Bajarang Shyamsunder Agarwal vs Central Bank Of India on 11 September, 2019

Equivalent citations: AIR 2019 SUPREME COURT 5017, 2019 (9) SCC 94, AIRONLINE 2019 SC 1063, 2020 (1) ABR 297, (2019) 12 SCALE 230, (2019) 3 ALLCRIR 2729, (2019) 3 CRILR(RAJ) 1029, (2019) 3 CURCC 497, (2019) 4 BANKCAS 1, (2019) 4 BOMCR(CRI) 732, (2019) 4 KER LT 143, 2019 CRILR(SC MAH GUJ) 1029, (2020) 1 ANDHLD 13, (2020) 1 CIVLJ 176, AIR 2020 SC (CIV) 468

Author: N.V. Ramana

Bench: Indira Banerjee, Mohan M. Shantanagoudar, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1371 OF 2019
(ARISING OUT OF SLP (CRL.) NO. 9590/2015)

BAJARANG SHYAMSUNDER AGARWAL …APPELLANT

VERSUS

CENTRAL BANK OF INDIA & ANR. …RESPONDENTS

JUDGMENT

N.V. RAMANA, J.

1. Leave granted.

2. The present appeal arises out of the impugned order dated 31.12.2014 in Case No. 42/SA/2012 of the Chief Metropolitan Magistrate, Esplanade, Mumbai rejecting the application of the intervenor who is the appellant□tenant herein seeking to stay the execution of order passed under Section 14 of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as the 'SARFAESI Act'] for taking possession of the property in question.

3. The property in question is a residential flat admeasuring about 1020 sq. ft., situated in Andheri (West), Mumbai (hereinafter SUSHMA KUMARI BAJAJ Date: 2019.09.12 11:30:09 IST Reason:

referred to as the "secured asset"). The secured asset was mortgaged by respondent no. 2–borrower/landlord with the respondent no. 1–bank in equitable mortgage, by depositing title deeds on 20.05.2000, with an intention to secure the credit facility. When the respondent no. 2–borrower/landlord failed to make the due repayment of the said credit facilities, the respondent no.1–bank classified the debt as a "Non–Performing Asset (NPA)". Thereafter, on 30.04.2011 a statutory Demand Notice under Section 13 (2) of the SARFAESI Act was issued to respondent no. 2–borrower/landlord demanding payment of Rs.10,72,10,106.73 (Rupees Ten Crores Seventy–Two Lacs Ten Thousand One Hundred Six and Seventy Three Paisa Only) which was due as on 30.04.2011.

4. When the respondent no.2–borrower, failed to repay the outstanding loan amount, the respondent no. 1–bank made an application under Section 14 of the SARFAESI Act seeking directions to take physical possession of the secured asset. This application was allowed by the Chief Metropolitan Magistrate, Esplanade, Mumbai by his order dated 09.03.2012. In this order, the Magistrate directed the Assistant Registrar to take possession of the secured asset and handover the same to the respondent no. 1–bank.

5. For the brevity of discussion, it may be pointed out that the appellant, who claims to be the tenant, asserts that the secured asset was let out to him by respondent no. 2–borrower/landlord in January, 2000 and he has been paying rent since then. Admittedly, the tenancy was based on an oral agreement. The appellant–tenant received a legal notice dated 25.07.2012, from respondent no. 2–borrower/landlord directing the appellant–tenant to vacate the premises within 15 days. The appellant–tenant preferred a suit being R.A.D Suit No. 652 of 2012 before the Court of Small Causes at Mumbai against the respondent no. 2–borrower/landlord. On 18.09.2012, the Small Causes Court allowed the application for interim injunction of the appellant–tenant filed in the above suit and respondent no. 2–borrower/landlord was restrained from disturbing the possession of the appellant–tenant.

6. Meanwhile, the High Court of Bombay, in Criminal Public Interest Litigation No. 24 of 2011, held that a Magistrate has the power to pass an order of eviction without giving an opportunity of hearing to the tenant under SARFAESI proceedings. An appeal against the aforesaid order along with a batch of other appeals was heard by this Court in Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd. and Ors, (2014) 6 SCC 1 [hereinafter referred to as 'Harshad Govardhan Case']. This Court directed the Magistrate to decide the applications after giving the tenants an opportunity of hearing.

7. The appellant–tenant preferred an application in Case No. 42/SA/2012 before the Chief Metropolitan Magistrate, Esplanade, Mumbai. By the impugned order dated 31.12.2014, the Chief Metropolitan Magistrate after hearing the appellant–tenant, rejected the application holding that the appellant–tenant being a tenant without any registered instrument is not entitled for the possession of the secured asset for more than one year from the date of execution of unregistered tenancy agreement in accordance with the law laid down in Harshad Govardhan Case (supra).

8. Aggrieved by the same, appellant-tenant filed this appeal by way of Special Leave.

9. The learned senior counsel on behalf of the appellant-tenant submitted that- a. The Appellant was a protected tenant under the Maharashtra Rent Control Act, 1999 [hereinafter referred to as the "Rent Act"], and was in occupation of the tenanted premises since October, 2005. B. Even though there was no registered lease deed, the factum of tenancy can be demonstrated by multiple rent receipts.

c. The Small Causes Court made a prima facie determination of rights in his favour (refer to order in R.A.D. Suit No. 652 of 2012).

d. the appellant-tenant's case is covered by the ruling of this Court in Harshad Govardhan Case (supra), and Vishal N. Kalsaria v. Bank of India and Ors., (2016) 3 SCC 762 [hereinafter referred to as 'Vishal N. Kalsaria Case'].

10. On the contrary, the counsel on behalf of respondent no.1-bank submits that a. The appellant-tenant and the respondent no. 2-borrower/landlord have devised this litigation to commit a large-scale fraud on the bank. The appellant is not a tenant and has been brought into the picture by the respondent no.2-borrower/landlord to misuse the process of law and is not entitled for any equitable relief.

b. At the time of creation of the mortgage, the bank officers were given to understand that the family of the mortgager was residing in the secured asset.

Even after multiple inquiries, and even after initiating proceedings under Section 14 of the SARFAESI Act, the bank officers were never intimated about the existing tenancy.

c. The respondent no. 2-borrower/landlord, had given a non-encumbrance certificate to the bank at the time of creation of the mortgage.

d. In 2016, the respondent no. 1-bank made enquiries regarding the status of the secured asset from the Housing Society which had built the property and is still maintaining the same. The Society, vide letter dated 12.07.2016, had confirmed that the secured asset is occupied by the respondent no. 2-borrower/landlord and there were no third-party rights created over the same.

11. Since the learned senior counsel on behalf of the appellant has extensively relied on the judgment of this Court passed in Harshad Govardhan Case (supra) and Vishal N. Kalsaria Case (supra) in support of the proposition that a tenant is protected from any ejectment proceedings under the SARFAESI Act, we have to examine if the law declared by these rulings accurately reflects the legal position and if these rulings applies to the facts of the present case.

12. Before we proceed further, the circumstances which led to the enactment of the SARFAESI Act deserve close scrutiny. The SARFAESI Act was enacted in response to a scenario where slow-paced recovery and staggering amounts of non-performing assets were looming over the banks. In order

to overcome the practical reality, and keep in pace with the changing commercial world, Narasimham Committee I and II and the Andhyarujina Committee were constituted by the Central Government to provide solutions for the issues plaguing the banking system of the country. The present Act is a culmination of the suggestions made by the aforesaid committees intended to enable the bank to resolve the issue of liquidity and aim for the reduction in the number of non□ performing assets. The Preamble to the Act emphasises upon the efficient and expeditious recovery of bad debts. This is also evident from the scheme of the Act.

13. Section 13 of the SARFAESI Act provides for the enforcement of security interest. This is a self□ executory mechanism for the banks. Once the process of realizing the secured interest takes place, the secured creditor acts as trustee having de□jure/symbolic possession of the property and is required by law to realize it strictly in accordance with the provisions of Section 13, 14 and 15 of the SARFAESI Act. Crucially, sub□Section (2) of Section 13 of the SARFAESI Act envisages a notice, which acts as the trigger point for initiation of the recovery process under the SARFAESI Act. In the aforesaid notice, the secured creditor is required to disclose information on the amount payable by the borrower and the secured interest intended to be enforced by the secured creditor in the event of non□payment of the secured debt. If the borrower fails to discharge the liability, the secured creditor has four options including taking possession of the secured assets of the borrower (Section 13(4) of the SARFAESI Act). Critically for this case, once a notice is served on the borrower, he cannot further enter into any contract to create any encumbrance on the property (Section 13(13) of the SARFAESI Act). This extinguishes the right of the mortgagor to lease the property under Section 65□A of the Transfer of Property Act [hereinafter referred to as the 'T.P. Act'].

14. Section 14 of the SARFAESI Act provides for the procedural mechanism for taking possession of property and documents with respect to the secured assets, from the borrower.

15. Section 17 of the SARFAESI Act, dealing with the Right to Appeal has been amended in the year 2016 1. However, we are only concerned with the earlier law which reads as under □

17. Right to appeal.— (1) 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 this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty□five days from the date on which such measures had been taken:

> Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.
>
> ..... (2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub□section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the Rules made thereunder.

> (3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are 1 The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (44 of 2016).

not in accordance with the provisions of this Act and the Rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

> Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).
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> (6) .....
>
> (7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.

(emphasis supplied)

16. Section 17 provides for an invaluable right of appeal to any person including the borrower to approach the Debt Recovery Tribunal (hereinafter referred to as the "DRT"). In Harshad Govardhan Case (supra) this Court held that the right of appeal is available to the tenant claiming under a borrower, however the right of re-possession does not exist with the tenant. However, in Kanaiyalal Lalchand Sachdev and Ors. vs. State of Maharashtra and Ors., (2011) 2 SCC 782, this Court held that the DRT can, not only set aside the action of the secured creditor, but even restore the status quo ante. We do not intend to express any view on this issue since it is not relevant for the disposal of

this appeal. We also note that Parliament has stepped in and amended Section 17 by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (44 of 2016). Under the amendment, possession can be restored to the "borrower or such other aggrieved person".

17. Section 35 of the SARFAESI Act provides an overriding effect over "anything inconsistent contained in any other law", in the following manner□"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." Section 35 is critical to this case and we will examine the conflicting views on Section 35.

18. The interplay between the SARFAESI Act and the right of the tenant was first examined by this Court in Harshad Govardhan Case (supra). It may be noted that the present appellant was a party to the aforesaid proceedings. This Court was confronted with the question as to whether the provisions of the SARFAESI Act affect the right of a lessee to remain in possession of the secured asset during the period of the lease. After noticing the scheme of the Act, this Court held that if the lawful possession of the secured asset is not with the borrower, but with a lessee under a valid lease, the secured creditor cannot take possession of the secured asset until the lawful possession of the lessee gets determined and the lease will not get determined if the secured creditor chooses to take any of the measures specified in Section 13 of the SARFAESI Act. Accordingly, this Court concluded that the Chief Metropolitan Magistrate /District Magistrate can pass an order for delivery of possession of secured asset in favour of secured creditor only when he finds that the lease has been determined in accordance with Section 111 of the T.P. Act.

19. The Court further held that if the Chief Metropolitan Magistrate / District Magistrate is satisfied that a valid lease is created before the mortgage and the lease has not been determined in accordance with Section 111 of the T.P. Act, then he cannot pass an order for delivery of possession of the secured asset to the secured creditor. In case, he comes to the conclusion that there is no valid lease either before the creation of mortgage or after the creation of the mortgage satisfying the requirements of Section 65□A of the T.P. Act or even though there is a valid lease the same stands determined in accordance with Section 111 of the T.P. Act, he can pass an order for delivery of possession of the secured asset to the secured creditor.

20. This Court also recognised the inconsistency between Section 13(13) of the SARFAESI Act and Section 65□A of the Transfer of Property Act. While Section 13(13) of SARFAESI prohibits a borrower from leasing out any of the secured assets after receipt of a notice under Section 13(2) without the prior written consent of the secured creditor, Section 65□A of the T.P. Act enables the borrower/mortgagor to lease out the property. This inconsistency was resolved by holding that the SARFAESI Act will override the provisions of the T.P. Act.

21. Before concluding, the Court in Harshad Govardhan Case (supra), distinguished the implications of a registered and an unregistered instrument/oral agreement, in the following manner:

> 36. 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 immovable 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 immovable 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 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 a year from the date of the instrument or from the date of delivery of possession in his favour by the landlord.

(emphasis supplied)

22. The second case which dealt with the issue of tenants' rights under the SARFAESI Act is Vishal N. Kalsaria Case (supra). This Court was concerned with the question Whether a "protected tenant" under the Maharashtra Rent Control Act, 1999 can be treated as a lessee and whether the provisions of the SARFEASI Act, will override the provisions of the Rent Act?

23. After examining the legal and constitutional position, the Court held that while the SARFAESI Act has a laudable objective of providing a smooth and efficient recovery procedure, it cannot override the objective of Rent Acts to control the rate of rent and provide protection to tenants against arbitrary and unreasonable evictions. To resolve this conflict, this Court held that

a) The provisions of the SARFAESI Act cannot be used to override the provisions of the Rent Act. The landlord cannot be permitted to do indirectly what he has been barred from doing under the Rent Act.

b) While a yearly tenancy requires to be registered, oral tenancy can still be proved by showing that the tenant has been in occupation of the premises before the Magistrate under Section 14 of the SARFAESI Act.

c) The non registration of the tenancy deed cannot be used against the tenant. For leasehold rights being created after the property has been mortgaged to the bank, the consent of the creditor needs to be taken.

d) Even though Section 35 of the SARFAESI Act has a non obstante clause, it will not override the statutory rights of the tenants under the Rent Control Act. The non obstante clause under Section 35 of the SARFAESI Act only applies to laws operating in the same field.

24. While we agree with the principle laid out in Vishal N. Kalsaria Case (supra) that the tenancy rights under the Rent Act need to be respected in appropriate cases, however, we believe that the holding with respect to the restricted application of the non obstante clause under section 35 of SARFAESI Act, to only apply to the laws operating in the same field is too narrow and such a proposition does not follow from the ruling of this Court in Harshad Govardhan Case (supra).

25. 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:

> a) 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 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.
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> b) 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 65□A of the T.P. Act.
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> c) 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.

26. In the present case, the bona fides of the tenant is highly doubtful, as there is no good or sufficient evidence to establish the tenancy in the first place. The present case involves a tenant who allegedly entered into an oral agreement of tenancy before the mortgage deed was entered into between the borrower and Bank/Creditor. Additionally, it must be noted that tenancy created under such an oral agreement, results in a fresh tenancy after the expiry of statutory period fixed under the T.P Act.

27. The records also do not demonstrate that the appellant□tenant has been able to prove his status as a valid leaseholder to merit the protection sought for. Admittedly, an equitable mortgage on the

secured asset was created by the respondent no. 2–borrower/landlord by depositing title deeds with respondent no. 1–bank on 20.05.2000. However, the date of creation of the tenancy is not established in the present case. It is to be noted that the appellant–tenant, while seeking protection before the Small Causes Court, stated that the premises were let out to him in January, 2000, but the Court noted that the appellant–tenant produced photocopies of rent receipts for the period of 2001 to 2011. Contrarily, the appellant–tenant, in this appeal before us, has stated that he entered into the tenancy in October, 2005.

28. The claim of tenancy made by the appellant–tenant is not supported by a registered instrument. We recognise the legal position, as laid out in the Vishal N. Kalsaria Case (supra), that in the absence of a written lease deed the tenant may prove his existing rights by producing other relevant evidence before the Magistrate. The appellant–tenant has to produce evidence of payment of rent, property taxes, etc. Furthermore, if the rent and permitted increases were payable, then the quantum ought to have been mentioned. In addition to the above, the claim of tenancy could have been substantiated by relying upon other tax receipts such as BMC tax, water tax, electricity charges consumed by the tenant, etc. However, the appellant–tenant has only submitted xerox copies of rent receipts.

29. Although the Small Causes Court held that the appellant–tenant seems to have, prima facie, a right over the secured asset, the order was passed ex parte, against the respondent no. 2–borrower/landlord, who did not oppose the application. It is to be noted that the prima facie case was decided in favour of the appellant–tenant solely on the basis of the xerox copies of rent receipts produced by him.

30. The respondent no. 1–bank has vehemently contested the bona fides of the appellant–tenant and has argued that the claim of tenancy has been raised just to defeat the legal process of realisation of dues as per the SARFAESI Act. To substantiate this claim, the respondent no. 1–bank has placed on record a legal scrutiny report dated 08.05.2000, wherein the property is indicated to be self–occupied by the respondent no. 2–borrower/landlord for residential usage. Additionally, the aforesaid fact is corroborated by the non–encumbrance certificate submitted by the respondent no. 2–borrower/landlord at the time of creation of the mortgage. Furthermore, the respondent no. 1–bank has also placed a letter dated 12.07.2016 from the Housing Society that maintains the secured asset, which confirmed that no tenancy had been created on the secured asset.

31. It is pertinent to note that at the time when the SARFAESI Act proceedings were pending, the factum of tenancy was never revealed by the parties. The earlier order dated 09.03.2012, passed by the Chief Metropolitan Magistrate, Esplanade, Mumbai directing the Assistant Registrar to take over the possession of the secured asset, is silent about any existing encumbrance over the secured asset. It was only after passing of the aforesaid order of the Chief Metropolitan Magistrate, that the appellant–tenant started agitating his rights before the Small Causes Court based on a completely different fact scenario, without a whisper of the alleged tenancy under the concluded Section 14, SARFAESI Act proceedings. The respondent no.2–borrower/landlord did not even respond to the claims of the appellant–tenant. The respondent no.1–bank has produced multiple records to substantiate their claim that the tenant was nowhere to be seen earlier and that this tenancy was

created just to defeat the proceedings initiated under the SARFAESI Act. On the contrary, the appellant-tenant has failed to produce any evidence to substantiate his claim over the secured asset. In such a situation, the appellant-tenant cannot claim protection under the garb of the interim protection granted to him, ex parte, by solely relying upon the xerox of the rent receipts.

32. In such an event, wherein the claim of the appellant-tenant is not supported by any conclusive evidence, the rejection of the stay application by the Chief Metropolitan Magistrate cannot be held to be erroneous. Although the counsel of the appellant-tenant has placed ample reliance upon the Vishal N. Kalsaria Case (supra), but the same would not help the cause of the appellant-tenant herein, as the earlier case proceeded with the assumption of a valid and bona fide tenancy. But in the present case, the stay application of the appellant-tenant seems to be an afterthought. It is clear that the respondent no. 2-borrower/landlord never intimated the respondent no. 1-bank about the alleged tenancy. In light of the above, we are unable to accept the claim of bona fide tenancy of the appellant-tenant.

33. 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 65-A 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.

34. In this context we may refer to R.V. Bhupal Prasad v. State of A.P. and Ors., AIR 1996 SC 140, wherein a two Judge Bench of this Court, speaking through Ramaswamy, J., made the following pertinent observations in paragraph 8 of the Report:

> "8. Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it, by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. "

35. On the same lines are the decisions of this Court in Smt. Shanti Devi v. Amal Kumar Banerjee, AIR 1981 SC 1550, Murlidhar Jalan (since deceased) through his Lrs. v. State of Meghalaya and Ors., AIR 1997 SC 2690 and D.H. Maniar and Ors. v. Waman Laxman Kudav, [1977] 1 SCR 403.

36. 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.

37. As noted above, this case, does not mandate the additional protection to be provided under the Rent Act, to the appellant□tenant herein. The lower Courts are correct in ordering delivery of possession to the respondent no. 1□bank as the tenancy stands determined. Before we part, we must note that we have not interpreted the new amendment per se or the law with respect to other categories of tenants, which may be taken up in appropriate cases.

38. In the present case, as we are in the year 2019, which is 7 years beyond the deadline of 2012, it is ordered that the appellant□tenant shall hand over the possession of the secured asset within 12 weeks of this order to the Assistant Registrar at Bandra Centre of Courts, Mumbai, who in turn shall deliver the same to the respondent no.1□bank. This Court is further of the opinion that such devious practices by the borrower to obstruct the rights of the bank to legitimately realize its dues cannot be appreciated by this Court. Accordingly, we dismiss this appeal.

.....J. (N.V. RAMANA) .....J. (MOHAN M. SHANTANAGOUDAR) .....J. (INDIRA BANERJEE) New Delhi, September 11, 2019