

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

WRIT PETITION No.13949 of 2015

Between:

G.Vijaya Lakshmi.

Petitioner and

The Housing Development Finance
Corporation Ltd., rep. by its Vice Chairman,
Raymond House, HT Parek Marg 169,
Churchgate, Mumbai
And others

Respondent

DATE OF JUDGMENT PRONOUNCED: 11-08-2015

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 Judgments?
2. Whether the copies of judgment may be
Yes/No

Marked to Law Reporters/Journals?

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

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.13949 of 2015

ORDER: (*Per Hon'ble Sri Justice A. Shankar Narayana*)

The instant Writ Petition is filed seeking *mandamus* to declare the action of respondent Nos.1 and 2 in initiating proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), as arbitrary and illegal; and consequently, to declare that respondent Nos.1 and 2 could not have proceeded against the property belonging to the petitioner bearing Plot No.16, H.No.2-2-1105/37/C, Tilak Nagar, New Nallakunta, Amberpet, Hyderabad.

2. The petitioner herein is the daughter of respondent No.3. Respondent No.3 is the borrower and respondent No.4 is guarantor, who is no other than the

son of respondent No.3. Respondent No.3 along with her husband-Dr. M.Seshagiri Rao and their son-respondent No.4 herein availed loan facility from respondent Nos.1 and 2, and respondent No.3 mortgaged the subject property as security for prompt discharge of loan amount, but respondent No.3 committed default in payment of monthly E.M.Is. When respondent Nos.3 and 4 became chronic defaulters, respondent Nos.1 and 2 declared their loan account as Non-performance Asset. Hence, respondent Nos.1 and 2 initiated measures under the Act by issuance of notices under Section 13(2) of the Act dated 26.09.2014 and 29.09.2014, which were effected on respondent No.3 and even affixed by way of affixture and by way of publication in newspapers. Thereafter, respondent Nos.1 and 2 approached the Chief Metropolitan Magistrate under Section 14 of the Act and orders were passed by the learned Magistrate dated 06.02.2015 in CrI.M.P.No.159 of 2015 appointing Advocate Commissioner to take physical possession of the secured asset.

3. The petitioner herein states that the secured asset had fallen towards her share by way of family arrangement and that she has been residing therein along with her family. When she learnt that bank has issued notice under Section 13(2) of the Act, she got issued reply dated 05.10.2014, for which a re-joinder notice was

issued to her dated 18.11.2014 stating therein that she was not the legal heir and cannot question the notice contents. Subsequently, on 21.04.2015, when a notice was put on her door, she filed the instant writ petition seeking the aforesaid relief stating that respondent Nos.1 and 2 have not complied with the provisions of the Act and their attempt to take possession of subject property is unjust and illegal.

4. Respondent Nos.1 and 2 have filed counter resisting the request stating therein that the provisions of the Act have been strictly adhered to in issuance of notices under Section 13(2) of the Act and further measures taken by them. According to respondent Nos.1 and 2, the petitioner is a stranger to the secured asset, and in an attempt to stall the measures taken under the Act on one pretext or the other, the petitioner unjustly raising one or the other objection. It is also stated that the stand of the petitioner that the subject property was only given as a gift by her father is totally incorrect. Therefore, while stating that the measures under Section 14 of the Act were also initiated by observing due formalities, sought to dismiss the petition.

5. Heard Sri K.S.Murthy, learned counsel for the petitioner, and Sri B.Ravindra Reddy, learned counsel for respondent Nos.1 and 2, and perused the material available on record.

6. In her affidavit, the stand of the petitioner is that by way of family arrangement, the secured asset was acquired by her towards her share, but in the reply notice dated 05.10.2014 got issued by her to respondent Nos.1 and 2 as reply for the demand notice dated 26.09.2014 issued under Section 13(2) of the Act, she claimed that she was getting issued that notice on behalf of her son-Akshay Raj Gollahalli, since her son went to New Zealand to pursue his studies and also stated that the secured asset was purchased by her late father, Sri M.Seshagiri Rao, in the name of her mother-respondent No.3 herein through registered document and that the same was gifted to her by her father orally in the year 2001 itself. Thus, the petitioner putforth inconsistent stands by stating in her affidavit in the instant writ petition that in the family arrangement, the secured asset had fallen to her share; whereas, in the said notice, she stated that it was gifted to her by her father orally. No document is filed by the petitioner, irrespective of the fact that whether the family arrangement is registered or otherwise. Thus, the very stand taken by the petitioner appears to be wholly untrue reflecting that she is a stranger to the secured asset. Therefore, we find no merit in the instant writ petition and it is liable to be dismissed.

7. During the course of arguments, learned

counsel for the petitioner sought time for vacating the secured premises. We feel that it would be reasonable to grant four weeks to the petitioner to vacate the premises directing respondent Nos.1 and 2 not to take any coercive steps during the said four weeks period.

8. Accordingly, the Writ Petition is dismissed granting four weeks' time to the petitioner to vacate the secured asset premises and hand over the vacant possession to the authorised officer of respondent Nos.1 and 2, and in case, she fails to vacate the premises, respondent Nos.1 and 2 are at liberty to continue the measures under the Act. No order as to costs.

9. As a sequel thereto, miscellaneous petitions, if any pending in this writ petition, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

Date: 11.08.2015

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