BEFORE THE DEBTS RECOVERY APPELLATE TRIBUNAL, AT: MUMBAI

Present: Justice Vivek Bharti Sharma, Chairperson

I.A. No. 612/2026 (Stay)
In
Misc. Appeal No. 140/2026

Between

Suresh Puniyani … Appellant/s

V/s.

Tata Capital Ltd. & Ors. …Respondent/s

-: Order dated: 23/10/2026: -

1. Present as under:

Ms. Aarti Suvarna and Mr. Radhe Agrawal (through VC), Counsel for Appellant/Tenant.

Mr. R.L. Motwani along with Ms. Priti Bhalerao, Counsel for Respondent No.1/Financial Company.

Mr. Khalid Ansari, Counsel for Respondent No.2 & 3 appeared through VC.

2. The matter is taken up for hearing on I.A. No. 612/2026 filed by the Appellant /Tenant seeking a stay on the operation of the impugned order and the consequential action of taking physical possession of the secured asset which was scheduled for 28.09.2026.

3. The Learned Counsel for the Appellant/Tenant would submit that the action of taking physical possession of the secured asset scheduled for 28.09.2026 has been stayed by the Hon'ble High Court

of Bombay, Nagpur Bench vide its order dated 05.10.2026 passed in Writ Petition No. 7739/2026 till the Applicant/Tenant for stay to possession is decided. By the same order, the Hon'ble High Court has directed to take up the matter of the Applicant/Tenant within one week from the date of furnishing the copy of the order and decide the same within one week thereafter. The copy of the order was furnished by the Applicant/Tenant to this Appellate Tribunal on 16.10.2026.

4. Heard.

5. The Learned Counsel for the Appellant/Tenant would submit that he is a tenant of mortgagor in the secured asset; that, the tenancy was registered by way of a registered Rend Deed document on dated 05.04.2025, commencing from 01.04.2025 and expiring on 29.02.2028; that, the Respondent Nos. 2 and 3 had availed a loan from the Respondent No. 1/Financial Company; that, upon the Borrowers committing default in repayment of the loan, a demand notice dated 25.10.2025 was issued to the Respondent Nos. 2 and 3; that, thereafter, the Respondent No. 1/Finance Company obtained an order dated 04.07.2026 from the Learned Additional Chief Judicial Magistrate under Section 14 of the SARFAESI Act for taking the physical possession; that, pursuant thereto, a notice dated 21.09.2026 was issued for taking physical possession of the secured asset. Hence, the present I.A. No. 612/2026 in Misc. Appeal No. 140/2026.

6. The Learned Counsel for the Appellant/Tenant relies upon the judgment passed by the Hon'ble Supreme Court of India in *Bajarang Shyamsundr Agarwal V/s Central Bank of India & Anr (2019) 9 SCC 94* and refer to paragraph 24. 2 thereof in support of his submissions and would submit that he has protection under of section 65-A of the "*Transfer of Property Act, 1882*" against the proposed dispossession.

7. Per contra, the Learned Counsel for the Respondent No. 1/Finance Company files a pursis along with a copy of the Memorandum of Creation of Mortgage by Deposit of Title Deeds. Same is taken on record.

The Learned Counsel for the Respondent No. 1/Finance Company would submit that the Respondent Nos. 2 and 3 are the mortgagors in respect of the loan extended to the Borrower/Company and had mortgaged the property described in Schedule-I(A), i.e., House No. 456, Nagpur Municipal Corporation in Mouza, Nagpur, bearing City Survey No. 415, which is the very same property in which the Appellant/3rd Party claims to be a tenant; that, the mortgage was created on 27.11.2022, that is, much prior to the creation of the alleged tenancy claimed by the Appellant.

The Learned Counsel for the Respondent No. 1/Finance Company would refer to Clauses 5 and 7 of the said Memorandum of Mortgage and submit that Clause 5 specifically provides that *no mortgage, charge, lien, lease or other encumbrance or attachment over the secured asset shall be created in any manner whatsoever so long as the Borrower continues to be indebted and liable to the Respondent No. 1/Finance Company.*

The Learned Counsel for the Respondent No. 1/Finance Company would further refer to and would submit that *Clause 7 of this Mortgage Deed specifically records that the mortgagors have waived the application of Section 65-A of the Transfer of Property Act, 1882*.

The Learned Counsel for the Respondent No. 1/Finance Company would further submit that the judgment of the Hon'ble Supreme Court of India relied upon by the Appellant/Tenant in *Bajarang Shyamsundr Agarwal V/s Central Bank of India & Anr (2019) 9 SCC 94* rather supports the case of the Respondent No. 1/Finance Company; that, sub-section (3) of Section 65-A of the Transfer of Property Act, 1882, provides that the provisions of sub-section (1) shall apply only in the absence of any contract or intention contrary to the same; that, in view of the specific covenant in the mortgage document prohibiting the creation of a tenancy over the mortgaged property, the alleged tenancy created subsequent to the mortgage cannot be relied upon against the Respondent No. 1/Financial Company; that, therefore, the Appellant is not entitled to any relief in the present application.

8. Considered and perused the record.

9. It is an admitted fact that the loan was extended against the mortgage of the secured assets which are the subject matter of the present appeal and that the mortgage deed in respect of the said secured assets was executed much prior to the creation and registration of the alleged tenancy in favour of the Appellant/Tenant

by way of a registered Rent Deed.

10. It is also an admitted fact that the demand notice under Section 13(2) of the SARFAESI Act was issued to the Borrowers after the creation and registration of the rent deed in favour of the Appellant/Tenant. Ordinarily, in such circumstances, a mortgagor, while may have the power to lease the mortgaged property to a third party in terms of Section 65-A of the Transfer of Property Act, 1882. However, such power is subject to the conditions as prescribed under sub-sections (1) and (2) of Section 65-A. The relevant provisions are reproduced hereunder:.

> *"65-A (1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.*
>
> *(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage,*
>
> *(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance,*
>
> *(c) No such lease shall contain a covenant for renewal,*
>
> *(d) Every such lease shall take effect from a date not later than six months from the date on which it is made,*
>
> *(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid with a time therein specified."*

11. **Sub-section (3) of Section 65-A is more important and significant, as it provides that the power of the mortgagor to lease the mortgaged property under sub-section (1) is subject to**

the absence of a contrary intention expressed in the mortgage deed. The relevant provision is reproduced hereunder:

> *"65-A (3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section."*

12. A careful reading of sub-section (3) of Section 65-A makes it clear that the statutory power of a mortgagor to lease the mortgaged property is subject to any contrary intention expressly recorded in the mortgage deed. **Therefore, where the mortgage deed contains an express covenant prohibiting the creation of a lease or other encumbrance over the mortgaged property, the mortgagor cannot rely upon the general power conferred under sub-section (1) to create a lease in contravention of such covenant.**

13. A perusal of the Memorandum of Creation of Mortgage by Deposit of Title Deeds placed on record by the Respondent No. 1/Finance Company by way of pursis, reveals that Clause 5 thereof specifically provides as follows:

> *"5…….. there are no mortgages, charges, lien, lease or other encumbrances or attachments thereon nor such encumbrances shall be created in whatsoever manner or attachment allowed to be levied on the said Properties, so long as the Borrower continues to be indebted or liable to TCFSL……."*

Similarly, the last line of Para 7 of this mortgage deed has been

specifically stated as hereunder:

> *"7 …… the mortgagors also waived the application of section 61, 65-A and 67-A of the Transfer of Property Act, 1882……"*

14. In view of the aforesaid express covenants contained in the mortgage deed, the mortgagors, i.e., the Respondent Nos. 2 and 3, had agreed not to create any lease or other encumbrance over the secured assets so long as the Borrower continued to be indebted or liable to the Respondent No. 1/Finance Company. But this lease was created in violation of these clauses in the Mortgage Deed. Consequently, the Appellant/Tenant cannot claim the benefit of the statutory power under Section 65-A of the Transfer of Property Act, 1882 in derogation of the express terms of the mortgage deed.

15. In view of the above, the alleged tenancy, stated to have commenced on 01.04.2025 and subsequently registered on 05.04.2025, having been created after the execution of the mortgage deed dated 27.11.2022, cannot be held to be binding upon the Respondent No. 1/Financial Company merely on the basis of its registration.

16. It would also be apposite to refer to Section 35 of the SARFAESI Act, which gives the provisions of the this Act overriding effect over any other law or instrument inconsistent therewith. The said provision reads as follows:

> *"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."*

17. It would be important to note that section 26-E of the SARFAESI Act says that the secured creditor shall have precedence over all other charges.

18. Accordingly, the Appellant/Tenant has failed to establish that the alleged tenancy is protected under Section 65-A of the Transfer of Property Act, 1882 against the enforcement measures initiated by the secured creditor.

19. In view of the foregoing discussion on facts and law, this Appellate Tribunal is of the considered view that the Appellant/Tenant has failed to establish a prima facie case warranting the grant of interim relief. The balance of convenience is also not in favour of the Appellant/Tenant. Accordingly, no case is made out for granting a stay on the operation of the impugned order or the consequential measures for taking physical possession of the secured assets.

20. Consequently, I.A. No. 612/2026 is dismissed.

21. List the case on 22.01.2027 for hearing.

22. Meanwhile, the Respondents are directed to file their replies to the grounds of appeal on or before the next date of hearing, with an advance copy thereof to the Appellant/Tenant.

Sd/-
Chairperson
23.10.2026

Psa-01 (SB)