

Ms Bushra Nizamuddin Ali v. Bank of Baroda & Anr.

Ms Bushra Nizamuddin Ali

...Appellant

Bank of Baroda & Anr.

...Respondent

Case No: Appeal No. 73/2023

Date of Judgement: 06/12/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Ms Adeeba Khan, Advocate.

For Respondent: None.

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Facts:

The case involves an appeal filed by Ms. Bushra Nizamuddin Ali (Appellant) against an order dated 13.02.2023 passed by the Debts Recovery Tribunal-I, Mumbai, in Securitisation Application (S.A.) No. 95 of 2022. The Securitisation Application was filed by the Appellant as one of the legal representatives of a tenant who occupied the premises until his death on 04.09.2002, leaving behind his wife and children as legal representatives who continued to remain in possession of the property. The Appellant's mother also passed away on 05.09.2006. The Appellant and her predecessor in interest had been in continuous occupation and possession of the subject flat since 1970. Documents regarding the use of electricity by the Appellant's father and later by the Appellant were produced to prove the continuity of possession of the property. The second Respondent, who is the present owner of the property, obtained an assignment of the property from the

erstwhile owner and allegedly concocted documents to mortgage the property to the Respondent bank, creating an impression that the lease had been surrendered by the Appellant's father. A deed of surrender dated 22.06.2010 was produced, which appeared to be concocted on the face of it because the Appellant's father had died on 04.09.2002. Based on the mortgage, the Respondent bank proceeded under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) to vacate the property and recover the debt.

Argument by the Appellant:

As a lawful occupant of the premises, the Appellant is entitled to protect her possession as a tenant. The provisions of the SARFAESI Act cannot be misused to thwart the lawful claim of the tenant to continue occupying the property until evicted by due process of law. The Appellant contends that it was not a yearly lease. Rent was paid monthly, for which rent receipts were issued, but sometimes lump sum payments were made. The occupancy since 1970 on such tenancy cannot be ignored merely because there is no registered instrument for the lease.

Court's Elaborate Opinions:

The right of a tenant is protected under Section 17(4A) of the SARFAESI Act, which states that any person who claims tenancy or leasehold rights upon the secured assets must be protected unless the lease or tenancy has expired or stands determined, or such a lease is contrary to Section 65A of the Transfer of Property Act (T.P. Act). The lease can also be ignored if it is contrary to the terms of the mortgage or is created after the issuance of the notice of default and demand by the bank under Sub-Section 2 of Section 13 of the SARFAESI Act. In the present case, the tenancy dates back to 1970 and was not created after the mortgage. It does not appear to be in contravention of Section 65A of the T.P. Act, as the documents of determination of tenancy produced by the mortgagor landlord (second Respondent) appear to be concocted, created after the demise of the original tenant. Under the circumstances, the subject document has to be ignored. The

Appellant appears to have a strong prima facie case protecting her right of tenancy over the property. The mortgage is subject to the tenancy right of the Appellant.

Sections and Laws Referred:

Section 107 of the Transfer of Property Act (T.P. Act) – The Presiding Officer referred to this section to conclude that the lease of a leasehold property from year to year can only be by a registered instrument. Section 17(4A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) – This section protects the rights of tenants or leaseholders upon secured assets, unless the lease or tenancy has expired, stands determined, or is contrary to Section 65A of the T.P. Act. Section 65A of the Transfer of Property Act (T.P. Act) – This section deals with leases that are contrary to specific provisions and potentially renders them void. Section 13(2) of the SARFAESI Act – This section mentions the issuance of a notice of default and demand by the bank, after which any lease created may be ignored.

Cases Cited:

No specific cases were cited in the document.

Interim Order:

The court granted an ad-interim stay of the sale of the property in favor of the Appellant. However, it was made clear that the sale can proceed, subject to mentioning the tenancy right of the Appellant. The case was adjourned to 03.01.2024, awaiting the appearance of the Respondent Bank.