

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.11.2015

DATE OF DECISION: 17.11.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE DR.JUSTICE P. DEVADASS

W.P. Nos.27802 and 27803 of 2015 and M.P. Nos.1 & 2 of 2015

V. Juvalamukhi Petitioner in WP No.27802 of 2015

P. Govindaraj Petitioner in WP No.27803 of 2015

vs.

- 1 The District Magistrate-cum-District Collector
Collectorate Building
Coimbatore 641 018
- 2 Canara Bank Ltd.
Oppanakara Street Branch
Coimbatore
- 3 S.K. Rangasamy
- 4 R. Jayabharathy Respondents in both the WPs

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records on the file of the first respondent in proceedings Na.Ka.16951/2014/U3 leading to the order dated 20.08.2015 and quash the same .

For petitioner
in both the WPs: Mr. P.J. Rishikesh
For R1 in : Mrs. A. Srijayanthi
both the WPs Special Government Pleader
For R2 in : Mr. V. Karthic
both the WPs for M/s. T.S. Gopalan & Co
For RR 3 & 4 : Notice served - No appearance
in both the WPs

COMMON ORDER

Since both the writ petitions emanate from one and the same order, they are considered and decided by this common order.

2 The facts in a nutshell, leading to the filing of the instant writ petitions are that the petitioners entered into lease agreements dated 26 July 2010 and 07 June 2010 respectively, with the respondents 3 and 4 in respect of a portion situated in the ground floor of the building bearing Door No.147, Thiruvengatasamy Road (West), R.S. Puram, Coimbatore 641 002, for a period of eleven months on a monthly rent of Rs.30,000/- per month. The respondents 3 and 4 stood guarantee for the loan availed by one Vignesh Alloys Private Ltd. from the second respondent-Canara Bank on mortgage of the properties in question belonging to the fourth respondent. Upon the secured asset having been classified as NPA, a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act) was issued to the borrower, viz., Vignesh Alloys Private Ltd., on 08 October 2012, calling upon the said company to pay a sum of Rs.26,20,84,716.87. Notices were issued to all the guarantors, including respondents 3 and 4, calling upon them to pay the above amounts. Owing to default in making payment of the aforesaid amount, a possession notice taking symbolic possession under Section 13(4) of the SARFAESI Act was issued on 12 December 2012. Eventually, the property in question was sold to one R.Asokan for a sum of Rs.4,23,00,000/- and a certificate to that effect was also issued. The respondent bank, being unable to recover possession of the premises in question, made an application before the first respondent under Section 14 of the SARFAESI Act for recovery of the premises.

3 As stated by the learned counsel for the petitioners, the petitioners had received a notice dated 19 May 2015 from the Court of the first respondent dealing with the instant application filed under Section 14 of the SARFAESI Act by the second respondent bank. The petitioners have, thereafter, addressed their replies raising objections on 22 May 2015. Subsequent thereto, the petitioners had no notice of the hearing. The first respondent, without affording an opportunity of hearing to the petitioners, allowed the application filed by the second respondent bank, directing the Thasildar, Coimbatore-South, for taking over possession of the property in question and handing over the same to the secured creditor, i.e., the second respondent bank.

4 The sole contention of the petitioners is that they were not afforded an opportunity of hearing before the impugned order came to be passed. Thus, the impugned order deserves to be set aside with a direction to the first respondent to consider the matter, after affording an opportunity of hearing to the petitioners, afresh.

5 The first respondent has filed a counter affidavit stating clearly that all the tenants, including the instant petitioners were served with a notice, calling upon them to appear before the first respondent on 29 May 2015 at 4.00 p.m. for an enquiry. Except one Madan Kumar, the other tenants, including the petitioners, did not choose to appear for enquiry and as such, the matter proceeded on the basis of documents filed by the parties.

6 According to the learned Special Government Pleader appearing for the first respondent, the petitioners were inducted into the premises on the basis of un-registered lease deeds. Relying on the decision of the Supreme Court in Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Ltd. and Others¹, it is contended that since the lease deeds were not duly registered, the lease cannot be held as valid, entitling the petitioners to have protection on the basis of unregistered documents to the effect that the same cannot be terminated without taking recourse to the provisions of Section 111 of the Transfer of Property Act, 1882 (for short "the TP Act").

7 Mr. V. Karthic, learned counsel for the second respondent bank, echoes the same submission advanced by the learned Special Government Pleader and further submits that the possession of the tenants was not valid and legal, inasmuch as the lease deeds were not executed in terms of Section 65-A of the TP Act. The petitioners were afforded full opportunity of hearing. However, the petitioners did not choose to appear before the authorities and participate in the proceedings. Thus, the contention of the petitioners that they were not afforded an opportunity of hearing is unfounded and deserves rejection.

8 We have heard the learned counsel for the parties and perused the pleadings and documents appended thereto.

9 That the lease deeds dated 26 July 2010 and 07 June 2010 respectively allegedly executed between the petitioners and

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the respondents 3 and 4-landlords were un-registered, is not in dispute. It is also not the case of the petitioners that they had entered into possession of the premises in question on the basis of the registered lease deeds. The case of the petitioners is that even if the lease deeds are not registered, the petitioners have occupied the property prior to mortgage and as such, they are entitled to be protected and the lease between the parties cannot be terminated under the provisions of the SARFAESI Act.

10 In the course of arguments, a copy of the notice issued subsequently also by the first respondent was produced before this Court along with a copy of the envelope addressed to the petitioners. The said envelope bears the endorsement of the petitioners declining acceptance of notice.

11 It is a well settled principle of law that refusal to accept notice is deemed to have been served on the noticee. It is also the case of the petitioners that they were served notices earlier on 07 May 2015 and they have also submitted their replies on 22 May 2015. The petitioners, thereafter, were under an obligation to follow the pending case as notice was issued in the pending application under Section 14 of the SARFAESI Act. Thus, the contention of the petitioners that they were not afforded an opportunity of hearing, which is tantamount to violation of principles of natural justice, is noted to be rejected.

12 On the question of validity of lease sans registration of lease deed, the Supreme Court, in Harshad Govardhan Sondagar (supra), examined the issue at length and came to the conclusion that a lessee is entitled to possession of secured asset only on production of proof for execution of registered instrument in his favour.

13 At this juncture, it is beneficial to extract the relevant paragraph of the aforesaid judgment as under:

"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."

14 In respect of W.P. No.27802 of 2015, the first unregistered lease deed dated 26 July 2010 was for a period of 11 months commencing from 01 August 2010, which came to an end on 30 June 2011. The lease was renewable on the expiry of the said lease period. The second lease deed dated 01 January 2013 was also for a period of 11 months commencing from the said date, which came to an end on 30 November 2013.

15 Coming to W.P. No. 27803 of 2015, the first unregistered lease deed dated 07 June 2010 was for a period of 11 months commencing from the said date, which came to an end on 06 April 2011. The lease was renewable on expiry of the said lease period. The second lease deed dated 17 November 2014 was also for a period of 11 months commencing from 01 December 2014, which came to an end on 31 October 2015.

16 As aforesaid, a demand notice under Section 13(2) of the SARFAESI Act was issued on 08 October 2012. The petitioners have not produced any renewal in respect the first lease after 30 June 2011 and 06 April 2011 respectively. The second lease deeds were executed after service of demand notice under Section 13(2), *ibid*, indisputably, without the consent of the secured creditor and as such, the same were not valid, necessitating protection under the same. It appears that lease deeds were executed for a period of 11 months to circumvent the mandatory registration under the provisions of the Registration Act, 1908. In that event, after the expiry of period of 11 months, the

renewal of lease deeds, made after the demand notice under Section 13(2), *ibid*, was served, were not valid, as it is not the case of the petitioner that the subsequent renewal was made with the consent of the secured creditor, which is a *sine qua non* for protection from the ambit of the provisions of Section 14, *ibid*. Thus, the petitioners have not entered into the premises in question on the basis of valid lease deeds under the provisions of Section 65-A of the TP Act.

17 For the reasons mentioned hereinabove, as indisputably, the petitioners have entered into the premises in question as tenants on the basis of invalid lease deeds, they are not entitled to continue therein or delivery of possession.

18 Resultantly, the writ petitions being devoid of any merit, stand dismissed. Costs made easy. Connected Miscellaneous Petitions are closed.

sd/
ASSISTANT REGISTRAR (CS-IV)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

cad

To

- 1 The District Magistrate-cum-District Collector
Collectorate Building
Coimbatore 641 018
- 2 Canara Bank Ltd.
Oppanakara Street Branch
Coimbatore

+2 CC to MR.P.J. Rishikesh Advocate. SR.NO. 61982
+1 CC to MR.T.S. Gopalan & Co Advocate. SR.NO. 62108

Pre-delivery common order in
W.P. Nos.27802 and 27803 of 2015

AR-IV
JD 23/11/2015