

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

* * * *

WRIT PETITION No.25387 of 2015

Between:

M/s. Phani Traders rep. by its Proprietor
R. Mohan Rao.

.. Petitioner

And

The Hon'ble Debt Recovery Appellate Tribunal
Rep. By its Registrar, Kolkata, West Bengal
and others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 12-08-2015

SUBMITTED FOR APPROVAL:

**HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

1. Whether Reporters of Local newspapers
Yes/No
may be allowed to see the Judgment?

2. Whether the copies of judgment may be
Yes/No
marked to Law Reporters/Journals

3. Whether Their Lordship wish to
see the fair copy of the Judgment?
Yes/No

**HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

WRIT PETITION No.25387 of 2015

ORDER : *(Per Hon'ble Sri Justice R.Subhash Reddy)*

In this writ petition, the petitioner has challenged the order dated 14.10.2009 in S.A.No.94 of 2008 passed by the Debts Recovery Tribunal, Visakhapatnam, and also the order dated 04.03.2015 in Appeal No.333/2013/1002 passed by the Debts Recovery Appellate Tribunal, Kolkata.

The 5th respondent availed loan facility from the 4th respondent Bank by mortgaging the property bearing Flat No.3, 2nd Floor, Saptha Gruha Housing Complex bearing Door No.67-8-12, NSM Public School Road, Patamata, Vijayawada as security for repayment of the loan amount. In view of default committed by the 5th respondent, the respondent Bank has initiated proceedings under the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short, 'the Act'). After issuing necessary notices under Sections 17 (2) and 17 (4) of the Act, the

respondent Bank has also obtained orders under Section 14 of the Act. When possession was sought to be taken by Advocate Commissioner in pursuance of the order passed under Section 14 of the Act, the writ petitioner, who is a third party, has filed an application being S.A.No.94 of 2008 under Section 17 of the Act before the Debts Recovery Tribunal, Visakhapatnam, seeking to set aside the action of the respondents in taking physical possession of the secured property on 16.06.2009 through Advocate Commissioner under the provisions of Section 14 of the Act and to declare the steps taken by the respondents under the Act as illegal and void.

We have perused the application filed by the petitioner in S.A.No.94 of 2008. In the said application, the petitioner clearly stated that he is a tenant of the schedule mentioned property and running business in the name and style of M/s. Phani Traders in the said property since 2005. He also pleaded that as the owner has expressed his intention to sell the subject property, he has come forward to purchase the same and assured the respondent Bank to pay the dues at the earliest. The Tribunal did not accept the claim of the petitioner and dismissed the S.A by order dated 14.10.2009. Aggrieved thereby, the petitioner has carried the matter in appeal under Section 18 of the Act before the Debts Recovery Appellate Tribunal at Kolkata (for short, 'the Appellate Tribunal'). Before the Appellate Tribunal, the petitioner has projected an unregistered agreement of sale in support of his

claim that he is in possession of the subject property, but the same was not accepted by the Appellate Tribunal.

In this writ petition, it is contended by learned counsel for the petitioner that the petitioner, who is an agreement holder, is in possession of the subject property and he has also paid certain amounts with the respondent Bank. It is further submitted that as much as the possession of the petitioner is evident from the unregistered agreement of sale, in view of the provision under Section 49 of the Registration Act, the appellate Tribunal has committed error in not accepting such document in support of the claim of the petitioner with regard to his possession.

Having heard learned counsel for the petitioner, we have carefully perused the application in S.A.No.94 of 2008 filed before the Tribunal. In the said application, the petitioner claimed to be a tenant of the subject property and has not projected any agreement of sale, as claimed before the appellate Tribunal. Though the petitioner claims that he is in possession of the subject property since 2005 by way of tenancy, he did not produce any written registered lease deed in support of his claim.

In **Harshad Govardhan Sondagar v. International Assets Reconstruction Co.Ltd.**^[1], it was held that in the absence of any lease deed, the person claiming possession is not entitled to retain possession if the claim is for more than a period of eleven months. Para 36 of the judgment reads as

under:

“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 instructions 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.”

It is not in dispute that the possession of the subject

property is taken pursuant to the orders passed under Section 14 of the Act by the competent authority. Under Section 14 (3) of the Act, no act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any Court or before any authority. In that view of the matter, the petitioner cannot question the action of the respondent Bank in taking possession of the subject property. That apart, the unregistered agreement of sale, which is the basis for the petitioner's claim over the subject property, is inadmissible in evidence. Hence, we do not find any merit in this writ petition.

Accordingly, the writ petition is dismissed at the stage of admission. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

12.08.2015

v v

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