

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

WRIT PETITION No.29294 OF 2015

ORDER:- (per Hon'ble Sri Justice R.Subhash Reddy)

This writ petition is filed questioning the Advocate Commissioner's Notice, dated 24.08.2015, passed in CrI.M.P.No.2203 of 2015 on the file of the Chief Metropolitan Magistrate, Nampally, Hyderabad, in exercise of powers conferred under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The petitioner claims to be a lessee of respondent No.2 in respect of the property in question since 15.12.2006 till date pursuant to an unregistered lease deed, dated 27.11.2006, and as per the said deed, the lease was for the period from 15.12.2006 to 14.12.2009. The lease was extended from time to time by separate lease deeds and the lease of the petitioner will expire by 14.12.2016. The petitioner is paying rents regularly to respondent No.2 and has valid licence up to 24.4.2025. While so, pursuant to possession notice, dated 31.01.2015, respondent No.1 - bank has obtained orders from the Chief Metropolitan Magistrate, Nampally, Hyderabad and appointed an Advocate Commissioner, who has given notice, dated 24.08.2015, of 15 days for taking physical possession of the property in question. On enquiry, the petitioner came to know that respondent No.2 stood as a guarantor for an education loan availed by respondent Nos.3 and 4, who are none other than his son and daughter-in-law. The said loan is much subsequent to the lease. Suppressing the lease with the petitioner, respondent No.2 stood as guarantor for the loan taken from respondent No.1. It is the case of petitioner that as it invested huge amounts on interior works and obtained all required permissions, it may be permitted to participate in the auction proceedings. Respondent No.1 - Bank suppressed the

lease and filed petition before the Chief Metropolitan Magistrate and obtained orders to vacate the premises. The petitioner is having lease till 2016. Hence, the petitioner has filed the present writ petition to set aside the Advocate Commissioner's notice, dated 24.08.2015.

3. Heard learned counsel for the petitioner and learned Standing Counsel for respondent No.1 - Bank.

4. Today, when the matter is called, it is fairly submitted by learned counsel for the petitioner that respondent No.1 - Bank has already taken possession of the property in question. In the case of **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and others**, while dealing with an identical issue, the Honourable Supreme Court has held 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."

In view of the aforesaid ratio laid down by the Honourable Supreme Court, we are of the view that the petitioner is not entitled to claim possession of the property in question based on the unregistered lease deed. In any event, as the possession of the property in question has already been taken by respondent No.1 - Bank, we do not find any reason to interfere with the impugned notice issued by the Advocate Commissioner.

5. Accordingly, the Writ Petition is dismissed. However, respondent No.1 - Bank shall permit the petitioner to remove furniture, if any, in the property in question. At the same time, it is made clear that the petitioner is not allowed to continue in possession or do business in the property in question. There shall be no order as to costs.

6. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE R.SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

Date: 07.10.2015

AMD

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

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Dated: 07.10.2015

AMD