

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No. 2196 OF 2015

JUDGMENT: (per Hon'ble Sri Justice M.Satyanarayana Murthy)

This writ petition is filed challenging the action of respondent No.4 in dismissing the petition filed in CrI.M.P No.253 of 2014 on 06.01.2015 as illegal.

2. The writ petitioner is claiming to be a lessee of schedule property, which is brought to sale by 1st respondent under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') and the petitioner challenged the order passed in CrI.M.P. No.253 of 2014 by the Chief Metropolitan Magistrate, Cyberabad, under Section 14 of the SARFAESI Act, alleging that the petitioner is running scrap business and function hall in premises No.5-41/1, in plot Nos.17, 18 and 19, in Sy.No.14/1 in an extent of 765 Sq.yds situated at Moosapet Village i.e., schedule property in CrI.M.P. No.253 of 2014. He also extended his business to adjacent premises bearing No.12-5-108, in Sy.No.14/2 in an extent of 3583 Sq.yds situated at Moosapet Village, Near Flyover.

3. The petitioner obtained lease for both the premises i.e., 765 Sq.yds on 19.11.2010 for a period of 72 months commencing from 20.11.2010 and 3583 Sq.yds on 21.08.2007 for a period of 72 months commencing from 22.08.2007 from United Enterprises, represented by its partners and that the lease is terminable by issuance of six months prior notice to the petitioner and there is a clause for extension of

lease period by consent of both lessee and lessor on the terms settled.

4. While the petitioner is continuing in possession and enjoyment of the premises bearing No.5-41/1 in plot Nos.17, 18 and 19, survey No.14/1 to an extent of 765 Sq.yds, the 3rd respondent, who availed loan from various financial institutions including State Bank of India. State Bank of India initiated proceedings under the SARFAESI Act and obtained orders in Crl.M.P. No.273 of 2013 from respondent No.4 for property admeasuring 3583 Sq.yds which is adjacent to the property covered by the Advocate Commissioners warrant issued by respondent No.4 in Crl.M.P. No.253 of 2014. The same is challenged by the petitioner before Debts Recovery Tribunal, Hyderabad in S.A No.107 of 2014 and he also filed O.S. No.1481 of 2011 against respondent No.3 and State Bank of India in respect of other premises.

5. The petitioner is a lawful tenant of the schedule property in Crl.M.P. No.253 of 2014 and he is continuing in possession and enjoyment by carrying on business and when the 3rd respondent proposed to take physical possession of the property by filing Crl.M.P. No.253 of 2014, the petitioner filed objections but the Chief Metropolitan Magistrate, Cyberabad dismissed the petition.

6. The Chief Metropolitan Magistrate is under obligation to issue notice to petitioner affording reasonable opportunity for hearing and thereafter the Chief Metropolitan Magistrate can dispose of the petition filed by authorized officer under Section 14 of the Act, in view of the principles laid down by the Apex Court in "Harshad Goverdhan Sondagar Vs. IARC", in Crl.A No.736 of 2014, but the Chief Metropolitan Magistrate did not issue any notice to the petitioner (alleged tenant) in Crl.M.P. No.253 of 2014. However, the petitioner

himself submitted objections against the application filed under Section 14 of the SARFAESI Act but the 4th respondent herein without going into the issue as to whether the lease is prior to or after mortgage, dismissed the application in a casual manner and that the order of the Chief Metropolitan Magistrate is against the principles laid down by the Apex Court in Harshad Goverdhan Sondagar (supra) and the order passed in Crl.M.P. No.253 of 2014 passed by the 4th respondent is unconstitutional and illegal.

7. At the stage of admission, we have heard the learned counsel for petitioner at length. The main contention of the petitioner is that when the petitioner is a lessee of the premises, before taking physical possession, an opportunity shall be given to him but without issuing any notice, the Court issued warrant to the Commissioner for taking physical possession of the property and even after filing the objections objecting the proposed taking over physical possession of the property, the Chief Metropolitan Magistrate, Cyberabad, passed a casual order, hence, prayed to set-aside the order passed by the Chief Metropolitan Magistrate, Cyberabad.

8. The petitioner filed a miscellaneous petition in Crl.M.P. No.253 of 2014, but it was not numbered, however, the Chief Metropolitan Magistrate considered the objections and finally concluded that the lease between the petitioner and respondents 2 and 3 is not legal and disbelieved the lease, accordingly rejected the Miscellaneous Petition.

9. The copy of the petition filed along with the writ petition discloses that the petitioner is claiming to be a tenant under G.S Enterprises and United Enterprises vide lease dated 21.08.2007 and 19.11.2010 respectively. The copies of lease deeds are also produced before this Court. The lease deed was executed on the

stamp paper worth Rs.100/- for a period of 72 months, on monthly rent of Rs.12,500/- with usual conditions. The lessor is Syed Anwar, Managing Partner of United Enterprises and the lessee is the petitioner. According to the amended provisions of Indian Registration Act, Section 17 (1) (d) of Registration Act (came into effect from 01.04.1999) 'any leases of immovable property are compulsory registerable', irrespective of period of lease and lease amount payable for the premises in respect of any immovable property, the stamp duty payable on lease deed is as per Article 31 (a) (iii) of Schedule I-A of the Indian Stamp Act, 1899, five percent for a market value equal to the amount or value of one and half times of the average annual rent reserved. Therefore, the lease deed dated 19.11.2010 is not duly stamped and not registered under the provisions of Indian Registration Act, though it is compulsory registerable document in view of A.P Amendment Act and such lease is not valid and legal. The trial Court dismissed the petition only on the ground that the lease is not valid and enforceable under law for want of registration. The finding of the Chief Metropolitan Magistrate about the validity of the lease is in accordance with law.

10. It is the specific contention of the counsel for the petitioner that when there is a subsisting relationship of lessee or lessor in respect of the premises proposed to be taken possession by the Commissioner, appointed by Chief Metropolitan Magistrate in CrI.M.P. No.253 of 2014, his rights are to be protected. No doubt, in view of the principles laid down in Harshad Goverdhan Sondagar (surpa), the lawful tenant is entitled to his physical possession till the lease is determined or duly evicted by due process of law. But, if the leases of this nature i.e., unregistered and not duly stamped leases are accepted to determine the rights, there is every possibility to create such leases to deprive the financial institutions from realization of the debt due to it by the defaulter invoking the provisions of the

SARFAESI Act. As the lease deed is insufficiently stamped and not registered under Section 17 of Indian Registration Act, the lease is invalid and such invalid lease would not create any legal right to enjoy the possession of the property. That apart, the lease deed was allegedly executed by Syed Anwar, whose occupation is business and Managing Partner of United Enterprises, but as seen from the allegations made in para No.3 of the writ petition, the lease was allegedly obtained from United Enterprises represented by its partners, but the lease dated 19.11.2010 was executed by Syed Anwar in his individual capacity not as partner of United Enterprises signing on all the pages of the lease deed not representing United Enterprises. But whereas, the other lease deed filed along with this petition dated 21.08.2007 was executed by Syed Anwar, Managing Partner of United Enterprises and affixed stamp of United Enterprises on all the pages of the lease deed dated 21.08.2007 which is not connected with the possession of the property proposed to be taken. Therefore, there is any amount of doubt about the subsisting lease between the writ petitioner and United Enterprises. The alleged lease is only between Syed Anwar and writ petitioner herein and that the said Syed Anwar was not made as party in his individual capacity, but United Enterprises was arrayed as 3rd respondent.

11. The dispute is with regard to the dispossession of the petitioner being lessee under unregistered and improperly stamped lease which is inadmissible in evidence and it appears that the property covered by two leases is proposed to be taken possession by the Commissioner, Commissioner warrant and schedule of property proposed to be taken have not been placed on record. But according to the schedule annexed to the petition filed before the Chief Metropolitan Magistrate the schedule of property is only 765 Sq.yds situated at Moosapet Village, Ranga Reddy District which is subject matter of the lease deed dated 19.11.2010, whereas the mortgage was

created long prior to the alleged lease but it is not known whether the lease was subsequent to issue of 13 (2) notice or prior to it.

12. If the lease was prior to mortgage or prior to issuance of notice under Section 13 (2) of the SARFAESI Act, the tenant is entitled to protect his possession subject to establishing the lawful and valid lease between the petitioner and third respondent. When no legal and valid lease is established between the petitioner and 3rd respondent—United Enterprises, the alleged lessee—petitioner is not entitled to protect his possession.

13. It is curious to note that the Crl.M.P. No.253 of 2014 was filed to appoint an Advocate Commissioner to take physical possession of 765 Sq.yds, subject matter of alleged lease dated 19.11.2010, the petitioner claimed right as lessee in same schedule by filing objections annexing schedule to the objections; moreover, in the present petition the petitioner made vain attempt to obtain order in respect of the other property of an extent of 3583 Sq.yds, impleading alleged lessor and State Bank of India, though not concerned with the order passed in Crl.M.P. No.253 of 2014, by misleading the Court. When the petitioner made an attempt to obtain order by misleading, this Court can't exercise the discretion under Article 226 of Constitution of India to grant relief. The relief claimed in the petition is beyond the scope of Crl.M.P. No.253 of 2014. Hence, we are unable to exercise discretion under Article 226 of Constitution of India and on this ground alone the petition is liable for dismissal.

14. On careful consideration of entire material available on record, it is evident that the 3rd respondent indebted to several banks and financial institutions and 1st respondent is one among such creditors of the 3rd respondent, but inventing different modes to protract realization of amount by the

banks and financial institutions, despite default committed by the 3rd respondent, the lease dated 19.11.2010 is one such invention to protract realisation of debt by the 1st respondent proceeding under the provisions of the SARFAESI Act and if such practices are encouraged believing the unregistered and not duly stamped leases, it is difficult for the banks and financial institutions to realize the debt due to them proceeding under the provisions of the SARFAESI Act. Therefore, we find that the lease deed dated 19.11.2010 is invalid and we are unable to extend any protection to the alleged possession under the invalid lease. Therefore, the Chief Metropolitan Magistrate rightly disbelieved the contention of the petitioner herein and rejected the claim. Hence, the findings of the Chief Metropolitan Magistrate are supported by legal reasons and do not call for interference of this Court.

15. Hence, we find no ground to declare that dismissal of application filed by the petitioner in CrI.M.P No. 253 of 2014 dated 06.01.2015 as illegal and arbitrary, while exercising jurisdiction under Article 226 of Constitution of India. Accordingly, the writ petition is dismissed.

16. Pending miscellaneous petitions in this writ petition, if any, shall stand dismissed in consequence. No order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

Date:26.02.2015.

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Date:26.02.2015

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