn after Respondent No.8 surrendered the tenancy and Respondent No.7 was inducted as tenant in January 2020. Much later, on 3 October 2024, Respondent No.7 surrendered his tenancy rights and Respondent No.6 created a fresh tenancy in favour of the present petitioners. Rent receipts were issued in November 2024. When the Special Recovery Officer sought to take possession in November 2025, the petitioners objected on the ground that they were lawful tenants in physical possession.

12. The petitioners rely heavily on the decision of the Supreme Court in *Harshad Govardhan Sondagar*. Their submission is simple. A lawful tenant cannot be dispossessed without due process. A lease created prior to the mortgage, or a lease created during the subsistence of the mortgage in accordance with Section 65A of the Transfer of Property Act and before issuance of statutory demand notice, enjoys protection. They contend that this principle applies with equal force to recovery proceedings under the Cooperative Societies Act. According to them, the Magistrate and the Recovery Officer could not ignore their tenancy and proceed to take possession.

13. The submission appears attractive at first sight. However, the protection recognised in *Harshad Govardhan Sondagar* is not unconditional. It rests on specific factual and legal foundations. The Supreme Court protected leases which existed prior to the mortgage or which were lawfully created during the mortgage in terms of statutory permission and before the creditor invoked coercive recovery measures. The decision does not protect every claim of tenancy raised at any point of time. The Court itself drew a clear line between genuine, prior, and lawful tenancies and those created to defeat recovery.

14. The present case does not satisfy that threshold. The petitioners do not claim a tenancy existing prior to the mortgage. The mortgage was created in April 2015. The petitioners came into the picture only in October 2024. They also do not claim a tenancy created by the mortgagor during the subsistence of the mortgage in exercise of statutory power under Section 65A. Their tenancy was created by the landlord long after recovery proceedings had culminated in an order of the Magistrate and after physical possession of the mortgaged property had already been taken. Such a tenancy stands on a fundamentally different footing.

15. The respondent bank, on the other hand, relies on the decision of this Court in *Amit Prakash Jori.* The principle laid down therein is clear. The power exercised by the Chief Metropolitan Magistrate under Rule 107(11)(d-1)(vi) is executionary. The Magistrate does not sit in adjudication over inter se rights. Once the Special Recovery Officer makes a written request in accordance with the Rules, the Magistrate is required to render assistance for taking possession. The Magistrate is not expected to conduct a trial on claims of title or tenancy.

16. This position flows from the scheme of the Rules themselves. Rule 107 creates a self-contained mechanism for recovery of dues of cooperative societies. It draws a clear distinction between adjudication and execution. Adjudication of disputes lies elsewhere. Execution is meant to be swift and effective. If, at the stage of execution, every claim of possession or tenancy is to be examined as if in a civil suit, the statutory object would be defeated.

17. The petitioners argue that they were not parties to the recovery proceedings and that their possession deserves protection. This submission overlooks the timing of their alleged rights. Their tenancy came into existence after the Magistrate's order dated 15 July 2023. It also came after physical possession of the mortgaged premises was taken in August 2023. A right created pendente execution cannot defeat the execution itself. The law does not recognise such a device.

18. It is also important to note that the petitioners' claim rests only on rent receipts and a deed executed in October 2024. There is no material to show that the tenancy was disclosed to or recognised by the secured creditor at any earlier point. There is no evidence to show that the tenancy was created with consent or knowledge of the mortgagee. In such circumstances, the claim lacks the legal character required for protection.

19. The rejection of the petitioners' objection by Respondent No.4 cannot be faulted. The Recovery Officer acted within the four corners of the Rules. He examined the objection. He found that the claim was subsequent to the recovery order. He therefore proceeded to fix a date for possession. This action aligns with the statutory mandate.

20. The balance between the rights of secured creditors and occupants must be maintained. The law protects genuine tenancies. It does not protect tenancies created after recovery has reached the stage of execution. To hold otherwise would encourage manipulation and frustrate recovery proceedings.

21. For these reasons, this Court finds no infirmity in the order dated 15 July 2023 passed by the Chief Metropolitan Magistrate. The subsequent notices issued by the Special Recovery Officer are a direct consequence of that order and suffer from no illegality. The petitioners have failed to establish any enforceable right that warrants interference under writ jurisdiction.

22. The petition therefore fails. No case for interference is made out.

23. The petition stands dismissed. There shall be no order as to costs.

(AMIT BORKAR, J.)