

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**

**Present: Mr Justice Ashok Menon, Chairperson**

**I.A. No. 791/2023 (Stay)**

**In**

**Appeal No. 73/2023**

**Between**

Ms Bushra Nizamuddin Ali  
V/s.

... Appellant/s

Bank of Baroda & Anr.

... Respondent/s

Ms Adeeba Khan, Advocate for Appellants.

**:- Order dated: 06 /12/2023:-**

The Appellant in appeal impugns the order dated 13.02.2023 in Securitisation Application (S.A.) No. 95 of 2022 on the files of the Debts Recovery Tribunal-I, Mumbai. The S.A. was filed by the Appellant as one of the legal representatives of the tenant who was in occupation of the premises till his death on 04.09.2002 living behind his wife and children as the legal representatives who continue to remain in possession of the property. Subsequently, the mother of the Appellant also died on 05.09.2006. The Appellant and her predecessor in interest were in continuous occupation and possession of the subject flat in 1970. The documents about the use of electricity by the Appellant's father and thereafter by the Appellant are produced to prove the continuity of the possession of the property. It is submitted that the second Respondent who is the present owner of the property who got an assignment of the property from the erstwhile owner had concocted documents to mortgage the property to the Respondent bank and an impression was created that the lease has been surrendered by the father

of the Appellant. A deed of surrender is produced which is dated 22.06.2010 which apparently on the face of it appears to be a concocted document because the Appellant's father had died on 04.09.2002. The tenancy continued and the Appellant is the present occupant of the premises. Based on the mortgage, the Respondent bank proceeded under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act", for short) to vacate the property and recover the debt from therein. Being a lawful occupant of the premises, the Appellant is entitled to protect her possession as a tenant. In the impugned order, the Ld. Presiding Officer has referred to Sec. 107 of the Transfer of Property Act (T.P. Act) to conclude that the lease of the leasehold property from year to year and can only be by a registered instrument and in this present case, there is no registered agreement and hence, the contention of the Appellant to the effect that the continuous as a lessee of the property cannot be countenanced. 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.

2. It is not contended by the Appellant that it is a yearly lease. Rent was being paid monthly for which the rent receipt was received but the rents were not paid regularly and usually paid in lump sum for which the receipts were issued. But that did not make it a yearly tenancy and the occupancy since 1970 on such tenancy cannot be ignored merely for the reasons that there is no registered instrument for lease.

3. The right of a tenant is protected under Sec. 17(4A) of the SARFAESI Act which states that any person who claims any tenancy or leasehold right upon the secured assets be protected unless the lease or

tenancy has expired or stands determined or such a lease is contrary to Sec. 65(A) of the 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-Sec. 2 of Sec. 13 of the SARFAESI Act.

4. In the instance case, the tenancy is of the year 1970. It is not created after the mortgage. It does not appear to be in contravention of Sec.65(A) of the T.P. Act as the documents of determination of tenancy produced by the mortgagor landlord who is the second Respondent herein apparently appears to be a concocted document created consequent to 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.

5. Though the Respondents were served with notice none appeared and therefore, an ad-interim stay of the sale of the property is granted in favour of the Appellant. It is, however, made clear that the sale can proceed subject to mentioning the tenancy right of the Appellant.

Await appearance of the Respondent Bank, adjourned to 03.01.2024.

Sd/-  
Chairperson