

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

WRIT PETITION No.18057 of 2015

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

This writ petition is filed by the petitioner seeking *Mandamus* to declare the notice dated 18.06.2015 issued by the 2nd respondent – Advocate Commissioner, as arbitrary and illegal.

2. Heard Sri M. Karuna Sagar, learned counsel for the petitioner, as well as Sri K. Mallikarjuna Rao, learned Standing Counsel for the 1st respondent-Bank and perused the material on record.

3. By the aforesaid notice, the 2nd respondent – Advocate Commissioner has sought to execute the warrant after three days and asked the petitioner to handover possession of the property and to cooperate for preparing inventory/panchanama, failing which he will be constrained to take possession of the property, if necessary, by breaking open the lock. The said notice is issued consequent to the order in CrI.MP.No.1559 of 2013 passed by the Chief Metropolitan Magistrate, Hyderabad, in exercise of the powers conferred under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

4. It is not in dispute that the subject property is given as security for the loan obtained by the original borrower from the 1st respondent-Bank. Though the petitioner claims possession over the subject property for the last five years, except the oral agreement, she has not produced lease deed or any other document in support of her claim.

5. In the case of HARSHAD GOVARDHAN SONDAGAR vs. INTERNATIONAL ASSETS RECONSTRUCTION CO.LTD.^[1], the Apex Court held 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 bonafide 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.”

6. The petitioner has merely questioned the notice dated 18.6.2015 issued by the 2nd respondent – Advocate

Commissioner, which is consequent to the order in Crl.MP.No.1559 of 2013 passed by the Chief Metropolitan Magistrate, Hyderabad. She has not even challenged the order in Crl.MP.No.1559 of 2013. Therefore, as per the judgment of the Apex Court in the case of HARSHAD GOVARDHAN SONDAGAR (supra), when the subject property is mortgaged for obtaining loan, basing on the oral agreement, the petitioner is not entitled for the relief sought for in the writ petition.

7. For the aforesaid reasons, this writ petition is devoid of merits and is accordingly dismissed, at the admission stage. However, as it is represented that the petitioner is staying in the subject premises and requires some time to secure alternate accommodation, we direct that both the parties shall maintain *status quo* with regard to the possession over the subject property for a period of six weeks from today. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

17.07.2015.

Msr

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

WRIT PETITION No.18057 of 2015

17.07.2015
Msr

[\[1\]](#) (2014) 6 SCC 1