# Vishal N Kalsaria vs Bank Of India & Ors on 20 January, 2016

## Equivalent citations: AIR 2016 SUPREME COURT 530, 2016 ACD 370 (SC), 2016 (2) AJR 243, 2016 (1) AKR 771, 2016 (1) ABR (CRI) 545, (2016) 4 MAD LW 7, (2016) 1 ALLCRIR 918, (2016) 1 NIJ 462, (2016) 2 CURCC 95, (2016) 159 ALLINDCAS 113 (SC), 2016 (3) SCC 762, (2016) 1 UC 292, (2016) 2 JLJR 121, (2016) 1 SCALE 472, (2016) 1 RECCIVR 911, (2016) 1 KER LJ 551, (2016) 5 MAH LJ 555, (2016) 2 PAT LJR 230, (2016) 1 PUN LR 784, (2016) 1 RENTLR 288, (2016) 2 ALLMR 920 (SC), (2017) 1 CLR 620 (SC), (2016) 226 DLT 474, (2016) 1 CIVILCOURTC 696, (2016) 131 REVDEC 564, (2016) 1 BANKCAS 471, (2016) 2 ICC 515, (2017) 123 CUT LT 931, (2016) 1 MAD LJ 583, (2016) 1 BOMCR(CRI) 705, (2016) 1 DLT(CRL) 836, (2016) 115 ALL LR 442, (2016) 2 ALL RENTCAS 555, (2016) 2 CAL HN 257, (2016) 1 RENCR 81, 2016 ALLMR(CRI) 1322, 2016 (2) KCCR SN 102 (SC), (2016) 2 BOM CR 67

## Author: V. Gopala Gowda

## Bench: Amitava Roy, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA CRIMINAL/CIVIL

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 52 OF 2016

(Arising out of SLP (Crl.) No.8060 of 2015)

VISHAL N. KALSARIA .....APPELLANT

Vs.

BANK OF INDIA & ORS. .....RESPONDENTS

with

CRIMINAL APPEAL NO. 53 OF 2016

(Arising out of SLP(Crl) No. 8064 of 2015)

CRIMINAL APPEAL NO. 54 OF 2016

(Arising out of SLP(Crl) No. 8063 of 2015)

CRIMINAL APPEAL NO. 55 OF 2016

(Arising out of SLP(Crl) No. 8062 of 2015)

CRIMINAL APPEAL NO. 56 OF 2016

(Arising out of SLP(Crl) No. 8066 of 2015)

CRIMINAL APPEAL NO. 57 OF 2016

(Arising out of SLP(Crl) No. 8067 of 2015)

CRIMINAL APPEAL NO. 58 OF 2016 (Arising out of SLP(Crl) No. 8068 of 2015)

CRIMINAL APPEAL NO. 59 OF 2016

(Arising out of SLP(Crl) No. 8069 of 2015)

CIVIL APPEAL NOS. 414-415 OF 2016

(Arising out of SLP(C) Nos.13295-13296 of 2015)

CRIMINAL APPEAL NO. 753 OF 2014

CRIMINAL APPEAL NO. 754 OF 2014
CRIMINAL APPEAL NO. 62 OF 2016
(Arising out of SLP(Crl) No. 6944 of 2015)
CRIMINAL APPEAL NO. 63 OF 2016
(Arising out of SLP (Crl) No. 6945 of 2015)
CIVIL APPEAL NO. 469 OF 2016
(Arising out of SLP(C) No. 25133 of 2015)
CRIMINAL APPEAL NO. 64 OF 2016
(Arising out of SLP(Crl) No. 6941 of 2015)
CIVIL APPEAL NO. 417 OF 2016
(Arising out of SLP(C) No. 28040 of 2015)
CIVIL APPEAL NO. 419 OF 2016
(Arising out of SLP(C) No. 28446 of 2015)

CIVIL APPEAL NO. 420 OF 2016
(Arising out of SLP(C) No. 28300 of 2015)
CIVIL APPEAL NO. 421 OF 2016
(Arising out of SLP(C) No. 12772 of 2015)
and
CIVIL APPEAL NO. 422 OF 2016
(Arising out of SLP(C)No. 31080 of 2015)

J U D G M E N T

V. GOPALA GOWDA, J.

The applications for impleadment are allowed.

Leave granted in all the special leave petitions.

In the present batch of appeals, the broad point which requires our attention and consideration is whether a 'protected tenant' under The Maharashtra Rent Control Act, 1999 (in short the 'Rent Control Act') can be treated as a lessee, and whether the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, the 'SARFAESI Act') will override the provisions of the Rent Control Act. How can the right of the 'protected tenant' be preserved in cases where the debtor-landlord secures a loan by offering the very same property as a security interest either to Banks or Financial Institutions, is also the essential legal question to be decided by us.

In all the appeals, the same question of law would arise for consideration. For the sake of convenience and brevity, we would refer to the relevant facts from the appeal arising out of S.L.P.(Crl.) No.8060 of 2015, which has been filed against the impugned judgment and order dated 29.11.2014 in M.A.No. 123 of 2011 in Case No.237 of 2010 passed by the learned Chief Metropolitan Magistrate, Esplanade, Mumbai, wherein the application of the appellant herein for impleadment as intervenor as well as stay of the order dated 08.04.2011 passed in Case No.237 of 2010 by the learned Magistrate, Esplanade, Mumbai, was dismissed.

Respondent Nos. 4 and 5 had approached the Bank of India (Respondent No.1) (in short "the respondent Bank") for a financial loan, which was granted against equitable mortgage of several properties belonging to them, including the property in which the appellant is allegedly a tenant. The respondent nos. 4 and 5 failed to pay the dues within the stipulated time and thus, in terms of the SARFAESI Act, their account became a non- performing asset. On 12.03.2010, the respondent-Bank served on them notice under Section 13(2) of SARFAESI Act. On failure of the respondents to clear the dues from the loan amount borrowed by the above respondent nos. 4 and 5 within the stipulated statutory period of 60 days, the respondent-Bank filed an application before the Chief Metropolitan Magistrate, Mumbai under Section 14 of the SARFAESI Act for seeking possession of the mortgaged properties which are in actual possession of the Appellant. The learned Chief Metropolitan Magistrate allowed the application filed by the respondent-Bank vide order dated 08.04.2011 and directed the Assistant Registrar, Borivali Centre of Courts to take possession of the secured assets. On 26.05.2011, the respondent no.4 served a notice on the appellant, asking him to vacate the premises in which he was residing within 12 days from the receipt of the notice. The appellant fearing eviction, filed a Rent Suit R.A.D. Suit No. 913 of 2011 before the Court of Small Causes, Bombay. Vide order dated 08.06.2011, the Small Causes Court allowed the application and passed an ad interim order of injunction in favour of the appellant, restraining respondent no.4 from obstructing the possession of the appellant over the suit premises during the pendency of the suit. In view of the order dated 08.06.2011, the appellant then filed an application as an intervenor to stay the execution of the order dated 08.04.2011 passed by the Chief Metropolitan Magistrate. The learned Chief Metropolitan Magistrate vide order dated 29.11.2014 dismissed the application filed by the appellant by placing reliance on a judgment of this Court rendered in the case of Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd. & Ors.[1]. Dismissing the application, the learned judge held as under:

> "3. ...the Hon'ble Supreme Court has held that the alleged tenant 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 a year from the date of the instrument or from the date of delivery of possession in his favour by the landlord.
>
> 4. It is to be highlighted that the intervener did not place on record any registered instrument to fulcrum his contention. So, in view of the ratio laid down in Harshad Sondagar's case (cited supra), I hold that the intervener is not entitled to any protection under the law." The learned Chief Metropolitan Magistrate further held that when the secured creditor takes action under Section 13 or 14 of the SARFAESI Act to recover the possession of the secured interest and recover the loan amount by selling the same in public auction, then it is not open for the Court to grant an injunction under Section 33 of the Rent Control Act. The learned Chief Metropolitan Magistrate further held that the order dated 08.06.2011 passed by the Small Causes Court, Mumbai cannot be said to be binding upon the respondent-Bank, especially in

> the light of the fact that it was not a party to the proceedings. Hence the present appeal filed by the appellant.

We have heard the learned counsel for both the parties.

Before we consider the submissions advanced by the learned counsel appearing on behalf of the parties, it is essential to first appreciate the provisions of law in question.

The Maharashtra Rent Control Act, 1999, which repealed the Bombay Rent Act, 1947 was enacted by the state legislature of Maharashtra under Entry 18 of List II of the Seventh Schedule of the Constitution of India to consolidate and unify the different provisions and legislations in the State which existed pertaining to rent and the landlord-tenant relationship. The Statement of objects and reasons of the Rent Control Act reads, inter alia, as under:

> "1……At present, there are three different rent control laws, which are in operation in this State……All these three laws have different provisions and the courts or authorities which have the jurisdiction to decide matters arising out of these laws are also not uniform. The Procedures under all the three laws are also different in many of the material aspect.
>
> 2. Many features of the rent control laws have outlived their utility. The task, therefore, of unifying, consolidating and amending the rent control laws in the State and to bring the rent control legislation in tune with the changed circumstances now, had been engaging the attention of the Government……
>
> 3. In the meantime, the Central Government announced the national housing policy which recommends, inter alia, to carry out suitable amendments to the existing rent control laws for creating and enabling involvement in housing activity and for guaranteeing access to shelter for the poor. The National Housing Policy further recognized the important role of rental housing in urban areas in different income groups and low-income households in particular who cannot afford ownership house. The existing rent control legislation has resulted in a freeze of rent, very low returns in investment and difficulty in resuming possession and has adversely affected investment in rental housing and cause deterioration of the rental housing stock." On the other hand, the SARFAESI Act was enacted by the Parliament with a view to regulate the securitisation and reconstruction of financial assets and enforcement of security interests against the debtor by securing the possession of such secured assets and recover the loan amount due to the Banks and Financial Institutions. The statement of objects and reasons of the SARFAESI Act reads as under:
>
> "The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While banking industry in India is progressively complying with the international prudential norms and accounting practices, there are certain areas in which the banking and financial sector do not

> have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating Securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas."

(emphasis laid by this Court) The SARFAESI Act enacted under List I of the Constitution of India thus, seeks to regulate asset recovery by the Banks. It becomes clear from a perusal of the Statements of Objects and Reasons of the Rent Control Act and the SARFAESI Act that the two Acts are meant to operate in completely different spheres. So far as residential tenancy rights are concerned, they are governed by the provisions of the Rent Control Act which occupies the field on the subject.

The controversy in the instant case arises squarely out of the interpretation of a decision of this Court in the case of Harshad Govardhan Sondagar (supra). The fact situation facing the court in that case was similar to the one in the instant case. The premises which the appellants therein claimed to be the tenants of had been mortgaged to different banks as collateral security to such borrowed amount by the landlord/debtor. On default of payment of the borrowed amount by the landlords/debtors, the banks made application under Section 14(1) of the SARFAESI Act to the Chief Metropolitan Magistrate, praying that the possession of the premises be handed over to them in accordance with the provisions of the SARFAESI Act. This Court in the case of Harshad Govardhan Sondagar (supra) held as under:

> "34……In our view, therefore, the High Court has not properly appreciated the judgment of this Court in Transcore (supra) and has lost sight of the opening words of sub-section (1) of Section 13 of the SARFAESI Act which state that notwithstanding anything contained in Section 69 or Section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of the Act. The High Court has failed to appreciate that the provisions of Section 13 of the SARFAESI Act thus override the provisions of Section 69 or Section 69A of the Transfer of Property Act, but does not override the provisions of the Transfer of Property Act relating to the rights of a lessee under a lease created before receipt of a notice under sub-Section (2) of Section 13 of the SARFAESI Act by a borrower. Hence, the view taken by the Bombay High Court in the impugned judgment as well as in M/s Trade Well (supra) so far as the rights of the lessee in possession of the secured asset under a valid lease made by the mortgagor prior to the creation of mortgage or after the creation of mortgage in accordance with Section

65A of the Transfer of Property Act is not correct and the impugned judgment of the High Court insofar it takes this view is set aside." (emphasis laid by this Court) Mr. Pallav Shishodia, the learned senior counsel appearing on behalf of the appellant in the appeal @ out of S.L.P. (C) No. 8060 of 2015 places reliance on the decision of this Court in Harshad Govardhan Sondagar (supra), to contend that prior tenancy in respect of the mortgaged property to the Bank is protected in terms of the Rent Control Act. The relevant paragraphs of the decision are quoted as under:

"25. The opening words of sub-section (1) of Section 14 of the SARFAESI Act also provides that if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of the Act, the secured creditor may take the assistance of the Chief Metropolitan Magistrate or the District Magistrate. Where, therefore, such a request is made by the secured creditor and the Chief Metropolitan Magistrate or the District Magistrate finds that the secured asset is in possession of a lessee but the lease under which the lessee claims to be in possession of the secured asset stands determined in accordance with 4 Section 111 of the Transfer of Property Act, the Chief Metropolitan Magistrate or the District Magistrate may pass an order for delivery of possession of secured asset in favour of the secured creditor to enable the secured creditor to sell and transfer the same under the provisions of the SARFAESI Act. Sub-section (6) of Section 13 of the SARFAESI Act provides that any transfer of secured asset after taking possession of secured asset by the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset. In other words, the transferee of a secured asset will not acquire any right in a secured asset under sub-section (6) of Section 13 of the SARFAESI Act, unless it has been effected after the secured creditor has taken over possession of the secured asset. Thus, for the purpose of transferring the secured asset and for realizing the secured debt, the secured creditor will require the assistance of the Chief Metropolitan Magistrate or the District Magistrate for taking possession of a secured asset from the lessee where the 4 lease stands determined by any of the modes mentioned in Section 111 of the Transfer of Property Act.

32. When we read sub-section (1) of Section 17 of the SARFAESI Act, we find that under the said sub-section "any person (including borrower)", aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under the Chapter, may apply to the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date on which such measures had been taken. We agree with the Mr. Vikas Singh that the words 'any person' are wide enough to include a lessee also. It is also possible to take a view that within 45 days from the date on which a possession notice is delivered or affixed or published under sub-rules (1) and (2) of Rule 8 of the Security Interest (Enforcement) Rules, 2002, a lessee may file an application before the Debts Recovery Tribunal having jurisdiction in the matter for restoration of possession in case he is dispossessed of the secured asset. But when we read subsection (3) of

Section 17 of the SARFAESI Act, we find that the Debts Recovery Tribunal has powers to restore 5 possession of the secured asset to the borrower only and not to any person such as a lessee. Hence, even if the Debt Recovery Tribunal comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor are not in accordance with the provisions of the Act, it cannot restore possession of the secured asset to the lessee. Where, therefore, the Debts Recovery Tribunal considers the application of the lessee and comes to the conclusion that the lease in favour of the lessee was made prior to the creation of mortgage or the lease though made after the creation of mortgage is in accordance with the requirements of Section 65A of the Transfer of Property Act and the lease was valid and binding on the mortgagee and the lease is yet to be determined, the Debts Recovery Tribunal will not have the power to restore possession of the secured asset to the lessee. In our considered opinion, therefore, there is no remedy available under Section 17 of the SARFAESI Act to the lessee to protect his lawful possession under a valid lease." The learned senior counsel contends that it is a settled position of law that in the absence of a valid document of lease for more than one year or in case of an invalid lease deed, the relation of tenancy between a landlord and the tenant is still created due to delivery of possession to the tenant and payment of rent to the landlord-owner and such tenancy is deemed to be a tenancy from month to month in respect of such property. The learned senior counsel further places reliance on a three Judge Bench decision of this Court in Anthony v. K.C. Ittoop & Sons & Ors.[2], wherein it was held as under:

"....so far as the instrument of lease is concerned there is no scope for holding that appellant is a lessee by virtue of the said instrument. The court is disabled from using the instrument as evidence...

But this above finding does not exhaust the scope of the issue whether appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created.... Thus, de hors the instrument parties can create a lease as envisaged in the second paragraph of Section 107 which reads thus:

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether

there was in fact a lease otherwise than through such deed." (emphasis laid by this Court) The learned senior counsel further contends that where a lease deed or document of tenancy in respect of the property in question is for a period exceeding one year, but such document has not been registered, then, by virtue of payment of rent, the relationship of tenancy between a landlord and the tenant comes into existence and in such cases, the tenant must be deemed to be a tenant from month to month and the same would amount to a tenancy from month to month. Thus, in the instant case, the tenancy of the appellants in respect of the property in question which is the secured asset of the Bank being from month to month would also be protected under the provisions of the Rent Control Act.

The learned senior counsel further contends that according to the decision of this Court in the case of Harshad Govardhan Sondagar (supra), if a person claiming to be a tenant or lessee either produces a registered agreement or relies on an oral agreement accompanied by delivery of possession, then such tenancy/possession of the property with the appellant as tenant needs to be protected. It is further contended that the Harshad Govardhan Sondagar (supra) has clearly held that the tenancy claims of the tenants are to be decided by the Chief Metropolitan Magistrate in accordance with any other law that may be relevant after giving an opportunity of hearing to the persons who claim tenancy in respect of such property. The term "any other law that may be relevant" clearly indicates a reference to the State Rent Protection laws, which in the case at hand is the Rent Control Act. Thus, the protection of the State Rent Control legislation is also to be considered by the learned magistrate while deciding an application filed by the Bank under Section 14 of the SARFAESI Act.

On the other hand, Mr. Amarendra Sharan, learned senior counsel appearing on behalf of the respondents in Crl.A. @ S.L.P. (Crl) Nos. 6941, 6944 and 6945 of 2015 contends that the pith and substance of the central enactment in the instant case, which is the SARFAESI Act needs to be appreciated. Proper implementation of the provisions of the SARFAESI Act is in the larger interest of the nation. The learned senior counsel places reliance on a Constitution Bench decision of this Court in the case of Ishwari Khetan Sugar Mills Pvt. Ltd. & Ors. v. State of Uttar Pradesh & Ors.[3], wherein it was held as under:

"13. If in pith and substance a legislation falls within one entry or the other but some portion of the subject-matter of the legislation incidentally trenches upon and might enter a field under another List, the Act as a whole would be valid notwithstanding such incidental trenching. This is well established by a catena of decisions [see Union of India v. H.S. Dhillon and Kerala State Electricity Board v. Indian Aluminium Co.] After referring to these decisions in State of Karnataka v. Ranganatha Reddy and Anr. Untwalia, J. speaking for the Constitution Bench has in terms stated that the pith and substance of the Act has to be looked into and an incidental trespass would not invalidate the law. The challenge in that case was to the Nationalisation of contract

carriages by the Karnataka State, inter alia, on the ground that the statute was invalid as it was a legislation on the subject of interstate trade and commerce. Repelling this contention the Court unanimously held that in pith and substance the impugned legislation was for acquisition of contract carriages and not an Act which deals with inter-State trade and commerce." The learned senior counsel further contends that the SARFAESI Act was enacted by the Parliament under Entry 45 of List I of the Constitution of India. It is a special Act with a special purpose and procedure laid down for the recovery of the secured asset of the debtor by the Bank to recover the amount due to it, and thus, any encroachment upon this Act should not be permitted, as it would defeat the laudable object of the Act, which has been enacted keeping in view the larger public interest.

Mr. Vikas Singh, the learned senior counsel appearing on behalf of the respondent State Bank of India in the appeal arising out of S.L.P. (C) No. 28040 of 2015 contends that the SARFAESI Act cannot be allowed to fail at the hands of the present appellants, who have no registered instrument of lease.

The learned senior counsel further contends that in light of the decision of this Court in the case of Harshad Govardhan Sondagar (supra), the present case is barred by res judicata. He places reliance on the three Judge Bench decision of this Court in the case of Bhanu Kumar Jain v. Archana Kumar & Anr.[4], wherein it was held as under:

"It is now well-settled that principles of res judicata applies in different stages of the same proceedings.

19. In Y.B. Patil (supra) it was held:

"4... It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent state of that proceeding..."

20. In Vijayabai (supra), it was held:

"13. We find in the present case the Tahsildar reopened the very question which finally stood concluded, viz., whether Respondent 1 was or was not the tenant of the suit land. He further erroneously entered into a new premise of reopening the question of validity of the compromise which could have been in issue if at all in appeal or revision by holding that compromise was arrived at under pressure and allurement. How can this question be up for determination when this became final under this very same statute?..."

21. Yet again in Hope Plantations Ltd. (supra), this Court laid down the law in the following terms:

> "17... One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice."

Mr. M.T. George, the learned counsel appearing on behalf of the Bank in the appeal arising out of S.L.P. (C) No. 12772 of 2015 contends that the tenancy has not been determined conclusively, as the documents produced on record to prove the relationship of tenancy are not registered and do not hold much water. Mr. Rajeev Kumar Pandey, the learned counsel appearing on behalf of the respondent Bank in the appeal arising out of S.L.P. (C) No. 31080 of 2015 submits that the property in question was mortgaged before it was leased. Such a lease would thus, not entitle the lessee to stop the bank from taking possession over the property which was mortgaged to it.

The other learned counsel appearing on behalf of other Banks in the connected appeals adopted the arguments advanced by the aforesaid learned senior counsel appearing on behalf of some of the Banks. It was also contended that the appellants in the connected appeals have not been able to produce sufficient documentary evidence to prove that they are tenants in respect of the properties in question in the proceedings under Section 14 of the SARFAESI Act and hence, they have no locus standi to prefer the above appeals questioning the correctness of the Order passed by the learned Magistrate.

We have carefully considered the above rival legal submissions made on behalf of the parties and answer the same as hereunder:

> The SARFAESI Act, which came into force from 21.06.2002, was enacted to provide procedures to the Banks to recover their security interest from the debtors and their collateral security assets as provided under the provisions of the Act. The scope of the Act was explained by this Court in the case of Transcore v. Union of India & Anr.[5] as under:
>
> "12. The NPA Act, 2002 is enacted to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. The NPA Act enables the banks and FIs to realize long-term assets, manage problems of liquidity, asset-liability mismatch and to improve recovery of debts by exercising powers to take possession of securities, sell them and thereby reduce non-performing assets by adopting measures for recovery and reconstruction. The NPA Act further provides for setting up of asset reconstruction companies which are empowered to take possession of secured assets of the borrower including the right to transfer by way of lease; assignment or sale. The said Act also empowers the said asset reconstruction companies to take over the management of the business of the borrower....

> 13. Non-performing assets (NPA) are a cost to the economy. When the Act was enacted in 2002, the NPA stood at Rs 1.10 lakh crores. This was a drag on the economy. Basically, NPA is an account which becomes non-viable and non-

performing in terms of the guidelines given by RBI. As stated in the Statement of Objects and Reasons, NPA arises on account of mismatch between asset and liability. The NPA account is an asset in the hands of the bank or FI. It represents an amount receivable and realizable by the banks or FIs. In that sense, it is an asset in the hands of the secured creditor. Therefore, the NPA Act, 2002 was primarily enacted to reduce the non- performing assets by adopting measures not only for recovery but also for reconstruction. Therefore, the Act provides for setting up of asset reconstruction companies, special purpose vehicles, asset management companies, etc. which are empowered to take possession of secured assets of the borrower including the right to transfer by way of lease, assignment or sale. It also provides for realization of the secured assets. It also provides for takeover of the management of the borrower company." Thus, it becomes clear that the SARFAESI Act is meant to operate as a tool for banks and ensures a smooth debt recovery process. The provisions of SARFAESI Act make its purport amply clear, specifically under the provisions of Sections 13(2) and 13(4) of the Act, which read as under:

> "13. Enforcement of Security interest.-
>
> (2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

"(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--

> (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset...." Further, the provision under Section 35 of the SARFAESI Act provides that it shall override all other laws, which is quoted as hereunder:
>
> "35. The provisions of this Act to override other laws.- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."
>
> Providing a smooth and efficient recovery procedure to enable the banks to recover the Non Performing Assets is a laudable object indeed, which needs to be ensured for

the development of the economy of the Country. What has complicated the matters, however, is the clash of this laudable object with another laudable object, namely, to secure the rights of the tenants under the various Rent Control Acts. The history of these Rent Control Acts can be traced to as far back as the Second World War. At that time, due to the massive inflation and shortage of commodities, not only had the cost of living risen exponentially, the tenants were also often left to the mercy of the landlords as far as evictions or prices of rent were concerned. Rent Control Acts have been enacted by the different state legislatures to secure the rights of the weaker sections of the society, viz., the tenants. Justice Krishna Iyer aptly observed in the case of Miss Santosh Mehta v. Om Prakash & Ors.[6]:

"2. Rent Control laws are basically designed to protect tenants because scarcity of accommodation is a nightmare for those who own none and if evicted, will be helpless." The preamble of the Rent Control Act reads as under:

"An Act to unify, consolidate and amend the law relating to the control of rent and repairs of certain premises and of eviction and for encouraging the construction of new houses by assuring a fair return on the investment by landlords and to provide for the matters connected with the purposes aforesaid……" It becomes clear from a perusal of the preamble of the Act that the ultimate object behind the enactment of this legislation is to control and regulate the rate of rent so that unnecessary hardship is not caused to the tenant, and also to provide protection to the tenants against arbitrary and unreasonable evictions from the possession of the property. The protection of the tenants against unjust evictions becomes even more pronounced when examined in the light of Section 15 of the Rent Control Act, which reads as under:

"15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act." Section 15, thus, restricts the right of a landlord to recover possession of the tenanted premises from a tenant.

When we understand the factual matrix in the backdrop of the objectives of the above two legislations, the controversy in the instant case assumes immense significance. There is an interest of the bank in recovering the Non Performing Asset on the one hand, and protecting the right of the blameless tenant on the other. The Rent Control Act being a social welfare legislation, must be construed as such. A landlord cannot be permitted to do indirectly what he has been barred from doing under the Rent Control Act, more so when the two legislations, that is the SARFAESI Act and the Rent Control Act operate in completely different fields. While SARFAESI Act is concerned with Non Performing Assets of the Banks, the Rent Control Act governs

the relationship between a tenant and the landlord and specifies the rights and liabilities of each as well as the rules of ejectment with respect to such tenants. The provisions of the SARFAESI Act cannot be used to override the provisions of the Rent Control Act. If the contentions of the learned counsel for the respondent Banks are to be accepted, it would render the entire scheme of all Rent Control Acts operating in the country as useless and nugatory. Tenants would be left wholly to the mercy of their landlords and in the fear that the landlord may use the tenanted premises as a security interest while taking a loan from a bank and subsequently default on it. Conversely, a landlord would simply have to give up the tenanted premises as a security interest to the creditor banks while he is still getting rent for the same. In case of default of the loan, the maximum brunt will be borne by the unsuspecting tenant, who would be evicted from the possession of the tenanted property by the Bank under the provisions of the SARFAESI Act. Under no circumstances can this be permitted, more so in view of the statutory protections to the tenants under the Rent Control Act and also in respect of contractual tenants along with the possession of their properties which shall be obtained with due process of law.

The issue of determination of tenancy is also one which is well settled. While Section 106 of the Transfer of Property Act, 1882 does provide for registration of leases which are created on a year to year basis, what needs to be remembered is the effect of non-registration, or the creation of tenancy by way of an oral agreement. According to Section 106 of the Transfer of Property Act, 1882, a monthly tenancy shall be deemed to be a tenancy from month to month and must be registered if it is reduced into writing. The Transfer of Property Act, however, remains silent on the position of law in cases where the agreement is not reduced into writing. If the two parties are executing their rights and liabilities in the nature of a landlord-tenant relationship and if regular rent is being paid and accepted, then the mere factum of non-registration of deed will not make the lease itself nugatory. If no written lease deed exists, then such tenants are required to prove that they have been in occupation of the premises as tenants by producing such evidence in the proceedings under Section 14 of the SARFAESI Act before the learned Magistrate. Further, in terms of Section 55(2) of the special law in the instant case, which is the Rent Control Act, the onus to get such a deed registered is on the landlord. In light of the same, neither the landlord nor the banks can be permitted to exploit the fact of non registration of the tenancy deed against the tenant. Further, the learned counsel for the appellants rightly placed reliance on a three Judge Bench decision of this Court in Anthony (supra). At the cost of repetition, in that case it was held as under:

“But the above finding does not exhaust the scope of the issue whether the appellant was a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands

created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first paragraph has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein.

The third paragraph can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein.

All other leases, if created, necessarily fall within the ambit of the second paragraph. Thus, de hors the instrument parties can create a lease as envisaged in the second paragraph of Section 107 which reads thus:

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession." It further saddens us to see the manner in which the decision in the case of Harshad Govardhan Sondagar (supra) has been misinterpreted to create this confusion. Random sentences have been picked up from the judgment and used, without any attempt to understand the true purport of the judgment in its entirety.

It is a well settled position of law that a word or sentence cannot be picked up from a judgment to construe that it is the ratio decidendi on the relevant aspect of the case. It is also a well settled position of law that a judgment cannot be read as a statute and interpreted and applied to fact situations. An eleven Judge Bench of this Court in the case of H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior & Ors. v. Union of India[7] held as under:

"It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment." The same view was reiterated by a Division Bench of this Court in the case of Commissioner of Income Tax v. Sun Engineering Works (P.) Ltd.[8] Further, a three Judge Bench of this Court in the case of Union of India v. Dhanawanti Devi & Ors.[9] held as under:

"9. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually

> decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.
>
> 10. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents……" (emphasis laid by this Court) The decision of this Court rendered in the case of Harshad Govardhan Sondagar (supra) 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.

As far as granting leasehold rights being created after the property has been mortgaged to the bank, the consent of the creditor needs to be taken. We have already taken this view in the case of Harshad Govardhan Sondagar (supra). We have not stated anything to the effect that the tenancy created after mortgaging the property must necessarily be registered under the provisions of the Registration Act and the Stamp Act.

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 on 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 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. Interpreting the non obstante clause of the SARFAESI Act, a three Judge Bench of this Court in the case of Central Bank of India v. State of Kerala & Ors.[10] has held as under:

> "18. The DRT Act and Securitisation Act were enacted by Parliament in the backdrop of recommendations made by the Expert Committees appointed by the Central Government for examining the causes for enormous delay in the recovery of dues of banks and financial institutions which were adversely affecting fiscal reforms. The committees headed by Shri T. Tiwari and Shri M. Narasimham suggested that the existing legal regime should be changed and special adjudicatory machinery be created for ensuring speedy recovery of the dues of banks and financial institutions. Narasimham and Andhyarujina Committees also suggested enactment of new legislation for securitisation and empowering the banks etc. to take possession of the securities and sell them without intervention of the Court.
>
> XXX XXX XXX
>
> 110. The DRT Act facilitated establishment of two-tier system of Tribunals.

The Tribunals established at the first level have been vested with the jurisdiction, powers and authority to summarily adjudicate the claims of banks and financial institutions in the matter of recovery of their dues without being bogged down by the technicalities of the Code of civil Procedure. The Securitisation Act drastically changed the scenario inasmuch as it enabled banks, financial institutions and other secured creditors to recover their dues without intervention of the Courts or Tribunals. The Securitisation Act also made provision for registration and regulation of securitisation/reconstruction companies, securitisation of financial assets of banks and financial institutions and other related provisions.

111. However, what is most significant to be noted is that there is no provision in either of these enactments by which first charge has been created in favour of banks, financial institutions or secured creditors qua the property of the borrower.

112. Under Section 13(1) of the Securitisation Act, limited primacy has been given to the right of a secured creditor to enforce security interest vis-à-vis Section 69 or Section 69A of the Transfer of Property Act. In terms of that sub-Section, a secured creditor can enforce security interest without intervention of the Court or Tribunal and if the borrower has created any mortgage of the secured asset, the mortgagee or any person acting on his behalf cannot sell the mortgaged property or appoint a receiver of the income of the mortgaged property or any part thereof in a manner which may defeat the right of the secured creditor to enforce security interest. This provision was enacted in the backdrop of Chapter VIII of Narasimham Committee's 2nd Report in which specific reference was made to the provisions relating to mortgages under the Transfer of Property Act.

113. In an apparent bid to overcome the likely difficulty faced by the secured creditor which may include a bank or a financial institution, Parliament incorporated the non obstante clause in Section 13 and gave primacy to the right of secured creditor vis a vis other mortgagees who could exercise rights under Sections 69 or 69A of the Transfer of Property Act. However, this primacy has not been extended to other provisions like Section 38C of the Bombay Act and Section 26B of the Kerala Act by which first charge has been created in favour of the State over the property of the dealer or any person liable to pay the dues of sales tax, etc. .....

116. The non obstante clauses contained in Section 34(1) of the DRT Act and Section 35 of the Securitisation Act give overriding effect to the provisions of those Acts only if there is anything inconsistent contained in any other law or instrument having effect by virtue of any other law. In other words, if there is no provision in the other enactments which are inconsistent with the DRT Act or Securitisation Act, the provisions contained in those Acts cannot override other legislations." (emphasis laid by this Court) If the interpretation of the provisions of SARFAESI Act as submitted by the learned senior counsel appearing on behalf of the Banks is accepted, it would not only tantamount to violation of rule of law, but would also render a valid Rent Control statute enacted by the State Legislature in exercise of its legislative power under Article 246 (2) of the Constitution of India useless and nugatory. The Constitution of India envisages a federal feature, which has been held to be a basic feature of the Constitution, as has been held by the seven Judge Bench of this Court in the case of S.R. Bommai & Ors. v. Union of India[11], wherein Justice K. Ramaswamy in his concurring opinion elaborated as under:

> "247. Federalism envisaged in the Constitution of India is a basic feature in which the Union of India is permanent within the territorial limits set in Article 1 of the Constitution and is indestructible. The State is the creature of the Constitution and the law made by Articles 2 to 4 with no territorial integrity, but a permanent entity with its boundaries alterable by a law made by Parliament. Neither the relative importance of the legislative entries in Schedule VII, Lists I and II of the Constitution, nor the fiscal control by the Union per se are decisive to conclude that the Constitution is unitary. The respective legislative powers are traceable to Articles 245 to 254 of the Constitution. The State qua the Constitution is federal in structure and independent in its exercise of legislative and executive power. However, being the creature of the Constitution the State has no right to secede or claim sovereignty. Qua the Union, State is quasi-federal. Both are coordinating institutions and ought to exercise their respective powers with adjustment, understanding and accommodation to render socio-economic and political justice to the people, to preserve and elongate the constitutional goals including secularism.
>
> 248. The preamble of the Constitution is an integral part of the Constitution. Democratic form of Government, federal structure, unity and integrity of the nation, secularism, socialism, social justice and judicial review are basic features of the Constitution." (emphasis laid by this Court) In view of the above legal position, if we accept the legal submissions made on behalf of the Banks to hold that the provisions of SARFAESI Act override the provisions of the various Rent Control Acts to allow a

> Bank to evict a tenant from the tenanted premise, which has become a secured asset of the Bank after the default on loan by the landlord and dispense with the procedure laid down under the provisions of the various Rent Control Acts and the law laid down by this Court in catena of cases, then the legislative powers of the state legislatures are denuded which would amount to subverting the law enacted by the State Legislature. Surely, such a situation was not contemplated by the Parliament while enacting the SARFAESI Act and therefore the interpretation sought to be made by the learned counsel appearing on behalf of the Banks cannot be accepted by this Court as the same is wholly untenable in law.

We are unable to agree with the contentions advanced by the learned counsel appearing on behalf of the respondent Banks.

In view of the foregoing, the impugned judgments and orders passed by the High Court/ Chief Metropolitan Magistrate are set aside and the appeals are allowed. We further direct that the amounts which are in deposit pursuant to the conditional interim order of this Court towards rent either before the Chief Metropolitan Magistrate/Magistrate Court or with the concerned Banks, shall be adjusted by the concerned Banks towards the debt due from the debtors/landlords in respect of the appellants in these appeals. The enhanced rent by way of conditional interim order shall be continued to be paid to the respective Banks, which amount shall also be adjusted towards debts of the debtors/landlords. All the pending applications are disposed of.

... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... J. [V. GOPALA GOWDA]
.....J. [AMITAVA ROY] New Delhi, January 20,2016

---

[1] (2014) 6 SCC 1
[2] (2000) 6 SCC 394
[3] (1980) 4 SCC 136
[4] (2005) 1 SCC 787
[5] (2008) 1 SCC 125
[6] (1980) 3 SCC 610
[7] (1971) 1 SCC 85
[8] (1992) 4 SCC 363
[9] (1996) 6 SCC 44
[10] (2009) 4 SCC 94
[11] (1994) 3 SCC 1